UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed August 16, 2024, 12:00 a.m. through September 03, 2024, 11:59 p.m.

Number 2024-18
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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

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

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EDITOR'S NOTES

First Possible Effective Date Correction for Rule R652-21 (ID 56686)

Rule R652-21 (ID 56686) was published in the September 1, 2024 Bulletin with the notice that the Division of Forestry, Fire and State Lands (division) intends for the first possible effective date of this filing to be 10/10/2024. However, the division's intended date was 10/08/2024. This editor's note serves as public notice that the division's intended first possible effective date for Rule R652-21 is 10/08/2024.

Any questions on this issue should be directed to rulesonline@utah.gov.

End of the Editor's Notes Section

NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 16, 2024, 12:00 a.m., and September 03, 2024, 11:59 p.m. are included in this, the September 15, 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 October 15, 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 January 13, 2025, 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:	**R33-101**	**Filing ID: 56763**

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. General Procurement Provisions

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-1, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-1.

4. Summary of the new rule or change:

This rule provides definitions, determines the applicability of Title R33, and provides general procurement provisions.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-1. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-1. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-1. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-1. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-1. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-101. General Procurement Provisions.
R33-101-101. 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 each party and approving authority, 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;
(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).

R33-101-102. 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.

R33-101-102.5. 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.

R33-101-103. 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.

R33-101-104. 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.

R33-101-112. 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.

R33-101-113. 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.

R33-101-114. Addenda to Solicitation.

(1) Before the deadline for receipt of a solicitation response, a procurement unit may issue addenda modifying any aspect of 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.

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

R33-101-115. 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 the 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 US 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.

R33-101-116. Voluntary Withdrawal of a Response.

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

R33-101-117. 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 Subsection (1) 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-102**	**Filing ID: 56760**

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:

R33-102. Rules of Procedure for Procurement Policy Board

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-2, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-2.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-2. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-2. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-2. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-2. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-2. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-202(5)	Subsection 63G-6a-203(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-102. Rules of Procedure for Procurement Policy Board.
R33-102-101. Purpose.

The purpose of this rule is to establish procedures for the meetings of the Procurement Policy Board. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

R33-102-102. Authority.

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 Sections 63G-6a-107.7 and 63G-6a-203.

R33-102-104. 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 may not be considered as part of the quorum requirement for Board meetings or determinations.

R33-102-106. 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 or second a motion and have a vote on each matter before the Board.

(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.

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

R33-102-107. Secretary to the Board.

(1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board.

(2) The Secretary shall:

(a) attend each meeting of the Board;

(b) provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Act;

(c) coordinate with others as needed for compliance with the Open and Public Meetings Act.

(d) maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically; and

(e) make records available at reasonable times to the public.

R33-102-108. Meetings.

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

(2) The date, time and location of a meeting may be identified or modified by the Chair at any time when it is in the interest of the Board and the public.

R33-102-109. 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 a member of the Board desires to participate electronically:

(i) the member of the Board shall contact the Director or Secretary;

(ii) the Director shall assess the practicality of facility requirements necessary to conduct the meeting electronically in a manner that is required by this rule; and

(iii) the Presiding Officer shall determine whether to allow electronic participation.

(b) If electronic participation is approved, the public notice of the meeting 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.

(c) When notice of electronic participation is given, any member of the Board may participate electronically.

(d) A member of the Board, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote.

(e) At the commencement of the meeting, or as any member of the Board initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically.

(f) 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.

R33-102-110. 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.

(2) 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.

R33-102-111. 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) Items may be placed on the agenda by:

(a) The Chair;

(b) A member of the Board contacting the Chair and requesting an item be placed on the agenda; or

(c) A member of the Board, the Division, governmental agency, or the public submitting a request to the Secretary of the Board for an item to be placed on the agenda subject to review and approval by the Chair.

(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) Each agenda shall include an agenda item that allows a Board member to request that an item be placed on a future agenda.

R33-102-112. 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:

(a) expressed publicly when called for by the Presiding Officer;

(b) the number of affirmative, negative, and abstaining votes announced by the Presiding Officer; and

(c) 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.

R33-102-113. 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.

R33-102-114. Committees and Appeals Panel.

The 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.

R33-102-115. 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.

R33-102-116. Rules of Order.

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.

R33-102-117. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of Sctions R33-102-101 through R33-102-117 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-202(5); 63G-6a-203(1)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-103**	**Filing ID: 56764**

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:
R33-103. Procurement Organization
3. Purpose of the new rule or reason for the change:
The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-3, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-3.

4. Summary of the new rule or change:

This rule provides authority to the Chief Procurement Officer to delegate any authority under Section 63G-6a304 as deemed appropriate.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-3. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-3. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-3. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-3. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-3. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-103. Procurement Organization.
R33-103-101. Delegation of Authority of the Chief Procurement Officer.

Pursuant to Section 63G-6a-304, the Chief Procurement Officer may delegate in writing:
(1) authority to an employee of the Division; and
(2) authority to an executive branch procurement unit provided:
(a) the executive director of the department agrees to the delegation;
(b) the authorized procurement duties are outlined;
(c) the responsibilities of the delegate to comply with the applicable laws, rules, and policies is stated; and
(d) the delegation remains in effect unless modified or revoked in writing.

KEY: government purchasing, chief procurement officer, delegation of authority
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: New		
Rule or Section Number:	**R33-104**	**Filing ID: 56765**

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:

R33-104. Supplemental Procurement Procedures

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-4, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-4.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-4. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-4. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-4. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-4. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-4. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

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) Each specification shall:

(a) be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition; and

(b) 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 solicitation 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 Subsection R33-104-103(3) may result in:

(i) the bidder or offeror being declared ineligible for the 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 for 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 can be waived by the procurement official 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.

(2) "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.

(3) 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.

(4) 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) "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.

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

(3) "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.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:
(a) quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;
(b) the procurement unit informs the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and
(c) the procurement unit maintains a public record that includes:
(i) the name of each vendor supplying a quotation; and
(ii) the amount of each vendor's quotation.
(5) An executive branch procurement unit, subject to this rule:
(a) may obtain electronic, telephone, or written quotations for a procurement item costing less than $10,000, unless the procurement official determines a lower amount by policy;
(b) shall send a request to obtain quotations for a procurement item costing more than $10,000, unless the procurement official determines a lower amount by policy, to the 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-105**	**Filing ID: 56766**

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:

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-5, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-5.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-5. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-5. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-5. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-5. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-5. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-506(2)	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-105. Other Standard Procurement Processes.
R33-105-101. Request for Information.

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.

R33-105-102. Small Purchases.

(1) A small purchase shall be conducted in accordance with Section 63G-6a-506 and this administrative rule.
(2) Unless statute, rule, or policy mandate use of a state cooperative contract or other source, a procurement unit may directly award to the best source without completing a solicitation process when:
(a) the individual cost of each procurement item does not exceed the Individual Procurement Item threshold; and
(b) the aggregate cost of all procurement items being procured at the same time does not exceed the Single Procurement Aggregate threshold; and
(c) the Annual Cumulative Threshold has not been exceeded by the procurement unit for that source.
(3) The Individual Procurement Item threshold is $5,000 unless the procurement official determines a lower amount in writing.
(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 in writing.
(5) The Annual Cumulative threshold is $50,000 for small purchases made by direct award without a solicitation process from the same source in one year.
(6) When practicable, a procurement unit shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-105-103. Quotes for Small Purchases from $5,000 to $50,000.

(1) A procurement unit shall complete a quotes for small purchase solicitation process when:
(a) the individual cost of a procurement item exceeds the Individual Procurement Item threshold established in Section R33-105-102; and
(b) the aggregate cost of all procurement items to be procured does not exceed $50,000.
(2) When completing a quotes for small purchases solicitation process, the procurement unit:
(a) shall determine the minimum specifications for award including a vendor response due date and time;
(b) shall provide the minimum specifications to multiple vendors;
(c) shall obtain a minimum of two competitive quotes which include minimum specifications; and
(d) shall purchase from the responsible vendor offering the lowest quote that meets the specifications.
(3) Executive Branch procurement units, to the extent they do not have independent procurement authority:
(a) may not obtain quotes when aggregate of the procurement exceeds $10,000; and

(b) shall send a request for solicitation to the Division.

(4) A procurement unit with independent procurement authority:

(a) may not obtain quotes when the aggregate of the procurement exceeds $50,000 or a lower amount determined in writing by the procurement official; and

(b) shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(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, a procurement unit may obtain quotes from all vendors on an approved vendor list.

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

R33-105-104. Small Purchases of Professional Service Providers and Consultants.

(1) For a small purchase for professional service providers and consultants solicitation, the procurement unit shall:

(a) limit the solicitation to a maximum amount to $100,000 per project;

(b) review the qualifications of a minimum of three firms or individuals;

(c) rank the firms or individuals in order from highest to lowest; and

(d) begin direct negotiation with the highest ranked firm or individual.

(2) If an agreement cannot be reached with the highest ranked firm or individual, the procurement unit shall:

(a) move to the next highest ranked firm or individual for negotiation and so on until a fee agreement is reached; or

(b) select and review three additional professional service provides and consultants prior to negotiating with the highest ranked firm or individual.

(3) 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.

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

(5) When using an approved vendor list:

(a) a procurement unit shall, when using this rule, 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; or

(iv) another method approved by the procurement official.

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (5)(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.

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 Subsections (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; and

(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.

(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.

R33-105-202. 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 R33-112-604, 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 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-506(2)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-106**	**Filing ID: 56762**

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:

R33-106. Bidding

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-6, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-6.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-6. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-6. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-6. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-6. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-6. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-106. Bidding.
R33-106-101. Competitive Sealed Bidding; Multiple Stage Bidding.
Competitive sealed bidding shall be conducted in accordance with the requirements in Title 63G, Chapter 6a, Part 6, Bidding. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

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, Utah Procurement Code were not followed;
(c) additional public notice is desired;
(d) there was a lack of adequate competition; or
(e) other reasons exist that are in the best interests of the procurement unit.
(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-106-110. 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.
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:
(1) the name of the bidder to which the contract is awarded and the price of the procurement item; and
(2) 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-107**	**Filing ID: 56767**

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:

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-7, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-7.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-7. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-7. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-7. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-7. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-7. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-707.5(13)	Subsection 63G-6a-712(8)

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-107. Request for Proposals.
R33-107-101. Conducting the Request for Proposals Standard Procurement Process.

The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in Chapter 63G, Title 6a, Part 7, Requests for Proposals. 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. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

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 in the best interest of 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.

R33-107-105. Protected Records.

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

(1) Trade Secrets, as defined in Section 13-24-2.

(2) Commercial information or non-individual financial information subject to Subsection 63G-2-305(2).

(3) Other Protected Records under GRAMA.

R33-107-105.5. Process for Requesting Non-Disclosure.

Any person requesting that a record be protected shall include with the proposal or submitted document:

(1) 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

(2) 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) Allowable disclosure of public records submitted in the RFP process will only be available after the selection of the successful offeror has been made public.

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

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

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

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

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

(b) 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) Minimum score thresholds:

(a) may be based on:

(i) minimum scores for each evaluation category;

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

(iii) a combination of Subsections (i) and (ii).

(b) 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 a written exception is provided by the procurement official.

R33-107-601. Best and Final Offers.

Best and Final Offers (BAFO) shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5. Rule R33-107 provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

(1) BAFO process is an optional step in the evaluation phase of the RFP process in which offerors are requested to modify their proposals.

(2) The BAFO process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(3) A procurement unit may not use the BAFO process to allow offerors a second opportunity to respond to the entire RFP.

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 RFP.

(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, each member 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) In accordance with Section 63G-6a-707, the procurement unit shall appoint an evaluation committee.

(a) The evaluation committee shall:

(i) evaluate each responsive proposal submitted by a responsible offeror that has not been rejected from consideration under Title 63G, Chapter 6a, Utah Procurement Code using the criteria described in the RFP.

(ii) exercise independent judgment in the evaluation and scoring of the non-priced technical criteria in each proposal.

(b) Proposals must be evaluated solely on the criteria listed in the RFP.

(6) 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 any presentations, interviews, or demonstrations. 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.

(7)(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.

(8) 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.

(9) 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.

(10)(a) The procurement official may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the procurement official to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The procurement official may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (10)(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.

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) Evaluators shall exercise independent judgment and not be inappropriately influenced by others.

(2) 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.

(3)(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 may 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.

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 RFP standard procurement process set forth in Title 63G, Chapter 6a, Part 7, Requests for Proposals.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-707.5(13); 63G-6a-712(8)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-108**	**Filing ID: 56768**

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:
R33-108. Exceptions to Standard Procurement Process
3. Purpose of the new rule or reason for the change:
The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-8, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-8.
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. (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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-8. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-8. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-8. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-8. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-8. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-802.3(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

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.

Award of a contract without engaging in a standard procurement process shall be conducted in accordance with the purpose and policies of Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements.

R33-108-101a. Sole Source Contract Awards.

(1) A sole source contract does not involve a standard procurement process and shall be awarded in accordance with Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements.

(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 life-cycle 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.
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:
(1) 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;
(2) public utility services, when only one public utility service is available in an area;
(3) an item where compatibility is the overriding consideration; or
(4) 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) The division shall make available a form that requires the procurement unit to provide, at a minimum, the following information:
(a) a description of the procurement item, including, when applicable, the proposed scope of work;
(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full life-cycle cost of maintenance and service agreements;
(c) the duration of the proposed contract; and
(d) research completed by the procurement unit documenting that:
(i) there are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-108-101a;
(ii) 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
(iii) 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.
(2) 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).
(3) 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 Section R33-108-101a, R33-108-101b, or R33-108-101c, the procurement official may waive the requirement to publish a notice of intent to award a contract without engaging in a standard procurement process for the following procurements:

(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 any person who deals 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 contest, 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 contest of 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 contest and make a written determination either supporting or denying the contest.

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

(b) If a contest 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 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, Chapter 6a, Utah Procurement Code is to ensure the fair and equitable treatment of any 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. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

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

(a) If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall when practicable:

(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) if the procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations;

(i) initiate a standard procurement process no later than 180 days before the contract expiration date; 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 conducting procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) a conducting 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.

R33-108-401. 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 to avoid a lapse in critical government services, when circumstances create harm or risk of harm to public health, welfare, safety, or property, or to protect the legal interests of a public entity.

(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."

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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-802.3(5)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-109**	**Filing ID: 56769**

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:

R33-109. Cancellations, Rejections, and Debarment

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-9, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-9.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-9. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-9. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-9. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-9. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-9. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-904(6)	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-109. Cancellations, Rejections, and Debarment.
R33-109-101. Cancellation Before Opening.

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 canceled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(1) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or

(2) 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 canceled 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 any 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, any 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) Regardless of 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 vendors', offerors', or person's acceptance periods, the procurement unit should request the vendors, 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 canceled 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 responsible vendor with a responsive solicitation response, meeting any 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 professional service or 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 any 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 canceled 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 canceled 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, canceling 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 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 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) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.
(2) 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.
(3) 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) Any 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-904(6)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-110**	**Filing ID: 56770**

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:

R33-110. Preferences

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-110, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-110.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-110. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-110. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-110. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-110. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-110. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

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. This rule provides additional requirements and procedures and must be used in conjunction with Sections 63G-6a-608, and 63G-6a-1003. Definitions in the Utah Procurement shall apply to this rule.

(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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-608; 63G-6a-1003

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-111**	**Filing ID: 56771**

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:
R33-111. Form of Bonds
3. Purpose of the new rule or reason for the change:
The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-11, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-11.
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. (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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-11. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-11. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-11. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-11. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-11. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-1103(3)	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	Date:	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-111. Form of Bonds.
R33-111-101. Definitions.

(1) When used in this rule, the terms "bid," "bidder," and "bid security" apply to any procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities or bonds.

(2) This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

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, when 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 Section 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 any 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 construction contracts exceeding $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 14 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 or 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 Subsection R33-111-302(1)(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 construction contracts exceeding $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 US 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) If the procurement unit fails to obtain a payment bond, it shall be subject to Section 14-1-19.

R33-111-304. Bond Waivers.

The procurement official may waive any bonding requirement if it is determined in writing by the procurement official that:

(1) bonds cannot reasonably be obtained for the work involved;

(2) the cost of the bond exceeds the risk to the procurement unit; or

(3) bonds are not necessary to protect the interests of the procurement unit.

KEY: bid security, performance bonds, payment bonds, procurement procedures
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-1103(3)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-112**	**Filing ID: 56772**

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:

R33-112. Terms and Conditions, Contracts, Change Orders and Costs

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-12, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-12.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-12. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-12. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-12. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-12. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-12. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Title 63G, Chapter 6a, Part 12	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

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. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

R33-112-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall use the standard terms and conditions established 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.
(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, 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 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 shall be conducted in accordance with Section 63A-3-103 and Section 63G-6a-1209.
(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:
(a) it is in the best interest of the procurement unit;
(b) any conditions for renewal and costs of termination are set forth in the lease; and
(c) the lease is not used to avoid a competitive procurement.
(2) Lease contracts shall be conducted with as much competition as practicable.
(3) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:
(a) investigate alternative means of procuring comparable procurement items; and
(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-112-404. 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.

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

(1) specific elements of costs;

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

(3) supplemental cost schedules;

(4) market basket cost of similar items;

(5) the necessity for certain costs;

(6) the reasonableness of allowances for contingencies;

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

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

R33-112-605. Right to Audit.

(1) As used in this section:

(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;
(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.

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:

(1) whether the definition of "responsible," has been met or is capable of being met; and

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

R33-112-702. Access to Contractor's Manufacturing or Production Facilities.

The procurement unit may enter a contractor's or subcontractor's manufacturing or production facility or place of business to:

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

(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-112-605; and

(3) investigate related to 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: 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-1208; 63G-6a-1209

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-113**	**Filing ID: 56773**

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:

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-13, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-13.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-13. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-13. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-13. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-13. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-13. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Section 63G-6a-1303	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.

R33-113. General Construction Provisions.

R33-113-101. Purpose.

The purpose of this rule is to comply with Sections 63G-6a-1302 and 63G-6a-1303. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

R33-113-201. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts;

(2) documenting the selection of a particular method of construction contract management; and

(3) the selection of a construction manager/general contractor.

R33-113-202. Application.

Sections R33-113-201 through R33-113-205 shall apply to any procurements of construction. Section R33-105-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security, and bonding requirements are contained in Title 63G, Chapter 6a, Part 11, Bond 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 Contractor or 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, program, or both. 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, also known as 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.

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

(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 Sections 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 Sections R33-113-302 through R33-113-304.

(2) In addition:

(a) "Board" means the Procurement Policy Board created under created under Title 63G, Chapter 6, Utah Procurement Code.

(b) "State Public Procurement Unit" means a public procurement unit that is subject to Section 63G-6a-1303.

(c) "State" as used throughout this Sections 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, after June 30, 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 Sections R33-113-302 through R33-113-304 and agrees to comply with all aspects of Sections 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 Sections R33-113-302 through R33-113-304.

(b) After June 30, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to Sections 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 any subcontractors under the contractor that are subject to Subsection R33-113-302(1), shall comply with Sections R33-113-302 through R33-113-304 and 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 Sections 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 Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 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 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 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 Sections 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.

Sections 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 Sections 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:

(1) jeopardizing the receipt of federal funds;

(2) the state construction contract being a sole source contract; or

(3) the state construction contract being an emergency procurement.

R33-113-304. Not Limit Other Lawful Policies.

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and Sections R33-113-302 through R33-113-304, 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-1303

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-114**	**Filing ID: 56774**

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:

R33-114. Procurement of Design-Build Transportation Project Contracts

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-14, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-14.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-14. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-14. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-14. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-14. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-14. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Subsection 63G-6a-1402(3)(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-114. Procurement of Design-Build Transportation Project Contracts.
R33-114-101. Procurement of Design-Build Transportation Project Contracts.

(1) The Utah Department of Transportation makes rules governing the procurement of design-build transportation projects in accordance with Subsection 63G-6a-1402(3)(a)(ii). Rule R916-3 provides guidance under which the Utah Department of Transportation may use the design-build approach for transportation projects.

(2) At the request of the Utah Department of Transportation, the Procurement Policy Board can review the proposed rules to ensure that they are not inconsistent with Title 63G, Chapter 6a, Utah Procurement Code or rules under Title R33.

KEY: design-build transportation projects, contracts, procurement
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-1402(3)(a)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-115**	**Filing ID: 56775**

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:
R33-115. Procurement of Design Professional Services
3. Purpose of the new rule or reason for the change:
The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-15, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-15.
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. (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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-15. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-15. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-15. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-15. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces emergency rule, which had previously replaced the expired Rule R33-15. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-115. Procurement of Design Professional Services.
R33-115-101. Application.

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. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

R33-115-201. Architect-Engineer Evaluation Committee.

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 may not include cost in a response to a request for statement of qualifications

R33-115-302. Evaluation of Statement of Qualifications.

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank or score architects or engineers.

R33-115-303. Negotiation and Award of Contract.

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.

R33-115-401. Written Justification Statements.

Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

KEY: architects, engineers, government purchasing
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-15

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-116**	**Filing ID: 56776**

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:
R33-116. Protests
3. Purpose of the new rule or reason for the change:
The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-16, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-16.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-16. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-16. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-16. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-16. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-16. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(1)	Section 63G-6a-16	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	09/03/2024

R33. Government Operations, Purchasing and General Services.
R33-116. Protests.
R33-116-101. Conduct.

Protests shall be conducted in accordance with the requirements set forth in 63G-6a, Part 16, Protests. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

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;

(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 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 written statement described in Section 63G-6a-707;

(B) protected information beyond what is provided under Title 63G, Chapter 6a, Utah Procurement Code, or

(C) other information, documents, or explanations reasonably considered not in compliance with the Utah Procurement Code or this rule by the Protest Officer.

(3) 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.

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) This rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) 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) 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 a Motion to Intervene made within the time prescribed in this rule will be considered timely.

(b) 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) A copy of the Motion to Intervene shall 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) A Motion to Intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(i) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) 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:

(A) consumer;

(B) customer;

(C) competitor;

(D) security holder of a party; or

(E) the person's participation is in the public interest.

(5) 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.

(6) 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.

(7) Notwithstanding 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.
(8) 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.
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, Utah Procurement Code, or rules established by the applicable rule making authority, including errors or discrepancies, based on the Protest Officer's recommendation, the 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-16

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-117**	**Filing ID: 56777**

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:

R33-117. Procurement Appeals Panel

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-17, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-17.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-17. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-17. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-17. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-17. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-17. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	Date:	9/3/2024

R33. Government Operations, Purchasing and General Services.
R33-117. Procurement Appeals Panel.
R33-117-101. Statutory Requirements.

Appeals of a protest decision shall be conducted in accordance with the requirements set forth in Title 63G, Chapter 6a, Part 17, Procurement Appeals Board. This rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code. Definitions in the Utah Procurement 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 Section 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; and

(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 provisions set forth in Title 63G, Chapter 6a, Part 17, Procurement Appeals Board; and

(b) Does not include the appeal of a debarment or suspension under Section 63G-6a-904.

(3) "Protestor" as used in this rule means: a person who files a protest under Title 63G, Chapter 6a, Part 16, Protests, including any intervening party authorized under Section 63G-6a-1603 and Section 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 file the notice of appeal in accordance with the requirements set forth in Title 63G, Chapter 6a, Part 17, Procurement Appeals Board and the following procedures:

(a) 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) the required security deposit or bond, if applicable,; and

(v) any other requirement set forth in Title 63G, Chapter 6a, Part 17.

(b) 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 Title 63G, Chapter 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) any 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) any 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 shall:

(a) comply with requirements set forth in Title 63G, Chapter 6a, Part 17, Procurement Appeals Board and this rule;

(b) 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;

(c) Consider and decide the appeal based solely on:

(i) without conducting a hearing:

(A) the notice of appeal; and

(B) the protest appeal record; or

(ii) if an informal hearing is held:

(A) responses received during the informal hearing;

(B) the notice of appeal; and

(C) the protest appeal record; and

(d) not otherwise take any additional evidence or consider any additional ground for the appeal;

(e) 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 Subsection 63G-6a-1702(2)(3)(4), or Section 63G-6a-1703;

(f) 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

(g) within seven days after the day on which the procurement appeals panel concludes the administrative review:

(i) issue a written decision of the appeal; and

(ii) mail, email, or hand deliver the written decision on the appeal to the parties to the appeal and to the protest officer.

(2) When conducting an administrative review of a protest officer's decision, a procurement appeals panel may:

(a) consult with the assistant attorney general assigned to the appeal;

(b) conduct the administrative review without conducting a hearing;

(c) at the sole discretion of the procurement appeals panel, conduct an informal hearing if the procurement appeals panel considers a hearing to be necessary:

(i) 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;

(ii) not take any additional evidence or consider any additional ground for the appeal; and

(d) dismiss an appeal if the appeal does not comply with the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

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.

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 Title 63G, Chapter 6a, Part 17, Procurement Appeals Board 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) Any 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 Title 63G, Chapter 6a, Part 17.

R33-117-104. Expedited Proceedings.

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.

Any panel member or, if applicable, participant may participate electronically if:

(1) a request to participate electronically is submitted to the coordinator of the panel at least 24 hours in advance of the proceeding;

(2) the means for electronic participation, by phone, computer or otherwise, is available at the location; and

(3) the electronic means allows other members of the panel and, if applicable, other participants to hear any person participating electronically.

KEY: hearings, Procurement Appeals Board, verification of legal authority
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-17

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-119**	**Filing ID: 56778**

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:

R33-119. General Provisions Related to Protest or Appeal

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-19, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-19.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-19. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-19. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-19. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-19. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-19. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Windy Aphayrath, Director	**Date:**	09/03/2024

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) This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

(2) 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.

(3) 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-19

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-121**	**Filing ID: 56779**

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:

R33-121. Interaction Between Procurement Units

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-21, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-21.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-21. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-21. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-21. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-21. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor answering a public entity's solicitation.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-21. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Windy Aphayrath, Director	**Date:**	9/3/2024

R33. Government Operations, Purchasing and General Services.

R33-121. Interaction Between Procurement Units.

R33-121-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

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 Subsection 63G-6a-506(5)(b), 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 Sections 63A-1-109.5, 63A-2-103, Subsection 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 may 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 time period 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 time period the price quotation must be guaranteed.

(2) The terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) Eligible users may include additional terms and conditions specific to the purchase of a procurement item from the state cooperative contract that do not conflict with the state cooperative contract terms and conditions.

(3) This process may not be used for an anti-competitive practice such as:

(a) bid rigging;

(b) steering a contract to a preferred state cooperative contractor;

(c) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(d) disclosing pricing or other confidential information prior to the date and time of the opening; or

(e) any other practice prohibited by the Utah Procurement Code.

(4) 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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-21

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-124**	**Filing ID: 56780**

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:

R33-124. Unlawful Conduct and Ethical Standards

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-24, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-24.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-24. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the procurement units.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired rule R33-24. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government procurement unit that have adopted Title R33.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired rule R33-24. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired rule R33-24. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities of a vendor.

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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired rule R33-24. There is no expected fiscal impact resulting from this rule filing, because it did not add or take away any responsibilities for persons other than small businesses, non-small businesses, state, or local government entities in the procurement processes.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-6a-107.7(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	9/3/2024

R33. Government Operations, Purchasing and General Services.

R33-124. Unlawful Conduct and Ethical Standards.

R33-124-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 63G-6a-2407. This rule provides additional requirements and procedures and must be used in conjunction with the Title 63G, Chapter 6a, Utah Procurement Code. Definitions in the Utah Procurement shall apply to this rule.

R33-124-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

Each executive branch employee classified as a Procurement Professional, as defined in Section 63G-6a-2402, shall be governed by:

(1) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties;

(2) Executive Order EO/002/2014, Establishing an Ethics Policy for Executive Branch Agencies and Employees;

(3) Title 67, Part 16, Utah Public Officers' and Employees' Ethics Act;

(4) Section 76-8-103, Bribery or Offering a Bribe; and

(5) any other applicable law.

R33-124-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

Each executive branch employee not classified as a Procurement Professional, as defined in Section 63G-6a-2402, shall be governed by:

(1) Executive Order EO/002/2014, Establishing an Ethics Policy for Executive Branch Agencies and Employees;

(2) Title 67, Part 16, Utah Public Officers' and Employees' Ethics Act;

(3) Section 76-8-103, Bribery or Offering a Bribe; and

(4) any other applicable law.

R33-124-104. Socialization with Vendors and Contractors.

(1) A procurement professional may 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 the 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, Request for Proposal (RFP), or other solicitation. This provision may 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 may 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.

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:

(1) Section R33-124-105;

(2) Section R33-124-106, Utah Public Officers' and Employees' Ethics Act;

(3) Executive Order EO/002/2014, Establishing an Ethics Policy for Executive Branch Agencies and Employees; and

(4) other applicable state laws.

R33-124-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.

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: 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R33-126**	**Filing ID: 56781**

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:
R33-126. State Surplus Property

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

The purpose of the new rule is to formally replace the emergency rule that was implemented after the original rule, R33-26, expired due to missed five-year review deadlines. This new rule ensures continuity and compliance by reinstating the necessary, regulatory, public procurement framework previously covered under Rule R33-26.

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.

(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 the August 1, 2024, issue of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-26. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of the state agencies.

B) Local governments:

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-26. This rule will not result in any cost or savings to the state budget because it does not add to or take away any of the duties of any local government. Local governments are not subject to this rule.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-26. There is no expected fiscal impact resulting from this rule filing. Small businesses are not subject to this rule.

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

There is no expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-26. There is no expected fiscal impact resulting from this rule filing. Non-small businesses are not subject to this 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 expected fiscal impact resulting from this rule filing, as it replaces the emergency rule, which had previously replaced the expired Rule R33-26. There is no expected fiscal impact resulting from this rule filing. Persons other than small businesses, non-small businesses, state, or local government entities are not subject to this rule.

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

There are no anticipated compliance costs for affected persons as a result of 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 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 63G-2-401(6)		

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Windy Aphayrath, Director	**Date:**	9/3/2024

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.

Under Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State Surplus Property Agency, including:

(1) 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;

(2) The 1033 program as the state and in compliance with Department of Defense (DoD) excess personal property conditionally transferred pursuant to 10 USC 2576a through a State Plan of Operation; and

(3) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property and information technology equipment.

R33-126-103. Definitions.

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:

(1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width:

(a) having an unladen dry weight of 1,500 pounds or less;

(b) traveling on three or more low pressure tires;

(c) having a seat designed to be straddled by the operator; and

(d) designed for or capable of travel over unimproved terrain.

(2) "All-terrain type II vehicle":

(a) means any other motor vehicle, not defined in Section R33-126-103 designed for or capable of travel over unimproved terrain;

(b) includes a class A side-by-side vehicle; and.

(c) 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.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "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.

(5) "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.

(6) "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.

(7) "Division" means the Division of Purchasing and General Services within the Department of Government Operations created under Section 63A-2-101.

(8) "Electronic Data Device" means any informational technology device identified by the Division of Technology Services.

(9) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(10) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(11) "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.

(12) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(13) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(14) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15) "Pickup truck":

(a) means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area; and

(b) includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "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.

(17) "Recreational vehicle":

(a) 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; and

(b) includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(18) "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.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "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.

(21) "Special mobile equipment":

(a) means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways; and

(b) includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
(iii) ditch-digging apparatus;
(iv) forklifts;
(v) warehouse equipment;
(vi) golf carts; and
(vii) electric carts.
(22) "State agency" means any executive branch department, division, or other agency of the state.
(23) "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.
(24) "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.
(25) "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.
(26) "Vehicle" means:
(i) all-terrain vehicle type I and II;
(ii) aircraft;
(iii) camper;
(iv) farm tractor;
(v) motorboat;
(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; and
(xx) vessel.
(27) "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 Agency 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 comply with Subsection 63A-2-401(2) by:
(a) completing a Form SP-1; and
(b) electronically submit the Form SP-1 to 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 Agency;
(b) Assigning an employee of the agency to assist the public and State Surplus Property Agency 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 the Division of Purchasing and General Services or the director's authorized representative of State Surplus Property Agency.

(5) The State Surplus Property Agency 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 may 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 residual that may be remaining from agency cannibalization of property.

(3) When a state agency determines that state-owned non-vehicle personal property is in

(a) transfer the state-owned, non-vehicle surplus property items directly to another state agency with the approval 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 this rule, Electronic Data Device means any informational

(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

(4) In coordination with the Division of Technology Services, the State Surplus Property Agency 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 by an authorized contracted vendor approved by the division or in accordance with the Division of Technology Services if such vendor does not exist.

R33-126-204. Federal Surplus Property.

(1) 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) Federal surplus property items are not available for sale to the general public.

(3) 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 State Surplus Property Agency.

(3) For this rule, these entities are considered to be public agencies and are listed in priority order for purchasing surplus items:

(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 a hold period. The decision shall consider the following:

(a) the cost to the State;

(b) the potential liability to the State; and

(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 Agency 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; and

(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 Title 63G, Chapter 4, the Administrative Procedures Act.

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 the director's 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 the director's 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 the director's designee shall issue a written decision stating:

(a) the decision;
(b) the reasons for the decision;
(c) time limits for filing an appeal with the director of the superior agency;
(d) notice of right of judicial review; and
(e) 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 the director's 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: 2024
Authorizing, and Implemented or Interpreted Law: 63A-2-401

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R66-31**	**Filing ID: 56758**

Agency Information

1. Title catchline:	Agriculture and Food, Medical Cannabis and Industrial Hemp	
Building:	Taylorsville State Office Building	
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:		
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Amber Brown	385-245-5222	ambermbrown@utah.gov
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Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R66-31. Industrial Hemp Cannabinoid Product Testing
3. Purpose of the new rule or reason for the change:
Changes are needed to update the microbial limits in Table 1 to conform with current industry best practices.
4. Summary of the new rule or change:
Clarifications have been made to Table 1 to update microbial testing requirements to be consistent with current industry best practices. Additionally, a pesticide has been added to Table 2 that was previously inadvertently removed and a reference to outdated rule numbers has been fixed.

Fiscal Information

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

A) State budget:

There is no impact to the state budget. The testing changes will not change the costs to the Utah Department of Agriculture and Food (UDAF) lab.

Other changes are clarifying or nonsubstantive.

B) Local governments:

Local governments do not participate in the industrial hemp program and will not be impacted by the changes.

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

Small businesses will not be impacted. The testing changes do no increase or decrease the cost of required testing.

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

Non small businesses will not be impacted. The testing changes do no increase or decrease the cost of required testing.

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

Other persons do not participate in the industrial hemp program and will not be impacted.

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

Compliance costs for affected persons will not change. Testing costs remain the same.

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 Utah Department of Agriculture and Food, Craig W Buttars, 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 4-41-204		

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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 W Buttars, Commissioner	**Date:**	08/27/2024

R66. Agriculture and Food, Medical Cannabis and Industrial Hemp.
R66-31. Industrial Hemp Cannabinoid Product Testing.
R66-31-1. Authority and Purpose.

Pursuant to Subsection 4-41-204(2), this rule establishes the standards for industrial hemp cannabinoid product potency testing and sets limits for foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

R66-31-2. Definitions.

(1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:
(a) pesticides;
(b) heavy metals;
(c) solvents;
(d) microbial life;
(e) mycotoxins; or
(f) foreign matter.
(2) "Analyte" means a substance or chemical component that is undergoing analysis.
(3)(a) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant.
(b) "Artificially derived cannabinoid" does not include:
(i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or
(ii) a cannabinoid that is produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.
([~~3~~]4) "Batch or lot" means a quantity of:
(a) cannabinoid concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of industrial hemp are used; or
(b) cannabinoid product produced on a particular date and time, following clean up until the next clean up during which industrial hemp concentrate is used.
([~~4~~]5) "Cannabinoid" means any:
(a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or
(b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
([~~5~~]6) "Cannabinoid concentrate" means:
(a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; and
(b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.
([~~6~~]7) "Cannabinoid product" means the same as the term is defined in Subsection 4-41-102(1).
([~~7~~]8) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.
([~~8~~]9) "CBD" means cannabidiol (CAS 13956-29-1).
([~~9~~]10) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).
(1[~~0~~]1) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the results for which that testing was performed.
(1[~~1~~]2) "Department" means the Utah Department of Agriculture and Food.

(1[~~2~~]3) "Final product" means a reasonably homogenous cannabinoid product in its final packaged form created using the same standard operating procedures and the same formulation.

(1[~~3~~]4) "Foreign matter" means:

(a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

(b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient.

(1[~~4~~]5) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

(1[~~5~~]6) "Industrial hemp manufacturer" means an entity that holds, stores, packages, or labels an industrial hemp cannabinoid product.

(1[~~6~~]7) "Pest" means:

(a) any insect, rodent, nematode, fungus, weed; or

(b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

(1[~~7~~]8) "Pesticide" means any:

(a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

(b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

(c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the application or effect of a pesticide.

(1[~~8~~]9) "THC" means total composite tetrahydrocannabinol, including delta-9-tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(ii)(AA).

([1~~9~~]20) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

(2[~~0~~]1) "Total CBD" means the sum of the determined amounts of CBD and CBDA, according to the formula: Total CBD = CBD + (CBDA x 0.877).

(2[~~1~~]2) "Total THC" means the sum of the determined amounts of THC and THCA, according to the formula: Total THC = THC + (THCA x 0.877).

(23) "Unknown Cannabinoid" means any component of a cannabis plant product, cannabis concentrate, or cannabis product that a laboratory determines is likely to be a cannabinoid by comparison of physical properties, including molecular weight, retention time, and absorption spectra but is not delta-9-THC, THCA, or any of the cannabinoids listed in Subsection 4-41-102(22)(b).

(2[~~2~~]4) "Unit" means each individual portion of an individually packaged product.

R66-31-3. Required Cannabinoid Product Tests.

(1) An industrial hemp manufacturer may not register or sell a cannabinoid product unless a third party testing laboratory has tested a representative sample of the cannabinoid product to determine:

(a) the amount of any THC analogs present in the sample; and

(b) the presence of adulterants in the sample.

(2) A certificate of analysis shall be included with each batch of cannabinoid product in accordance with Section [~~R66-35~~]R68-26-4.

R66-31-4. Foreign Matter Standards.

A sample and related batch of cannabinoid product fails quality assurance testing if:

(1) the sample contains foreign matter visible to the unaided human eye;

(2) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

(3) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R66-31-5. Potency Testing and Standards.

(1) A batch of cannabinoid product shall have the following determined and listed on the COA:

(a) quantity of any cannabinoid it is known to contain, including any THC analog; and

(b) the cannabinoid profile by percentage of mass.

(2) Cannabinoid products may not exceed the cannabinoid product THC level.

(3) A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for cannabinoid content if:

(a) any of the artificially derived cannabinoids listed in Table 1 are found to be present; or

(b) greater than 10% of the total cannabinoid peak area is comprised of unknown cannabinoids after peaks smaller than 1% of the total peak area have been excluded as determined by high-performance liquid chromatography with a diode array detector (HPLC-DAD).

TABLE 1 Artificially Derived Cannabinoids	
Analyte	Chemical Abstract Service (CAS) Registry number
Hexahydrocannabinol (HHC)	36403-90-4, 36403-91-5
3-Heptyl-delta(1)-tetrahydrocannabinol (THCP)	54763-99-4, 51768-60-6
tetrahydrocannabinol acetate (THC-OAc)	23132-17-4, 23050-54-6

R66-31-6. Microbial Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table [~~1~~]2.

TABLE [~~1~~]2 Microbial Analytes and Action Levels	
Material	Microbial Limit Requirement[~~ (cfu)~~]
Cannabinoid Concentrate	Total Aerobic Microbial Count ≤100,000 cfu/g Total Combined Yeast and Mold Count ≤1,000 cfu/g Not detectable in 1g: [~~Absence of E. Coli and~~]STEC, Salmonella spp., [~~Absence of~~]Aspergillus fumigatus, Aspergillus flavus, Aspergillus niger, and Aspergillus terreus
[~~Orally Consumable Products~~]Infused Edible Products	Total Aerobic Microbial Count ≤10,000 cfu/g Total Combined Yeast and Mold Count ≤1,000 cfu/g Not detectable in 1 g: [~~Absence of E. Coli and~~]STEC, Salmonella spp. [~~Absence of Staph~~]
[~~Transdermal Products~~]Infused Non- Edible Products	Total Aerobic Microbial Count ≤250 cfu/g Total Yeast and Mold ≤250 cfu/g Not detectable in 1g: [~~Absence of~~]Pseudomonas aeruginosa, Staphylococcus aureus [~~Absence of Staph~~]
Infused Suppository Products	Total Aerobic Microbial Count ≤10,000 cfu/g Total Combined Yeast and Mold Count ≤1,000 cfu/g Not detectable in 1 g: STEC, Salmonella spp., Pseudomonas, Staphylococcus aureus

R66-31-7. Pesticide Standards.

(1) A sample and related batch of cannabinoid product fails quality assurance testing for pesticides if the results exceed the limits as set forth in Table [~~2~~]3.

TABLE [~~2~~]3 Pesticide Analytes and Action Levels		
Analyte	Chemical Abstract Service	Action Level

	(CAS) Registry number	ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
[~~h~~]Hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl_butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2

Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

(2) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

(3) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

(4) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R66-31-8. Residual Solvent Standards.

(1) A sample and related batch of cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table [~~3~~]4 unless the solvent is:

(a) a component of the product formulation;

(b) listed as an ingredient; and

(c) generally considered to be safe for the intended form of use.

TABLE [~~3~~]4
List of Solvents and Action Levels

Solvent	Chemical Abstract Service	Action level
	(CAS)Registry number	Ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000

Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	290	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

(2) Xylenes is a combination of the following:
(a) 1,2-dimethylbenzene;
(b) 1,3-dimethylbenzene;
(c) 1,4-dimethylbenzene; and
(d) ethyl benzene.

R66-31-9. Heavy Metal Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for heavy metals if the results exceed the limits provided in Table [~~4~~]5.

TABLE [~~4~~]5 Heavy Metals	
Metals	Natural Health Products Acceptable
	limits in parts per million
Arsenic	<2
Cadmium	<.82
Lead	<1.2
Mercury	<.4

R66-31-10. Mycotoxin Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for mycotoxin if the results exceed the limits provided in Table [~~5~~]6.

TABLE [~~5~~]6 Mycotoxin	
Test	Specification
The Total of	
Aflatoxin B1,	
Aflatoxin B2,	
Aflatoxin G1, and	

Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

R66-31-11. Prohibited Additives.

Vitamin E Acetate may not be permitted to be present in any inhalable cannabinoid product.

KEY: industrial hemp, cannabinoid, testing
Date of Last Change: [~~June 25, ~~]2024
Authorizing, and Implemented or Interpreted Law: 4-41-204(2)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R68-2**	**Filing ID: 56759**

Agency Information

1. Title catchline:	Agriculture and Food, Plant Industry	
Building:	Taylorsville State Office Buildings, South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 16500	
City, state, and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	Ambermbrown@Utah.gov
Kelly Pehrson	801-982-2200	Kwpehrson@Utah.gov
Rob Hougaard	801-982-2305	Rhougaard@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R68-2. Utah Commercial Feed Act Governing Feed

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

In 2023, legislation was passed implementing new labeling requirements for home-produced pet treats. Considering the rule has not had substantive changes since 2009, the Department of Agriculture and Food (Department) has reviewed, revised, repealed, and reenacted this rule with standards that most of the industry and other states across the nation have adopted and utilized.

While most requirements remain the same, this revised rule provides clarity, conciseness, and better alignment with the Rulewriting Manual for Utah.

To ensure this rule is current and aligned with recent advances in pet nutrition, the Department seeks to incorporate recent or current AAFCO (Association of American Feed Control Officials) or animal feed standards. This will provide clarity and easy-to-understand requirements for pet food labels, ensuring consumers have the information they need to make informed choices about their pet's nutrition.

4. Summary of the new rule or change:

The Department revised this rule to provide clarity by aligning the text with the guidelines in the Rulewriting Manual for Utah.

The revised rule includes a purpose section that highlights the purpose of this rule, it removes redundancy by removing language that was duplicated from state statute in the definitions, and it organizes the required guarantee analysis for animal classes or

species into a table format which will help the user quickly and easily identify the guarantees that are required for commercial feed labels.

Fiscal Information

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

A) State budget:

The program requirements are not changing, and the proposed rule will not impact the state's budget.

B) Local governments:

The program requirements are not changing, and the proposed rule will not impact local governments.

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

The program requirements are not changing, and the proposed rule will not impact small businesses.

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

The program requirements are not changing, and the proposed rule will not impact non-small businesses.

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

The program requirements are not changing, and other persons will not be impacted.

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

The program requirements are not changing, and compliance costs will not be impacted.

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 Buttars, 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 4-12-103	Subsection 4-12-102(4)(a)(iii)	Subsection 4-12-105(3)

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)	Chapter Six: Official Feed Terms, Common or Usual Ingredient Names and Ingredient Definitions
Publisher	Association of American Feed Control Officials
Issue Date	2023

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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 Buttars, Commissioner	**Date:**	08/27/2024

R68. Agriculture and Food, Plant Industry.
R68-2. Utah Commercial Feed Act Governing Feed.
[~~R68-2-1. Authority.~~
~~Promulgated under authority of Section 4-12-3.~~

~~R68-2-2. Definition and Terms.~~
~~A. The names and definitions for commercial feeds shall be the Official Definition of Feed Ingredients adopted by the Association of American Feed Control Officials, except as the Commissioner designates other wise in specific cases.~~
~~B. The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the AAFCO, except as the Commissioner designates otherwise in specific cases.~~
~~C. The following commodities are declared exempt from the definition of commercial feed, under the provisions of Section 4-12-2: hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 4-12-2.~~

~~R68-2-3. Registration of Products.~~
~~A. All commercial feeds and feed ingredients except those specifically exempted herein shall be officially registered annually with the Utah Department of Agriculture and Food.~~
~~1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and the applicant shall furnish all information requested thereon, being totally responsible for the accuracy and completeness of all required information.~~
~~2. A registration fee per product, determined by the department pursuant to Subsection 4-2-2(2) shall be paid by the applicant annually.~~
~~3. Each registration is renewable for a period of one year upon payment of the annual renewal fee per product, determined by the department pursuant to Subsection 4-2-2(2) which shall be paid on or before December 31 of each year. If the renewal of a commercial feed or feed ingredient registration is not filed prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that commercial feed or feed ingredient shall be issued.~~
~~4. Whenever the name of a feed product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.~~

~~B. Any person who distributes customer-formula feed shall obtain a permit annually from the Department before distribution of such feeds.~~

~~1. Application for a customer-formula feed distribution permit shall be made to the Department upon forms prescribed and furnished by the Department. A permit fee, determined by the Department pursuant to Subsection 4-2-2(2), shall be paid by the applicant annually.~~

~~2. Each renewal fee shall be paid on or before December 31 of each year. If the renewal fee for customer-formula feed distribution permit is not filed prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original permit fee and shall be paid by the applicant before the permit shall be issued.~~

~~R68-2-4. Commercial Feed Labeling.~~

~~Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this rule on the principal display panel of the product in the following general format.~~

~~A. Net weight.~~

~~B. Product name and brand name if any.~~

~~C. If a drug is used:~~

~~1. The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.~~

~~2. The purpose of medication (claim statement).~~

~~3. An active drug ingredient statement listing the active drug ingredients by their established name and the amount in accordance with Subsection R68-2-7-D.~~

~~4. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Section R68-2-9, appear elsewhere on the label.~~

~~D. Purpose statement~~

~~1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended.~~

~~2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined, which may include but not limited to including the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.~~

~~3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.~~

~~4. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specification are provided by the end user.~~

~~5. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.~~

~~E. The guaranteed analysis of the feed shall include the following items, unless exempted in Section R68-2-4, and in the order listed:~~

~~1. Minimum percentage of crude protein.~~

~~2. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Section R68-2-7.~~

~~3. Minimum percentage of amino acids when required by animal class or specie.~~

~~4. Minimum percentage of crude fat.~~

~~5. Maximum percentage of crude fiber.~~

~~6. Maximum percentage of acid detergent fiber when required by animal class or specie.~~

~~7. Maximum percentage of moisture in pet foods.~~

~~8. Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentage of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl) and sodium, and (d) other minerals.~~

~~9. Vitamins in such terms as specified in Section R68-2-7.~~

~~10. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.~~

~~11. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.~~

~~12. Exemptions.~~

~~a. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6 1/2% of Calcium, Phosphorus, Sodium and Chloride and does not serve as a principal source of that mineral to the animal.~~

~~b. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.~~

~~c. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.~~

~~F. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements.~~

~~1. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Commissioner.~~

2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

a. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

b. The manufacturer shall provide the feed control officials, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

3. The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Department. This list shall be made available to the feed purchaser upon request.

G. Name and principal mailing address of the manufacturer, registrant, or person responsible for distributing the feed.

H. The lot number or batch number shall be on each label and may be the date the feed product was manufactured.

I. Commercial Livestock Feed Labeling requirements.

1. Swine formula feeds.

Animal classes: Pre-starter - 2 to 11 pounds, Starter - 11 to 44 pounds, Grower - 44 to 110 pounds, Finisher (market) 110 to 242 pounds, gilts, sows and adult boars, lactating gilts and sows.

Guaranteed Analysis, Swine complete feeds and supplements, (all animal classes).

Minimum percentage of crude protein, lysine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum selenium in parts per million (ppm). Minimum zinc in parts per million (ppm).

2. Poultry Feeds, Layers, Broilers, and Turkeys.

Animal classes:

a. Layers: - chickens that are grown to produce eggs for food, i.e., table eggs. Starting/growing - from day of hatch to approximately 10 weeks of age. Finisher - from approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age). Laying - from time first egg is laid throughout the time of egg production. Breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their reproductive cycle

b. Broilers - chickens that are grown for human food. Starting/growing - from day of hatch to approximately 5 weeks of age. Finisher - from approximately 5 weeks of age to market (42- to 52 days). Breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

c. Broilers, Breeders - chickens whose offspring are grown for human food (broilers). Starting/growing - from day of hatch until approximately 10 weeks of age. Finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age. Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

d. Starting/growing - Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females)and 16 weeks of age (males). Finisher - Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight). Laying - Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs. Breeder - Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

Guaranteed analysis: Poultry complete feeds and supplements. (all animal classes): Minimum percentage of crude protein, lysine, methionine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

3. Beef cattle formula feeds: Animal classes; calves, birth to weaning. Cattle on Pasture (may be specific as to reproduction stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)

a. Guaranteed analysis; Beef complete feeds and supplements, (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of potassium. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis; Beef mineral feeds (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum copper, selenium, and zinc in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A in International Units per pound.

4. Dairy formula feeds: Animal classes; Veal milk replacer - milk replacer to be fed for veal production. Herd milk replacer - milk replacer to be fed for herd replacement calves. Starter - approximately 3 days to 3 months. Growing heifers, bull, and dairy beef, (a.) grower 1 - 3 months to 12 months of age, (b) grower 2 - more than 12 months of age. Lactating dairy cattle. Non-lactating dairy cattle.

a. Guaranteed analysis; Veal and herd replacement milk replacer. Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis: Dairy cattle complete feeds and supplements; Minimum percentage of crude protein. Maximum percentage of non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Maximum percentage of

~~acid detergent fiber (ADF). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum selenium in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound~~

~~c. Guaranteed analysis: Dairy mixing and pasture mineral with vitamins (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum selenium in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.~~

~~5. Equine formula feeds: Animal classes; Foal, Mare, Breeding, Maintenance. Guaranteed analysis; Equine complete feeds and supplements (all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum copper, selenium and zinc in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added). Guaranteed analysis for Equine Mineral Feeds (all animal classes). Minimum and maximum percentage of calcium, minimum percentage of phosphorus, minimum and maximum percentage of salt (if added), minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee. Minimum copper, selenium and zinc in parts per million (ppm), minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added)~~

~~6. Goat and Sheep formula feeds: Animal classes; starter, grower, finisher, breeder, lactating. Guaranteed analysis; Goat and Sheep complete feeds and supplements (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum and maximum copper in parts per million (PPM) (if added, or if total copper exceeds 20 ppm). Minimum selenium in parts per million (ppm). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).~~

~~7. Duck and Geese formula feeds: Animal classes; Ducks, starter - 0 to 3 weeks of age, grower - 3 to 6 weeks of age, finisher - 6 weeks to market, breeder/developer- 8 to 19 weeks of age, breeder 22 weeks to end of lay. Geese, starter 0 to 4 weeks of age, grower 4 to 8 weeks of age, finisher 8 weeks to market, breeder/developer 10 to 22 weeks of age, breeder 22 weeks to end of lay. Guaranteed analysis: duck and geese complete feeds and supplements (for all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.~~

~~8. Fish complete feeds and supplements. Animal species shall be declared in lieu of animal class; trout, catfish, and other species. Guaranteed analysis: fish complete feeds and supplements; Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum percentage of phosphorus.~~

~~9. Rabbit complete feeds and supplements. Animal classes, grower 4 to 12 weeks of age, breeder 12 weeks of age and over. Guaranteed analysis, Rabbit complete feeds and supplements(all animal classes). Minimum percentage of crude protein and crude fat. Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).~~

~~10. Other feeds shall include the following items in the order listed (unless exempted). The required guarantees of grain mixtures with or without molasses and feeds other than those described shall include the following items, unless exempted and in the order listed: Animal class(es) and species for which the product is intended. Guaranteed analysis; Minimum percentage of crude protein. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minerals in formula feeds, to include in the following order. Minimum and maximum percentages of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee, other mineral.~~

~~J. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.~~

~~1. The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.~~

~~K. No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.~~

~~L. Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.~~

~~M. When a pet food is enclosed in any outer container or wrapper which is intended for retail sale, all required label information must appear on such outside container or wrapper.~~

~~N. The words "Dog Food," "Cat Food," or similar designations must appear conspicuously upon the principal display panels of the pet food labels.~~

~~O. The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof is or meets the requisites of a complete, perfect scientific or balanced ration for dogs or cats unless such product or feeding:~~

~~1. Contains ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences or,~~

~~2. Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.~~

~~P. Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:~~

~~1. In conjunction with a statement of a limited purpose for which the product is intended or suitable (as, for example, in the statement 'a complete food for puppies'). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and~~

~~2. Such qualified representations may appear on pet food labels only if:~~

~~a. The pet food contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or~~

~~b. The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.~~

~~Q. Except as specified by Section R68-2-6, the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, and if the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.~~

~~R68-2-5. Customer-Formula Feed Labeling.~~

~~A. Customer-formula feed shall be accompanied with the following prescribed information shown on label, invoice, delivery ticket, or other shipping document:~~

~~1. The name and address of the manufacturer.~~

~~2. The name and address of the purchaser.~~

~~3. The date of sale or delivery.~~

~~4. The customer-formula feed name and brand name if any.~~

~~5. The product name and net weight of each registered commercial feed and each other ingredient used in the mixture.~~

~~6. If a drug-containing product is used:~~

~~a. The purpose of the medication (claim statement).~~

~~b. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Section R68-2-7.~~

~~c. The directions for use and precautionary statements as required by Section R68-2-9.~~

~~R68-2-6. Brand and Product Names.~~

~~A. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose.~~

~~B. Commercial, registered brand or trade names are not permitted in guarantees of ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.~~

~~C. The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.~~

~~D. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.~~

~~E. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.~~

~~F. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Commissioner designates otherwise.~~

~~G. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Section R68-2-7.~~

~~H. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.~~

~~I. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.~~

~~J. No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one, the presence of which, provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either~~

~~conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of its flavor. The word flavor shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived. Distribution of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the appropriate control official.~~

~~K. The designation "100%" or "All" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.~~

~~L. The name of the pet food shall not be derived from one or more ingredients of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by Subsections R68-2-6-J, M or N; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:~~

~~1. the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or~~

~~2. it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; or~~

~~3. it is not otherwise false or misleading.~~

~~M. When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95% or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style and color print.~~

~~N. When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25% but less than 95% of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the products in accordance with an established law, custom or usage or so that the product name is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.~~

~~O. Contractions or coined names referring to ingredients shall not be used in the name of a pet food unless it is in compliance with Subsections R68-2-6-J, L, M and N.~~

~~R68-2-7. Expression of Guarantees.~~

~~A. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees, (when required) will be in terms of percentage.~~

~~B. Commercial feeds containing 6-1/2% or more Calcium, Phosphorus, Sodium and Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following:~~

~~1. When the minimum is 5.0% the maximum shall not exceed the minimum by more than one percentage point.~~

~~2. When the minimum is above 5.0% the maximum shall not exceed the minimum by more than 5 percentage points.~~

~~C. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that:~~

~~1. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound.~~

~~2. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound.~~

~~3. Vitamin D for other uses shall be stated in International or USP units per pound.~~

~~4. Vitamin E shall be stated in International or USP Units per pound.~~

~~5. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine, Hydrochloride, Choline Chloride, Thiamine, and d-Panto-thenic Acid.~~

~~6. Oils and premixes containing vitamin D or both may be labeled to show vitamin content in terms of units per gram.~~

~~D. Guarantees for drugs shall be stated in terms of percent by weight.~~

~~1. Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.~~

~~2. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.~~

~~3. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulation for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.~~

~~4. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.~~

~~E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:~~

~~1. For ruminants.~~

~~a. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:~~

~~Crude Protein, minimum, (%)~~

~~(This includes not more than (%) equivalent~~

~~protein from non-protein nitrogen).~~

~~b. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:~~
~~Equivalent Crude Protein from Non-Protein Nitrogen,~~
~~minimum, (%)~~
~~c. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:~~
~~Nitrogen, minimum, (%)~~
~~Equivalent Crude Protein from Non-Protein Nitrogen,~~
~~minimum, (%)~~
~~2. For non-ruminants.~~
~~a. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:~~
~~Crude Protein, minimum (%)~~
~~(This includes not more than (%) equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.)~~
~~b. Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein with adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."~~
~~F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.~~
~~G. or the purpose of determining compliance with this act, a commercial feed shall be deemed in violation if an analysis shows one or more ingredients varies from the guarantee in an amount exceeding the permitted analytical variations (PAV) published by the Association of American Feed Control Officials.~~

~~R68-2-8. Ingredients.~~
~~A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of American Feed Control Officials, the common or usual name, or one approved by the Commissioner. Failure to list the ingredients of a pet food in descending order by their predominance by weight in non-quantitative terms may be misleading.~~
~~B. The name of each ingredient must be shown in letters or type of the same size.~~
~~C. No references to quality or grade of an ingredient shall appear in the ingredient statement of a feed.~~
~~D. The term "dehydrated" may precede the name of any product that has been artificially dried.~~
~~E. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.~~
~~F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).~~
~~G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.0007% iodine, uniformly distributed.~~

~~R68-2-9. Directions for Use and Precautionary Statements.~~
~~A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:~~
~~1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles: and,~~
~~2. Include, but not be limited to, all information described by all applicable rules under the Federal Food, Drug and Cosmetic Act.~~
~~B. Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in Section R68-2-9.~~
~~C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.~~

~~R68-2-10. Non-Protein Nitrogen.~~
~~A. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for reminant animal as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be read and understood by ordinary persons under customary conditions of purchase and use.~~
~~B. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrient as a source of nutrients other than~~

~~equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.~~

~~C. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.~~

~~**R68-2-11. Drug and Feed Additives.**~~

~~A. Prior to approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.~~

~~B. Satisfactory evidence of safety and efficacy of a commercial feed may be:~~

~~1. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable rule in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use, or~~

~~2. When the commercial feed is itself a drug as defined in Section 4-12-2 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C., 360 (b).~~

~~**R68-2-12. Adulterants.**~~

~~A. For the purpose of Section 4-12-2, the terms "poisonous or deleterious substances" include but are not limited to the following:~~

~~1. Fluorine and any mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine and 0.60% for poultry.~~

~~2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.004% for breeding and dairy cattle: 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry.~~

~~3. Soybean meal, flakes or pellets or other vegetable meal, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.~~

~~4. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of B_1 (Thiamine).~~

~~5. Aflatoxin content of any feed ingredient which exceeds 20 parts per billion and/or any quantity established by Federal Statutes or Guidelines.~~

~~B. A commercial feed shall be deemed to be adulterated if it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules for medicated feeds and for medicated premixes as published in the Code of Federal Regulations, Title 21, Parts 225 and 226 Sections 225.1-225.115 and 226.1-226.115, respectively.~~

~~C. All screenings or by-products of grain and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer shall be ground fine enough or other wise treated to destroy the viability of such weed seeds so that the finished product contains no more than six viable prohibited noxious weed seeds per pound.~~]

R68-2-1. Authority.

(1) Promulgated under the authority of Section 4-12-103, Subsections 4-12-102(4)(a)(iii) and 4-12-105(3).

(2) The Association of American Feed Control Officials (AAFCO) has permitted the department to utilize and reproduce copyrighted information from the 2024 edition of the AAFCO Official Publication for non-commercial purposes in this rule.

R68-2-2. Definitions and Terms.

This rule defines the following terms in addition to the terms used in Section 4-12-102;

(1) "Home produced" means a pet treat produced in a private home kitchen in the state.

(2) "Official Publication" means an annual publication of the Association of American Feed Control Officials (AAFCO) that contains common ingredient names, feed terms, and definitions and lists standards for labels, ingredients, and laboratories.

(3) "Principal Display Panel" means the outfacing side of the feed tag, or if no tag, the part of the label most likely to be displayed, presented, shown, or examined under normal and customary display conditions for retail sale.

(4) "Raw meat" means an unadulterated commodity that the department and is exempt from the definition of commercial feed per Subsection 4-12-102(4)(b)(iii).

R68-2-3. Registration of Products.

(1) An applicant shall register a commercial feed with the department by meeting the requirements listed in Subsection 4-12-104(2) which include:

(a) submitting an annual registration form with the department; and

(b) paying an annual registration fee on or before December 31 each year.

(2) Per Subsection 4-12-104(4), a person selling animal formula feeds shall obtain a license before distribution by:

(a) submitting an annual application as provided by the department; and

(b) pay an annual license fee on or before December 31 each year.

(3) To monitor and track the registration of commercial feed products and distribution of formula feed licenses, the department may:

(a) assess an additional fee, per product, if the application for renewal of a commercial feed or feed ingredient registration is not submitted on or before December 31; and

(b) add the additional fee to the original registration fee.

(4) The department may not issue a commercial feed product registration or a customer-formula feed license until the applicant pays the fee.

(5) The department shall require the applicant to submit a new registration if the applicant changes the name of a feed or changes the product ingredients.

(6)(a) The department may not require the applicant to register labeling changes but the applicant shall submit copies of any labeling changes to the department as soon as they are effective.

(b) The department may permit a reasonable time to dispose of properly labeled stocks of the old product.

(7) Home produced pet treats are exempt from customer-formula feed labeling requirements and shall meet the requirements of Section 4-12-105.5.

R68-2-4. Feed Label Format.

(1) A registrant shall meet consistent labeling requirements by ensuring:

(a) commercial feed, other than customer-formula feed, bears the information prescribed in Section R68-2-5 on the label of the product in the following format:

(i) product name and brand name, if any;

(ii) if a drug is used, the drug label as stipulated in Subsection R68-2-5(3);

(iii) purpose statement;

(iv) guaranteed analysis;

(v) feed ingredients;

(vi) directions for use and precautionary statements;

(vii) manufacturer or persons responsible for distributing the feed name and principal mailing address;

(viii) quantity statement; and

(ix) the lot number, batch number, or unique identifier, or it may be the manufactured date of the feed product; and

(b) label information is placed as follows:

(i) the information required in Subsection R68-2-4(1)(a)(i) through Subsection R68-2-4(1)(a)(iii), and Subsection R68-2-4(1)(a)(viii) shall appear in its entirety on the principal display panel;

(ii) the information required in Subsection R68-2-4(1)(a)(iv) through Subsection R68-2-4(1)(a)(vii) may appear in a prominent place on the feed tag or label, but not necessarily on the principal display panel; and

(iii) if the precautionary statement required by Subsection R68-2-4(1)(a)(vi) does not appear on the principal display panel, the principal display panel shall reference it with a statement, such as "See back of label for precautions;" and

(c) the information required by this section may not subordinate or obscure any other statements or designs.

(2) A registrant shall meet consistent customer-formula feed labeling requirements as prescribed in this rule by using a label, invoice, delivery ticket, or other shipping document that bears the following information:

(a) name and address of the manufacturer;

(b) name and address of the purchaser;

(c) date of sale or delivery;

(d) the customer-formula feed name and brand name, if any;

(e) the product name and net quantity of each registered commercial feed and each other ingredient used in the mixture;

(f) the directions for use and precautionary statements required by Sections R68-2-8 and R68-2-9; and

(g) if the feed uses a drug containing product, the label shall also include:

(i) the purpose of the medication or claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Subsection R68-2-6(4).

(3) A registrant shall label pet and specialty pet food products to meet the following requirements:

(a) a vignette, graphic, or pictorial representation of a product on a pet food label may not misrepresent the contents of the package;

(b) the use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available;

(c) a statement may not appear on the label of a pet food that makes false or misleading comparisons between that pet food and any other pet food;

(d) personal or commercial endorsements are permitted on pet food labels if the endorsements are factual and not otherwise misleading;

(e) if a pet food is enclosed in any outer container or wrapper that is intended for retail sale, required label information shall appear on the outside container or wrapper; and

(f) the words "Dog Food," "Cat Food," or similar designations shall appear conspicuously on the principal display panels of the pet food label.

(4) The label of a pet food may not contain an unqualified representation or claim, directly or indirectly, that the pet food contained or a recommended feeding is or meets the requisites of a complete, perfect scientific, or balanced ration for dogs or cats unless the product or feeding:

(a) contains ingredients in quantities sufficient to provide the estimated nutrient requirements for each stage of the life of a dog, cat; or

(b) contains a combination of ingredients that, when fed to a normal animal as the only source of nourishment, will provide satisfactorily for;

(i) fertility of females;

(ii) gestation and lactation;

(iii) normal growth from weaning to maturity without supplementary feeding;

(iv) maintaining the normal weight of an adult animal whether working or at rest; and

(v) has had its capabilities demonstrated by adequate testing.

(5) If a label refers to the presence of ingredients or common terms not defined in the 2024 version of the Official Publication, the following statement must be included: "Not recognized as an essential nutrient by the AAFCO Dog or Cat Food Nutrient Profiles."

(6) Labels for pet food products that are compounded for or are suitable for only a limited purpose, such as a product designed for the feeding of puppies, may contain representations that the pet food product or the recommended feeding is or meets the requisites of a complete, perfect, scientific, or balanced ration for dogs or cats by including:

(a) a statement of the limited purpose for which the product is intended or suitable, such as the statement:" A complete food for puppies;" and

(b) representations and the required qualification shall be juxtaposed on the same panel and in the same size, style, and color print and the qualified representations may appear on pet food labels only if the pet food product contains:

(i) ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition; or

(ii) a combination of ingredients that, when fed for a limited purpose, will satisfy the nutrient requirements for the limited purpose, and can demonstrate its capabilities through adequate testing.

(7)(a) Except as specified by Section R68-2-6, the name of any ingredient that appears on the label other than in the product name may not be emphasized to create the impression that an ingredient is present in the product in a larger amount than is the fact.

(b) If the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

R68-2-5. Feed Label Information.

(1) A registrant shall label commercial feed, other than customer-formula feed, as specified in this section.

(2) The product name and brand name, if any, displayed on the commercial feed label may:

(a) be appropriate for the intended use of the feed and may not be misleading;

(b) state if the name of the feed is made for a specific use, the character of the feed for a particular animal class shall be suitable for that purpose;

(c) only be in the product name of feeds produced by or for the firm holding the rights to that name and may not have the commercial, registered brand, or trade names in guarantees or ingredient listings;

(d) not contain the name of a commercial feed if the name is derived from one or more ingredients of a mixture to the exclusion of other ingredients and may not represent any components of a mixture unless each component is included in the name;

(e) contain the name of any ingredient or combination of ingredients that are intended to impart a distinctive characteristic to the product that is of significance to the purchaser and may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading;

(f) not contain the word "protein" in the product name of a feed that contains added non-protein nitrogen;

(g) state when the name carries a percentage value, it shall be understood to signify protein or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein," provided that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice;

(h) not contain digital numbers used in a manner as to be misleading or confusing to the customer;

(i) allow single ingredient feeds to have a product name that conforms with the designated definition of feed ingredients as recognized by the Official Publication or unless the department designates otherwise;

(j) contain the word "vitamin," or a contraction, or any word suggesting vitamin can be used only in the name of a feed that is represented to be a vitamin supplement, and labeled with the minimum content of each vitamin declared, as specified in Subsection R68-2-6(3);

(k) contain the term "mineralized" which may not be used in the name of a feed except for "TRACE MINERALIZED SALT," if the product contains significant amounts of trace minerals that are recognized as essential for animal nutrition;

(l) contain the terms "meat" and "meat by-products" if qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are made from cattle, swine, sheep, and goats; or

(m) contain the words, "Raw (blank) Milk" that shall appear conspicuously on the principal display panel with "blank" completed with the species of animal from which the raw milk is collected, if the commercial feed consists of raw milk.

(3) If a drug is used in the commercial feed, the label shall include:

(a) the word "medicated" and it shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name;

(b) a purpose statement as required in Subsection R68-2-5(4);

(c) the purpose of medication or claim statement; and

(d) an active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection R68-2-6(4).

(4) The purpose statement on the commercial feed label may:

(a)(i) contain the specific species and animal classes for which the feed is intended as defined in Subsection R68-2-5(5); and

(ii) if applicable, a description by the manufacturer of the defined animal class, species, and purpose in a more specific and common language that is consistent with the category of an animal class defined in Subsection R68-2-5(5), including weight ranges, sex, or ages of the animals for which the feed is manufactured;

(b) be excluded from the label if the product name includes a description of the species and animal class for which the product is intended;

(c) exclude the animal class and species for a premix of the manufacture of feed, and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix;

(d) exclude the animal class and species and state "For Further Manufacture of Feed" of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products, or molasses products, if the label guarantees the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds;

(e) include a statement of enzyme functionality if an enzymatic activity is represented in any manner;

(f) state the terms "Single Ingredient Feed", "Feed Ingredient " or "For Further Manufacture of Feed, " for single ingredient feed, although the manufacturer of a single ingredient feed or feed ingredient shall have flexibility in describing in more specific and common language the intended use of the feed ingredient dependent on species and class; or

(g) include the words "treat" or "snack" and the intended species conspicuously on the principal display panel for a feed intended as a treat for a designated species, such as exclusive of pets and specialty pets.

(5) The sequence of nutritional guarantees that must be stated on a commercial feed label, when a guarantee is stated, shall be:

(a) crude protein;

(b) equivalent crude protein from Non-Protein Nitrogen (NPN);

(c) amino acids;

(d) crude fat;

(e) crude fiber;

(f) acid detergent fiber (ADF);

(g) neutral detergent fiber (NDF);

(h) calcium;

(i) phosphorus;

(j) salt;

(k) sodium; and

(l) any other required or voluntary guarantees shall follow a general format that ensures the units of measure used to express guarantees such as percentage, parts per million (ppm), or international units, are listed in a sequence that provides a consistent grouping of the units of measure.

(6) The label may not state an individual nutrient guarantee if listed as exempt in Subsection R68-2-5(5)(e).

(7) The label shall state the guaranteed analysis as listed in Tables 1-10 of this rule for the specific animal class or species for which the feed is intended.

Table 1
Required Guarantees for Swine Formula Feeds

Animal Class	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentage
(1) Prestarter: 2-11 pounds; (2) Starter: 11-44 pounds (3) Grower: 44 to 110 pounds; (4) Finisher: 110 pounds to market weight; (5) Gilts, sows, and adult boars; and (6) Lactating gilts and sows.	Crude protein	Minimum
	Lysine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Selenium, in ppm	Minimum

Table 2 Required Guarantees Formula Poultry Feeds for Layers, Broilers, Turkeys, and Breeders		
Animal Class/Species	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentage
(1) Layers: Chickens that are grown to produce eggs for food, for example, table eggs:		
(a) starter or growing: from day of hatch to approximately 10 weeks of age; (b) finisher: from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age; (c) laying: from time first egg is laid throughout the time of egg production; (d) breeders: (i) chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs; and (ii) from time first egg is laid throughout their productive cycle.	Crude protein	Minimum
	Lysine	Minimum
	Methionine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
(2) Broilers: Chickens that are grown for human food:		
(a) starter or growing: from day of hatch to approximately 5 weeks of age; (b) finisher: from approximately 5 weeks of age to desired market weight, 42-52 days; (c) breeders: hybrid strains of chickens whose offspring are grown for human food or broilers, at any age and either sex.	Crude protein	Minimum
	Lysine	Minimum
	Methionine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
(3) Broilers, Breeders: Chickens whose offspring are grown for human food, broilers:		
(a) starting or growing: from day of hatch until approximately 10 weeks of age; (b) finishing: from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age; (c) laying: fertile egg producing chickens, broilers or roasters, from day of first egg throughout the time fertile eggs are produced.	Crude protein	Minimum
	Lysine	Minimum
	Methionine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max

	Total sodium, only if it exceeds max salt	Min/Max
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
(4) Turkeys:		
(a) starter or growing: grown for human food from day of hatch to approximately 13 weeks of age for females and 16 weeks of age for males; (b) finisher: grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, or desired market weight;	Crude protein	Minimum
	Lysine	Minimum
	Methionine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium; only if it exceeds max salt	Min/Max
(c) laying: female turkeys that are producing eggs; from first egg is produced, throughout the time they are producing eggs; (d) breeder: grown to produce fertile eggs, from day of hatch to time first egg is produced, approximately 30 weeks of age, both sexes.	Crude protein	Minimum
	Lysine	Minimum
	Methionine	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max

Table 3
Required Guarantees for Beef Cattle Formula Feeds

Animal Class	Guaranteed Analysis	Min/Max Percentage
(1) Calves: birth to weaning. (2) Cattle on pasture: may be specific as to production stage such as stocker, feeder, replacement heifers, brood cows, bulls; and (3) Feedlot cattle.	Complete Feeds and Supplements	
	Crude protein	Minimum
	Equivalent crude protein from NPN, when added	Maximum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max

	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Potassium	Minimum
	Vitamin A, other than precursors of Vitamin A, International Units per Pound, if added	Minimum
	Mineral Feeds, if added	
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Magnesium	Minimum
	Potassium	Minimum
	Copper, in ppm	Minimum
	Selenium, in ppm	Minimum
	Zinc, in ppm	Minimum
	Vitamin A, other than precursors of Vitamin A, International Units per pound	Minimum

Table 4
Required Guarantees for Dairy Formula Feeds

Animal Class	Guaranteed Analysis	Min/Max Percentage
(1) Veal milk replacer; and (2) Herd milk replacer.	Crude protein	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Vitamin A, other than precursors of vitamin A, in International Units per pound, if added	Minimum
(1) Starter; (2) Non-lactating dairy cattle including: replacement dairy heifers, dairy bulls, and dairy calves;. (3) Lactating dairy cows; and (4) Dry dairy cows.	Complete Feeds and Supplements	
	Crude protein	Minimum
	Equivalent crude protein from NPN, when added	Maximum
	Crude fat	Minimum
	Crude fiber	Maximum

	ADF	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Selenium, in ppm	Minimum
	Vitamin A, other than precursors of Vitamin A, in International Units per pound, if added	Minimum
	Mixing and Pasture Mineral, if added	
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Magnesium	Minimum
	Potassium	Minimum
	Selenium, in ppm	Minimum
	Vitamin A, other than the precursors of Vitamin A, in International Units per pound	Minimum

Table 5
Required Guarantees for Equine Formula Feeds

Animal Class	Guaranteed Analysis	Min/Max Percentage
(1) Growing; (2) Broodmare; (3) Maintenance; and (4) Performance, including stallions.	Complete Feeds and Supplements	
	Crude Protein	Minimum
	Crude Fat	Minimum
	Crude Fiber	Maximum
	ADF	Maximum
	NDF	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Copper, in ppm, if added	Minimum
	Selenium, in ppm	Minimum
	Zinc, in ppm	Minimum
	Vitamin A, other than the precursors of Vitamin A, in International Units per pound, if added	Minimum
	Mineral Feeds	
	Calcium	Min/Max
	Phosphorus	Minimum

	Salt, if added	Min/Max
	Sodium	Min/Max
	Copper, in ppm, if added	Minimum
	Selenium, in ppm	Minimum
	Zinc, in ppm	Minimum
	Vitamin A, other than precursors of Vitamin A, in International Units per pound, if added	Minimum

Table 6
Required Guarantees for Goat Formula Feeds

Animal Class	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentage
(1) Starter; (2) Grower; (3) Finisher; (4) Breeder; and (5) Lactating.	Crude protein	Minimum
	Equivalent crude protein from NPN, when added	Maximum
	Crude fat	Minimum
	Crude fiber	Maximum
	ADF	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Copper, in ppm, if added	Min/Max
	Selenium, in ppm	Minimum
	Vitamin A, other than precursors of Vitamin A, in International Units per pound, if added	Minimum

Table 7
Required Guarantees for Sheep Formula Feeds

Animal Class	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentages
(1) Starter; (2) Grower; (3) Finisher; (4) Breeder; and (5) Lactating.	Crude protein	Minimum
	Equivalent crude protein from NPN, when added	Maximum
	Crude fat	Minimum
	Crude fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Copper, in ppm	Min/Max
	Selenium, in ppm	Minimum
	Vitamin A, other than precursors of Vitamin A, in International Units per pound, if added	Minimum

Table 8 Required Guarantees for Duck and Geese Formula Feeds		
Animal Class/Species	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentage
(1) Ducks:		
(a) starter: 0-3 weeks; (b) grower: 3-6 weeks; (c) finisher: 6 weeks to market; (d) breeder developer: 8 to 19 weeks of age; and (e) breeder: 22 weeks to end of lay.	Crude Protein	Minimum
	Crude Fat	Minimum
	Crude Fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
(2) Geese:		
(a) starter: 0-4 weeks; (b) grower: 4-8 weeks; (c) finisher: 8 weeks to market; (d) breeder developer: 10-22 weeks; and (e) breeder.	Crude Protein	Minimum
	Crude Fat	Minimum
	Crude Fiber	Maximum
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max

Table 9 Required guarantees for Fish, Rabbits, and Treats		
Animal Class/Species	Guaranteed Analysis Complete Feeds and Supplements	Min/Max Percentage
(1) Fish:		
(a) species declared in lieu of animal class: (i) trout; (ii) catfish; or (iii) species other than trout or catfish.	Crude protein	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Phosphorus	Minimum
(2) Rabbit:		
(a) grower: 4 to 12 weeks of age; and (b) breeder: 12 weeks of age and over.	Crude protein	Minimum
	Crude fat	Minimum
	Crude fiber, may not exceed min by more than 5.0 units	Min/Max
	Calcium	Min/Max
	Phosphorus	Minimum

	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Vitamin A, other than precursors of Vitamin A, in International Units per oud, if added	Minimum
(3) Treats:		
(a) any other animal class or species;	Crude protein	Minimum
	Crude fat	Minimum
	Crude fiber	Maximum
	Other guarantees to support claims	As needed to support nutritional claims as per labeling and expression of guarantees requirements listed in this rule.
(b) pets and specialty pets; or	Reserved	Reserved
(c) home produced.	Exempt	Exempt

Table 10
Required Guarantees for Grain Mixtures, With or Without Molasses and Other Feeds

Animal Class	Guaranteed Analysis	Min/Max Percentage
(1) Animal class or species for which the product is intended.	Crude protein	Minimum
	Equivalent crude protein from NPN, when added	Min/Max
	Crude fat	Minimum
	Crude fiber	Maximum
	Minerals in formula feeds, in the following order:	
	Calcium	Min/Max
	Phosphorus	Minimum
	Salt, if added	Min/Max
	Total sodium, only if it exceeds max salt	Min/Max
	Other Minerals	
	(2) The following shall also be listed as required in this rule:	
	(a) minerals in feed ingredients as specified by AAFCO definitions;	
	(b) vitamins per Section R68-2-6;	
	(c) total sugars as invert on dried molasses products or products being sold primarily for their sugar content; and	
	(d) viable lactic acid producing microorganisms for use in silages in terms specified in this rule.	

(8)(a) The label shall state a commercial feed, vitamin or mineral premix, base mix, which intends to provide a specialized nutritional source for use in the manufacture of other feeds, its intended purpose and guarantee the nutrients relevant to the stated purpose.

(b) Article II of AAFCO's "Criteria for Labeling Nutritional Indicators" may not apply to the label guarantees for these specialized commercial feeds.

(9) Exemptions for guarantees stated on the label, includes:

(a) a mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when the feed or feed ingredient:

(i) is not intended or represented or does not serve as a principal source of that mineral to the animal; or

(ii) is intended for non-food producing animals and contains less than 6.5% total mineral.

(b) guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement;

(c) guarantees for crude protein, crude fat, and or crude fiber are not required when the commercial feed is intended for purposes other than to furnish one or more of these substances or one or more are of minor significance relative to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses;

(d) guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made; and

(e) the indication for animal class, or classes, and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class or species.

(10) The label shall state feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements that are listed by ensuring:

(a) the name of each ingredient as defined in the Official Publication, common or usual name, or one approved by the department; or

(b) any collective terms for the grouping of feed ingredients as defined in the Official Publication in lieu of the individual ingredients, provided that:

(i) when a collective term for a group of ingredients is used on the label, individual ingredients within that group may not be listed on the label; and

(ii) the manufacturer provides to the department, upon request, a list of individual ingredients, within a defined group, which are or have been used at manufacturing facilities distributing in or into the state; and

(c)(i) the registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label; and

(ii) the list of ingredients shall be on file with the department and shall be made available to the feed purchaser upon request.

(11) The label for commercial feed shall display directions for use and precautionary statements, or reference to their location if the detailed feeding directions and precautionary statements required by Sections R68-2-8 and R68-2-9 appear elsewhere on the label.

(12) Name and principal mailing address of the manufacturer or person responsible for distributing the feed displayed on the commercial feed label shall include:

(a) the principal mailing address including the street address, city, state, and zip code; and

(b) the street address may be omitted if it is readily displayed on relevant hard copy or the principal website.

(13)(a) The commercial feed label shall display the net weight or net quantity declared in terms of weight, liquid measure, or count, based on applicable requirements of Section R70-910-3.

(b) Net quantity labeled in terms of weight shall be expressed both in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound and in appropriate SI metric system units; or in the case of liquid measure, both in the largest whole unit, quarts, quarts and pints, or pints, with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart and in appropriate Si metric system units.

(c) When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it shall be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information.

R68-2-6. Expression of Guarantees.

(1) The guarantees for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, and other fiber indicators shall be in terms of percentage.

(2) When the label states mineral guarantees, it shall include:

(a) when calcium, salt, and sodium guarantees are given in the guaranteed analysis, they shall be stated and meet the following, if the minimum is:

(i) below 2.5%, the maximum may not exceed the minimum by more than 0.5 percentage points;

(ii) 2.5% but less than 5.0%, the maximum may not exceed the minimum by more than one percentage point; and

(iii) above 5.0% the maximum may not exceed the minimum by more than 20% of the minimum and the maximum may not ever exceed the minimum by more than five percentage points.

(b) guarantees for minimum and maximum total sodium and salt, minimum potassium, magnesium, sulfur, phosphorus, and maximum fluorine and shall be listed in terms of percentage;

(c) other minimum mineral guarantees that shall be stated in ppm when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater; and

(d) any products labeled with a quantity statement, tablets, capsules, granules, or liquids, may state mineral guarantees in milligrams (mg) per unit, consistent with the quantity statement and directions for use.

(3) Guarantees for minimum vitamin content of commercial feed shall be listed in the order specified and are stated in milligrams per pound, or in the following units consistent with those employed for the quantity statement, unless otherwise specified:

(a) vitamin A, other than precursors of vitamin A, in International Units per pound;

(b) vitamin D-3, in products offered for poultry feeding, in International Chick Units per pound;

(c) vitamin D, for other uses, in International Units per pound;

(d) vitamin E, in International Units per pound;

(e) concentrated oils and feed additive premixes containing vitamins A, D, or E, at the option of the distributor, in units per gram instead of units per pound;

(f) vitamin B-12, in milligrams or micrograms per pound;

(g) other vitamin guarantees for menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid, and carotene shall express the vitamin activity in milligrams per pound; and

(h) any products labeled with a quantity statement for tablets, capsules, granules, or liquid, may state vitamin guarantees in milligrams per unit, consistent with the quantity statement and directions for use.

(4) Guarantees for drugs shall be stated in terms of percent by weight, except:

(a) drugs, present at less than 2,000 grams per ton, total, of commercial feed shall be stated in grams per ton of commercial feed;

(b) drugs, present at 2,000 or more grams per ton, total, of commercial feed, shall be stated in grams per pound of commercial feed; or

(c) the term "milligrams per pound" may be used for drugs in cases where a dosage is given in "milligrams" in the feeding directions.

(5) Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

(a) for ruminants:

(i) complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources, shall be guaranteed as follows:

(A) " crude protein, minimum, _____%"; and

(B) " this includes not more than _____% equivalent crude protein from non-protein nitrogen ";

(ii) mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as "equivalent crude protein from non-protein nitrogen, minimum, _____%"; or

(iii) ingredient sources of non-protein nitrogen such as Urea, Diammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by AAFCO shall be guaranteed as follows:

(A) " nitrogen, minimum, _%"; or

(B) "equivalent crude protein from non-protein nitrogen, minimum, _____%".

(b) for non-ruminants:

(i) complete feeds, supplements, and concentrates containing crude protein from all forms of non-protein nitrogen and added as listed, shall be labeled as follows:

(A) "crude protein, minimum _____%;" or

(B) "This includes not more than _____% equivalent crude protein which is not nutritionally available to species of animal for which feed is intended"; or

(ii) premixes, concentrates, or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen and added as listed, shall contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

(6) Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium when present, the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(7) Guarantees for microorganisms shall be stated and conform to the following:

(a) colony forming units per gram (CFU/g) or per pound (CFU/lb.) consistent with the directions for use, or CFU per product unit, consistent with directions for use and the quantity statement; and

(b) a parenthetical statement following the guarantee shall list each species in order of predominance.

(8) Guarantees for enzymes shall be stated and conform to the following:

(a) units of enzymatic activity per unit weight or volume consistent with the directions for use, or units of enzymatic activity per product unit, such as tablets or capsules, consistent with the directions for use and the quantity statement; and

(b)(i) the source organism for each type of enzymatic activity specified, such as Protease, Bacillus subtilis, 5.5 mg amino acids liberated/min./ milligram; and

(ii) if two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

(9) Any guarantees for dietary starch, sugars, and fructans for commercial feeds, excluding customer-formula feed, and pet food and specialty pet food products, which appear on the label shall ensure:

(a) the labeling claim in any manner for levels of "dietary starch," "sugars," "fructans," or words of similar designation shall include:

(i) guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the guaranteed analysis section immediately following the last fiber guarantee; and

(ii) a maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products; and

(b) feeding directions state the proper use of the feed product and a recommendation to consult with a veterinarian or nutritionist for a recommended diet.

R68-2-7. Ingredients.

(1) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name defined in the 2024 version of Chapter Six Official Feed Terms, Common or Usual Ingredient Names and Ingredient Definitions as published in the Official Publication and incorporated by reference into this rule, the common or usual name, or one approved by the department.

(2) Failure to list the ingredients of feeds in descending order by their predominance by weight in non-quantitative terms may be misleading.

(3) The name of each ingredient shall be shown in letters or type of the same size.

(4) No references to the quality or grade of an ingredient shall appear in the ingredient statement of a feed.

(5) The term "dehydrated" may precede the name of any product that has been artificially dried.

(6) A single ingredient product defined by the AAFCOs is not required to have an ingredient statement.

(7) Tentative definitions for ingredients may not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition exists or the ingredient has common accepted name that requires no definition, such as sugar.

(8) When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.0007% iodine, uniformly distributed.

(9) Each carrier shall be listed in the ingredient statement on the label unless it meets the criteria for an incidental ingredient as defined in the January 2017 version of the 21 CFR 501.100(a)(3).

R68-2-8. Directions for Use and Precautionary Statements.

(1) Directions for use and precautionary statements on the labeling of commercial feeds and customer-formula feeds containing additives, including drugs, special purpose additives, or non-nutritive additives, shall be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use articles.

(2) Feeds containing non-protein nitrogen as specified in Section R68-2-9 require adequate directions for use and precautionary statements.

(3) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

(4)(a) Raw milk distributed as commercial feed shall bear the following statement: "WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA."

(b) The statement in Subsection R68-2-8(4)(a) must be clearly visible and use a font no smaller than the minimum size required for the quantity statement as outlined in Section R70-910-3, and as shown in Table 11.

TABLE 11
Raw Milk Warning Statement Size

If Panel Size Is:	Use Minimum Warning Statement Type Size:
Less than or equal to 5 square inches;	1/16 inches.
Greater than 5 or less than or equal to 25 square inches;	1/8 inches.
Greater than 25 or less than or equal to 100 square inches;	3/16 inches.
Greater than 100 or less than or equal to 400 square inches;	1/4 inches.
Greater than 400 square inches;	1/2 inches.

R68-2-9. Non-protein Nitrogen.

(1)(a) Urea and other non-protein nitrogen products defined in the Official Publication are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein.

(b) If the commercial feed contains more than 8.75% of equivalent crude protein from any form of non-protein nitrogen, or the equivalent crude protein from any form of non-protein nitrogen and added as listed, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED."

(c) The directions for use and the caution statement shall be of adequate type size and be placed on the label in a manner that they will be read and understood by ordinary persons under customary conditions of purchase and use.

(2) Feeding or use directions for those feeds in which more than 50% of the protein content is derived from non-protein nitrogen sources should include recommendations providing adequate supplies of drinking water, sources of energy, forages being fed, minerals, adaptation, "warm-up" periods and stress conditions when necessary.

(3)(a) Non-protein nitrogen as defined in the Official Publication, when so indicated, are acceptable ingredient in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein.

(b) The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations may not exceed 1.25% of the total daily ration.

(4) On labels for medicated feeds that bear adequate feeding directions or warning statements, the presence of added non-protein nitrogen may not require a duplication of the feeding directions or the precautionary statements if those statements include sufficient information to ensure the safe and effective use of the product due to the presence of non-protein nitrogen.

R68-2-10. Drugs and Additives in Feed.

(1) Before the approval of a registration application or approval of a label for commercial feed that contains additives, including drugs, other special purpose additives, or non-nutritive additives, the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

(2) Satisfactory evidence of safety and efficacy of a commercial feed include:
(a) the commercial feed contains additives, the use of which conforms to the requirements of the applicable section in Title 21, Code of Federal Regulations, or which are "prior sanctioned", "informal review sanctioned", or "generally recognized as safe" for use;
(b) the commercial feed is itself a drug as defined in 21 CFR 510.3 (January 3, 2017) and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under 21 CFR 584 (August 2, 2024);
(c) one of the purposes for feeding a commercial feed is to impart immunity, and the constituent's imparting immunity has been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913 21 USC Ch. 5;
(d) the commercial feed is a direct fed microbial product, which includes;
(i) the product meets the particular fermentation product definition;
(ii) the microbial content statement, as expressed and appears on the labeling, is limited to the following: "Contains a source of live, viable, naturally occurring microorganisms."; and
(iii) the source is stated with a corresponding guarantee expressed in accordance with Subsection R68-2-6(6); and
(e) the commercial feed is an enzyme product, which includes:
(i) the product meets the particular enzyme definition defined by AAFCO; and
(ii) the enzyme is stated with a corresponding guarantee expressed in accordance with Subsection R68-2-6(7).

R68-2-11. Adulterants.
(1) The terms "poisonous or deleterious substances" include:
(a) fluorine and any mineral or mineral mixture that is used directly for the feeding of domestic animals and the fluorine exceeds;
(i) 0.20% for breeding and dairy cattle;
(ii) 0.30% for slaughter cattle;
(iii) 0.30% for sheep;
(iv) 0.35% for lambs;
(v) 0.45% for swine; or
(vi) 0.60% for poultry;
(b) fluorine bearing ingredients when used in amounts that raise the fluorine content of the total ration, exclusive of roughage, above the following amounts:
(i) 0.004% for breeding and dairy cattle;
(ii) 0.009% for slaughter cattle;
(iii) 0.006% for sheep;
(iv) 0.01% for lambs;
(v) 0.015% for swine; or
(vi) 0.03% for poultry.
(c) fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep, or goats consuming roughage, with or without, limited amounts of grain, which results in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of body weight;
(d) soybean meal, flakes or pellets or other vegetable meals, flakes or pellets that have been extracted with trichlorethylene or other chlorinated solvents;
(e) sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients that are considered or reported to be a significant source of vitamin B1, Thiamine; or
(f) raw leather residue from tanning or leather manufacturing.
(2) Any screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of the weed seeds so that the finished product contains no more than six viable prohibited weed seeds per pound.

KEY: feed contamination, animal commercial feed, pet homemade treats, pet food
Date of Last Change: [~~February 25, 2009~~]2024
Notice of Continuation: January 17, 2020
Authorizing, and Implemented or Interpreted Law: [~~4-12-3~~]4-12-103, 4-12-105(3); 4-12-102(4)(a)(iii)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R317-8-1**	**Filing ID: 56761**

Agency Information

1. Title catchline:	Environmental Quality, Water Quality
Building:	MASOB Office Building
Street address:	195 N 1950 W
City, state	Salt Lake City, UT 84116

Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact persons:		
Name:	**Phone:**	**Email:**
Danielle Lenz	385-363-8250	dlenz@utah.gov
Leanna Littler-Woolf	385-443-0381	lnlittler@utah.gov
Daniel Griffin	801-536-4387	dgriffin@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R317-8-1. General Provisions and Definitions

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

The Division of Water Quality (DWQ) needs to incorporate Federal Regulations Section 316 (b) of the Clean Water Act into thw Utah Administrative Code in order to adequately protect Utah's water quality.

Without the proposed amendment, DWQ would not have the legal authority to enforce these federal requirements and incorporate them into Utah Pollutant Discharge Elimination System (UPDES) permits, when applicable.

4. Summary of the new rule or change:

The amendment to Section R317-8-1 incorporates federal regulations by reference to Title 40, Code of Federal Regulations (40 CFR) 125.80-99, as Subsection R317-8-1(1.10)(19). The amendment is associated with requirements for facilities that need coverage under a UPDES permit and have cooling water intake structures designed to withdraw at least 2 million gallons per day from waters of the state. These requirements aim to protect the waters of the state.

Fiscal Information

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

A) State budget:

DWQ has identified four facilities that would need coverage under this amendment. Two of these facilities already have UPDES permit coverage; the incorporation of these amendment requirements would require a permit modification, and the facility would be charged DWQ staff recovery time at $125/hour, with an estimated 5 hours to complete. This would result in $1,250 in modification fees paid to DWQ. The two facilities that do not currently have UPDES permit coverage would need to obtain and maintain a UPDES permit. The yearly permit fee paid to DWQ is $601 per Permit, for a total of $1,202 per year. This workload could be handled by current DWQ staff, so there would be no increase to the staff budget.

B) Local governments:

This amendment has no anticipated cost or savings to local governments. Local Government would not be involved in permitting or regulating requirements associated with this amendment.

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

Due to this amendment, small businesses are not anticipated to incur costs or savings. All facilities that would be impacted are non-small businesses.

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

DWQ has identified four facilities that would need coverage under this amendment. All four of these faculties are non-small businesses by definition. Two of these facilities already have UPDES permit coverage; the incorporation of these amendment requirements would require a permit modification, and the facility would be charged DWQ staff recovery time at $125/hour, with an estimated 5 hours to complete. This would result in $1,250 in modification fees paid to DWQ. The two facilities that do not currently have UPDES permit coverage would need to obtain and maintain a UPDES permit. The yearly permit fee paid to DWQ is $601 per Permit, for a total of $1,202 per year.

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

This amendment has no anticipated cost or savings to other persons. There is the positive benefit of improved water quality protection that would come with this amendment, but this is not monetarily quantifiable.

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

DWQ has identified four facilities that would need coverage under this amendment. The two unpermitted facilities would pay $601 a year each for permit coverage. If these facilities do not already have a flow meter, they would need to purchase one at an average cost of $1,400 for one meter. The permitted facilities would pay up to $625 each to modify their existing permit to incorporate new requirements. These permitted facilities already have flow meters.

Although not legally enforceable, these requirements were included in the UPDES Multi-Sector General Permit before January 1, 2024. Facilities should be familiar with requirements and have the knowledge, staff, and other resources to comply. Actual costs will be facility specific.

These are Federal Requirements that applicable facilities need to comply with.

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	$5,252	$1,202	$1,202
Other Persons	$0	$0	$0
Total Fiscal Cost	**$5,252**	**$1,202**	**$1,202**
Fiscal Benefits	**FY2025**	**FY2026**	**FY2027**
State Government	$2,452	$1,202	$1,202
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$2,452**	**$1,202**	**$1,202**
Net Fiscal Benefits	**-$2,800**	**$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 for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Chapter 19-5	40 CFR 125	40 CFR 503
40 CFR 122	40 CFR 412	40 CFR 123

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)	40 CFR 125.80-99
Publisher	Federal Register and the Government Publishing Office
Issue Date	December 18, 2001

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:	10/15/2024

9. This rule change MAY become effective on:	11/01/2024
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:	John K. Mackey, Director, Division of Water Quality	**Date:**	09/03/2024

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-1. General Provisions and Definitions.

1.1 COMPARABILITY WITH THE CWA. The UPDES rule[~~s~~] promulgated pursuant to the Utah Water Quality Act [~~are~~]is intended to be compatible with the Federal regulations adopted pursuant to CWA.

1.2 CONFLICTING PROVISIONS. The provisions of the UPDES rule[~~s~~] are to be construed as being compatible with and complementary to each other. [~~In the event that~~]If any of these [~~rules~~]provisions are found by a court of competent jurisdiction to be contradictory, the more stringent provisions shall apply.

1.3 SEVERABILITY. [~~In the event that~~]If any provision of [~~these rules~~]this rule is found to be invalid by a court of competent jurisdiction, the remaining UPDES [~~rules~~]provisions [~~shall~~]may not be affected or diminished thereby.

1.4 ADMINISTRATION OF THE UPDES PROGRAM. The [~~D~~]director has responsibility for the administration of the UPDES program, including pretreatment. The responsibility for the program is delegated to the [~~D~~]director in accordance with [~~UCA~~]Subsection 19-5-104(11) and [~~UCA~~]Subsection 19-5-107(2)(a). The [~~D~~]director has the responsibility for issuance, denial, modification, revocation and enforcement of UPDES permits, including general permits, Federal facilities permits, and sludge permits; and approval and enforcement authority for the pretreatment program.

1.5 DEFINITIONS. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of [~~these rules~~]this rule:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

(2) "Applicable standards and limitations" means all standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under Subsection 19-5-104(6) of the Utah Water Quality Act and rules promulgated pursuant thereto, including [~~but not limited to~~]effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal.

(3) "Application" means the forms available from the [~~D~~]division, which are the same as the EPA standard NPDES forms, for applying for a UPDES permit, including any additions, revisions or modifications.

(4) "Average monthly discharge limit" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharge measured during a calendar month divided by the number of daily discharges measured during the month.

(5) "Average weekly discharge limit" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

(6) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(7) "Class I sludge management facility" means any POTW required to have an approved pretreatment program under Section R317-8-8 and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the [~~D~~]director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(8) "Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(9) "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. 1251 et seq.).

(10) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(11) "Direct discharge" means the discharge of a pollutant.

(12) "Discharge of a pollutant" means any addition of any pollutants to "waters of the [~~S~~]state" from any "point source." This definition includes additions of pollutants into waters of the [~~S~~]state from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by the [~~S~~]state, a municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

(13) "Economic impact consideration" means the reasonable consideration given by the [~~D~~]director to the economic impact of water pollution control on industry and agriculture; provided, however, that such consideration shall be consistent and in compliance with the CWA and EPA promulgated regulations.

(14) "Discharge Monitoring Report (DMR)" means EPA uniform national form or equivalent [~~S~~]state form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

(15) "Draft permit" means a document prepared under Subsection R317-8-6(6.3) indicating the [~~D~~]director's preliminary decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as provided in Subsection R317-8-5(5.6) is not a draft permit. A proposed permit prepared after the close of the public comment period is not a draft permit.

(16) "Effluent limitation" means any restriction imposed by the [~~D~~]director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the [~~S~~]state.

(17) "Effluent limitations guidelines" means a regulation published by the Administrator under [~~s~~]Section 304(b) of CWA to adopt or revise effluent limitations.

(18) "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

(19) "Facility or activity" means any UPDES point source, or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under the UPDES program.

(20) "General permit" means any UPDES permit authorizing a category of discharges within a geographical area, and issued under Subsection R317-8-2(2.5).

(21) "Hazardous substance" means any substance designated under 40 CFR Part 116.

(22) "Indirect discharge" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(23) "Interstate agency" means an agency of which Utah and one or more states is a member, established by or under an agreement or compact, or any other agency, of which Utah and one or more other states are members, having substantial powers or duties pertaining to the control of pollutants.

(24) "Major facility" means any UPDES facility or activity classified as such by the [~~D~~]director in conjunction with the Regional Administrator.

(25) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(26) "Municipality" means a city, town, district, county, or other public body created by or under the [~~S~~]state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. For purposes of [~~these rules~~]this rule, an agency designated by the [~~G~~]governor under Section 208 of the CWA is also considered to be a municipality.

(27) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the CWA.

(28) "New discharger" means any building, structure, facility, or installation:

(a) [~~F~~]from which there is or may be a "discharge of pollutants;"

(b) [~~T~~]that did not commence the "discharge of pollutants" at a particular "site" [~~prior to~~]before August 13, 1979;

(c) [~~W~~]which is not a "new source;" and

(d) [~~W~~]which has never received a finally effective UPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commenced discharging into waters of the state after August 13, 1979.

(29) "New source" means any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced;

(a) [~~A~~]after promulgation of EPA's standards of performance under Section 306 of CWA which are applicable to such source[~~,~~]; or

(b) [~~A~~]after proposal of Federal standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the Federal standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(30) "Non-continuous or batch discharge" for a discharge to be considered a non-continuous or batch discharge the following must apply:

(a) [~~F~~]frequency of a non-continuous or batch discharge:

[~~i.~~](i) [~~shall~~]may not occur more than once every three [~~(3)~~]weeks[~~,~~];

[~~ii.~~](ii) [~~shall~~]may not be more than once during the three [~~(3)~~]weeks; and

[~~iii.~~](iii) [~~shall~~]may not exceed 24 hours; and

(b) [~~Shall~~]may not cause a slug load at the POTW.

(31) "Owner or operator" means the owner or operator of any facility or activity subject to regulation under the UPDES program.

(32) "Permit" means an authorization, license, or equivalent control document issued by the [~~D~~]director to implement the requirements of the UPDES rules. "Permit" includes a UPDES "general permit." The term does not include any document which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

(33) "Person" means any individual, corporation, partnership, association, company or body politic, including any agency or instrumentality of the United States government.

(34) "Point source" means any discernible, confined, and discrete conveyance, including [~~but not limited to~~]any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm[-] water runoff or return flows from irrigated agriculture.

(35) "Pollutant" means, for [~~the purpose of these rules~~]this rule, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials [~~(~~]except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)[~~)~~], heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) [~~S~~]sewage from vessels; or

(b) [~~W~~]water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(36) "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the [~~S~~]state, unless such alteration is necessary for the public health and safety. Alterations which are not consistent with the requirements of the CWA and implementing regulations [~~shall~~]may not be deemed to be alterations necessary for the public health and safety. A discharge not in accordance with Utah Water Quality Standards, stream classification, and UPDES permit requirements, including technology-based standards shall be deemed to be pollution.

(37) "Primary industry category" means any industry category listed in Subsection R317-8-3(3.11).

(38) "Privately owned treatment works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works and which is not a POTW.

(39) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(40) "Proposed permit" means a UPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and adjudicative proceedings, which is sent to EPA for review before final issuance by the [~~D~~]director. A proposed permit is not a draft permit.

(41) "Publicly[-] owned treatment works" (POTW) means any facility for the treatment of pollutants owned by the [~~S~~]state, its political subdivisions, or other public entity. For [~~the purposes of these rules~~]this rule, POTW includes sewers, pipes or other conveyances conveying wastewater to a POTW providing treatment, treatment of pollutants includes recycling and reclamation, and pollutants refers to municipal sewage or industrial wastes of a liquid nature.

(42) "Recommencing discharger" means a source which resumes discharge after terminating operation.

(43) "Regional Administrator" means the Regional Administrator of the Region VIII office of the EPA or the authorized representative of the Regional Administrator.

(44) "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with the Utah Water Quality Act and rules promulgated pursuant thereto.

(45) "Secondary industry category" means any industry category which is not a primary industry category.

(46) "Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

(47) "Seven [~~(7) ~~]consecutive day discharge limit" means the highest allowable average of daily discharges over a seven [~~(7)~~]consecutive day period.

(48) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

(49) "Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes[~~, but is not limited to,~~] solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet dumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

(50) "Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

(51) "Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

(52) "Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act and which is required to obtain a permit under Subsection R317-8-2(2.1).

(53) "Standards for sewage sludge use or disposal" means the rules promulgated pursuant to Section 19-5-104 of the Utah Water Quality Act which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

(54) "State/EPA Agreement" means an agreement between the State and the Regional Administrator which coordinates State and EPA activities, responsibilities and programs, including those under the CWA programs.

(55) "Thirty [~~(30) ~~]consecutive day discharge limit" means the highest allowable average of daily discharges over a [~~thirty (~~]30[~~)~~] consecutive day period.

(56) "Toxic pollutant" means any pollutant listed as toxic in Subsection R317-8-7(7.6) or, in the case of sludge use or disposal practices, any pollutant identified as toxic in [~~S~~]state adopted rules for the disposal of sewage sludge.

(57) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership, [(]including federal facilities[)], used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

(58) "Variance" means any mechanism or provision under the UPDES rules which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(59) "Waters of the [~~S~~]state":

(a) means [~~all~~]streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and[~~all~~] other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this [~~S~~]state or any portion [~~thereof, except that~~]of the state: and

(b) does not include bodies of water confined to and retained within the limits of private property, and [~~which~~]that do not develop into or constitute a nuisance, [~~or~~]a public health hazard, or a menace to fish or wildlife.[~~, shall not be considered to be "waters of the State."~~] The exception for confined bodies of water does not apply to any waters [~~which~~]that meet the definition of "waters of the United States" under 40 CFR 122.2. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the [~~S~~]state includes "wetlands" as defined in the Federal Clean Water Act.

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

(61) "Whole effluent toxicity" means the aggregate toxic effect of an effluent as measured directly by a toxicity test.

(62) "Utah Pollutant Discharge Elimination System (UPDES)" means the [~~S~~]state-wide program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the Utah Water Quality Act.

1.6 DEFINITIONS APPLICABLE TO STORM[-] WATER DISCHARGES.

(1) "Co-Permittee" means a permittee to a UPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a UPDES permit, [(]other than the UPDES permit for discharges from the municipal separate storm sewer[)], and discharges resulting from fire fighting activities.

(3) "Incorporated place" means a city or town that is incorporated under the laws of Utah.

(4) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(b) Located in counties with unincorporated urbanized areas with a population of 250,000 or more according to the 1990 Decennial Census by the Bureau of Census, except municipal separate storm sewers that are located in the incorporated places, townships or towns within the County; or

(c) Owned or operated by a municipality other than those described in Subsection R317-8-1(1.6)(4)(a) or (b) and that are designated by the [~~D~~]director as part of a large or medium municipal separate storm sewer system. See Subsection R317-8-11(11.3)(6)(a) for provisions regarding this definition.

(5) "Major municipal separate storm sewer outfall" [(]or "major outfall"[)] means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent, i.e. [(]discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres[)]; or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity, [(]based on comprehensive zoning plans or the equivalent[)], an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent, i.e. [(]discharge from other than a circular pipe associated with a drainage area of 2 acres or more[)].

(6) "Major outfall" means a major municipal separate storm sewer outfall.

(7) "Maximum Extent Practicable" (MEP) means the technology-based discharge standard for Municipal Separate Storm Sewer Systems established by [~~p~~]Paragraph 402(p)(3)(B)(iii) of the Federal Clean Water Act (CWA), which states that permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the Administrator or the [~~S~~]state determines appropriate for the control of such pollutants.

(8) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census;

(b) Located in counties with unincorporated urbanized areas with a population greater than 100,000 but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or

(c) Owned or operated by a municipality other than those described in Subsections R317-8-1(1.6)(4)(a) and (b) and that are designated by the [~~D~~]director as part of the large or medium municipal separate storm sewer system. See Subsection R317-8-11(11.3)(6)(b) for provisions regarding this definition.

(9) "MS4" means a municipal separate storm sewer system.

(10) "Municipal separate storm sewer system" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to [~~paragraphs~~]Subsections R317-8-1(1.6)(4), (8), and (15)[~~ of this section~~], or designated under [~~paragraph~~]Subsection R317-8-11(11.3)(1)(a)(6)[~~ of this section~~].

(11) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the [~~S~~]state and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the [~~S~~]state and are used to convey waters of the [~~S~~]state.

(12) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(13) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(14) "Significant materials" means[~~, but is not limited to:~~] raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under [~~s~~]Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): any chemical the facility is required to report pursuant to [~~s~~]Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA): fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(15) "Small municipal separate storm sewer system" means all separate storm sewers that are:

(a) Owned or operated by the United States, the state[~~State of Utah~~], city, town, county, district, association, or other public body [~~(~~]created by or pursuant to [~~S~~]state law.[~~)~~] having jurisdiction over disposal of sewage, industrial waste, storm water, or other wastes, including special districts under [~~S~~]state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under [~~s~~]Section 208 of the CWA that discharges to waters of the [~~S~~]state.

(b) Not defined as "large" or "medium" municipal separate storm sewer system pursuant to [~~paragraphs~~]Subsections R317-8-1(1.6)(4) and (8)[~~ of this section~~], or designated under [~~paragraph~~]Subsection R317-8-11(11.3)(1)(a)(6)[~~ of this section~~].

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(16) "Small MS4" means a small municipal separate storm sewer system.

(17) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(18) "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the UPDES program. See Subsections R317-8-11(11.3)(6)(c) and (d) for provisions applicable to this definition.

(19) "Uncontrolled sanitary landfill means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

1.7 ABBREVIATIONS AND ACRONYMS. The [~~following~~]listed abbreviations and acronyms, as used throughout the UPDES rule[~~s~~], shall have these meanings[~~ given below~~]:

(1) "BAT" means best available technology economically achievable;

(2) "BCT" means best conventional pollutant control technology;

(3) "BMPs" means best management practices;

(4) "BOD" means biochemical oxygen demands;

(5) "BPT" means best practicable technology currently available;

(6) "CFR" means Code of Federal Regulations;

(7) "COD" means chemical oxygen demand;

(8) "CWA" means the Federal Clean Water Act;

(9) "DMR" means discharge monitoring report;

(10) "NPDES" means National Pollutant Discharge Elimination System;

(11) "POTW" means publicly owned treatment works;

(12) "SIC" means standard industrial classification;

(13) "TDS" means total dissolved solids;

(14) "TSS" means total suspended solids;

(15) "UPDES" means Utah Pollutant Discharge Elimination System;

(16) "UWQB" means the Utah Water Quality Board;

(17) "WET" means whole effluent toxicity.

1.8 UPGRADE AND RECLASSIFICATION. Upgrading or reclassification of waters of the [~~S~~]state by the Utah Water Quality Board may be done periodically, but only using procedures and in a manner consistent with the requirements of [~~S~~]state and [~~F~~]federal law.

1.9 PUBLIC PARTICIPATION. The [~~D~~]division will investigate and provide written response to all citizen complaints. In addition, the [~~D~~]director [~~shall~~]may not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The [~~D~~]director will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

1.10 INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE. The [~~S~~]state adopts the following Federal standards and procedures, effective as of December 8, 1999 unless otherwise noted, which are incorporated by reference:

(1) 40 CFR 129 (Toxic Effluent Standards) with the following exceptions:

(a) Substitute "UPDES" for all federal regulation references to "NPDES".

(b) Substitute [~~D~~]director of the Division of Water Quality for all federal regulation references to "State Director".

(c) Substitute "Sections R317-8-4[~~.4~~], R317-8-6, and R317-8-7" for all federal regulation references to "40 CFR Parts 124 and 125".

(2) 40 CFR 133 (Secondary Treatment Regulation) with the following exceptions:

(a) 40 CFR 133.102 for which Subsection R317-1-3(3.2) is substituted.

(b) 40 CFR 133.105.

(c) Substitute "UPDES" or "Utah Pollutant Discharge Elimination System" for all federal regulation references for "NPDES" or "National Pollutant Discharge Elimination System", respectively.

(d) Substitute [~~D~~]director of the Division of Water Quality for all federal regulation references to "State Director" in 40 CFR 133.103.

(3) 40 CFR 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants)

(4) 40 CFR 403.6 (National Pretreatment Standards and Categorical Standards), effective as of May 16, 2008, with the following exception:

(a) Substitute [~~D~~]director of the Division of Water Quality for all federal regulation references to "[~~D~~]director".

(5) 40 CFR 403.7, effective as of May 16, 2008, (Removal Credits)

(6) 40 CFR 403.13, effective as of May 16, 2008, (Variances from Categorical Pretreatment Standards for Fundamentally Different Factors)

(7) 40 CFR Parts 405 through 411

(8) 40 CFR Part 412, effective as of July 30, 2012, with the following changes:

(a) Substitute [~~D~~]director of the Division of Water Quality for all federal regulation references to "[~~D~~]director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute "surface waters" of the state for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."

(9) 40 CFR Parts 413 through 471

(10) 40 CFR 503 (Standards for the Use or Disposal of Sewage Sludge), effective as of the date that responsibility for implementation of the federal Sludge Management Program is delegated to the [~~S~~]state except as provided in Subsection R317-1-6(6.4), with the following changes:

(a) Substitute [~~D~~]director of the Division of Water Quality for all federal regulation references to "[~~D~~]director".

(11) 40 CFR 122.30

(12) 40 CFR 122.32

(a) In 122.32(a)(2), replace the reference 122.26(f) with Subsection R317-8-11(11.3)(5).

(13) 40 CFR 122.33

(a) In 122.33(b)(2)(i), replace the reference 122.21(f) with Subsection R317-8-3(3.1)(6).

(b) In 122.33(b)(2)(i), replace the reference 122.21(f)(7) with Subsection R317-8-3(3.1)(6)(g).

(c) In 122.33(b)(2)(ii), replace the reference 122.26(d)(1) and (2) with Subsection R317-8-11(11.3)(3)(a)

(d) In 122.33(b)(3), replace the reference 122.26 with Rule R317-8.

(e) In 122.33(b)(3), replace the reference 122.26(d)(1)(iii) and (iv); and (d)(2)(iv) with Subsections R317-8-11(11.3)(4)(b)(2) and (6); and R317-8-11(11.3)(3)(b).

(14) 40 CFR 122.34

(a) In 122.34(b)(4)(i), replace the reference 122.26(b)(15)(i) with Subsection R317-8-11(11.3)(6)(e)(1).

(b) In 122.34(f), replace the references 122.41 through 122.49 with Subsections R317-8-4(4.1) through R317-8-5(5.4).

(c) In 122.34(g)(2), replace the reference 122.7 with Subsection R317-8-3(3.3).

(15) 40 CFR 122.35

(a) In 122.35, replace the reference 122 with Rule R317-8.

(16) 40 CFR 122.36

(17) For the references Subsections R317-8-1(1.10)(12), (13), (14), (15), and (16), make the following substitutions:

(a) Substitute the [~~D~~]director of the Division of Water Quality for the "NPDES permitting authority"

(b) Substitute "UPDES" for "NPDES"

(18) Effective as of July 30, 2012, 40 CFR 122.21(i) Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities, 40 CFR 122.23 Concentrated animal feeding operations, 40 CFR 122.28(b)(2) Authorization to discharge, 40 CFR 122.42(e) Additional conditions applicable to specified categories of NPDES permits, 40 CFR 122.62(a)(17) Modification or revocation and reissuance of permits, Nutrient Management Plans, and 40 CFR 122.63(h) Minor modification of permits, changes to the terms of a CAFO's Nutrient Management Plan, with the following substitutions:

(a) Substitute "[~~D~~]director of the Division of Water Quality" for all federal regulation references to "[~~D~~]director" or "State Director".

(b) Substitute "UPDES" for all federal regulation references to "NPDES".

(c) Substitute "surface waters of the state" for all federal regulation references to "surface water," "waters of the United States," "navigable waters," or "U.S. waters."

(19) Effective as of November 1, 2024, 40 CFR 125.80-99, with the following substitutions:

(a) Substitute "director of the Division of Water Quality" for all federal regulation references to "Director."

(b) Substitute "UPDES" for all federal regulation references to "NPDES."

(c) Substitute "surface waters of the state" for all federal regulation references to "waters of the United States" or "waters of the U.S."

KEY: water pollution, discharge permits
Date of Last Change: [~~April 15, 2021~~]2024
Notice of Continuation: August 29, 2022
Authorizing, and Implemented or Interpreted Law: 19-5; 40 CFR 122; 40 CFR 123; 40 CFR 125; 40 CFR 412; 40 CFR 503

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R414-29**	**Filing ID: 56738**

Agency Information

1. Title catchline:	Health and Human Services, Integrated Healthcare	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state	Salt Lake City, UT	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Mariah Noble	385-214-1150	mariahnoble@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R414-29. Client Review and Restriction Policy

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

The purpose of this change is to update and clarify policy for the Medicaid Restriction Program. The change was deemed necessary based on internal review.

4. Summary of the new rule or change:

This amendment updates and clarifies provisions for member placement in the Restriction Program.

It also makes other technical changes to structure, formatting, and grammar in accordance 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:

There is no anticipated impact to the state budget as this amendment clarifies restriction policy within the Medicaid program.

B) Local governments:

There is no anticipated impact on local governments as they neither fund nor administer Medicaid programs.

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

There is no anticipated impact on small businesses as this amendment clarifies restriction policy within the Medicaid program.

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

There is no anticipated impact on non-small businesses as this amendment clarifies restriction policy within the Medicaid program.

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 impact to other persons or entities as this amendment clarifies restriction policy within the Medicaid program.

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 to a single person or entity as this amendment clarifies restriction policy within the Medicaid program.

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 Health and Human Services, Tracy S. Gruber, 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 26B-1-213	Section 26B-3-108	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Tracy S. Gruber, Executive Director	**Date:**	08/16/2024

R414. Health and Human Services, Integrated Healthcare.
R414-29. Client Review and Restriction Policy.
R414-29-1. Introduction and Authority.

(1) This rule sets out the criteria and process to restrict a Medicaid member to specific Medicaid providers if the member is found to have a pattern of using Medicaid services at a frequency or amount not medically necessary.

(2) This rule implements the requirements found in 42 CFR 431.54(e) and 42 CFR 456.3.

R414-29-2. Definitions.

In addition to the definitions in Section R414-1-2, the following definitions apply to this rule:

(1) "Abuse potential medications" means [~~those~~]substances listed in Schedule II-V in 21 CFR 812, Subchapter I, Part B (b)(2) through (5)(c) and Section 58-37-4.2. For purposes of the Restriction Program, this also includes regulated drugs.

(2) "Access to care" means the timely availability and adequacy of healthcare services to achieve the best health outcomes for Medicaid members.

(3) "Annual review" means a review of a restricted member's records and claims from the [~~prior~~]earlier 12 months of Medicaid eligibility and enrollment in the Restriction Program performed to determine whether the member has adhered to Restriction Program guidelines during enrollment in the Restriction Program.

(4) "Assigned pharmacy" means the pharmacy assigned by the [~~D~~]department for a restricted member to access pharmacy services.

(5) "Assigned prescriber" means a provider authorized by a restricted member's assigned PCP to write prescriptions for the restricted member.

(6) "Assigned primary care provider" means the PCP assigned by the [~~D~~]department as the provider responsible for coordinating a restricted member's overall health care.

(7) "Assigned provider" means provider authorized by the restricted member's assigned PCP to provide services to the member.

(8) "Concurrently [~~P~~]prescribed" means abuse potential medications that are prescribed by different prescribers for overlapping periods.

(9) "[~~D~~]department" means the Division of Integrated Healthcare and its contracted accountable care organizations.

(10) "Emergency department" means an area of a hospital in which emergency services are provided 24 hours a day.

(11) "Member" means a person who is determined eligible for assistance under the Medicaid program.

(12) "Non-emergent emergency department visit" means an emergency department visit, in which the medical condition does not meet the definition of emergency medical condition, and the services [~~rendered~~]provided do not meet the definition of emergency service, in accordance with the definitions set forth in Section R414-1-2.

(13) "Non-affiliated" provider means a provider who has not entered into a contractual agreement with another provider to provide similar health care services. This type of provider is neither closely associated with, belongs to, nor subordinate to another provider within a provider group practice. It also means a provider who has not been designated by a principal provider to [~~render~~]provide health care services in the temporary absence of the principal provider.

(14) "Overutilization" means to use medical services at a frequency or amount that is more than customary.

(15) "Primary care provider" or "PCP" means a physician, doctor of osteopathic medicine, nurse practitioner, or physician assistant, who provides, coordinates, or helps a patient access a necessary range of health care services.

(16) "Regulated drugs" means drugs that are monitored in the Department of Commerce Controlled Substance Database but have not been scheduled.

(1[~~6~~]7) "Restriction case" means the record of documentation on a member enrolled in the Restriction Program.

(1[~~7~~]8) "Restriction criteria" means the criteria used to place a Medicaid member in the Restriction Program, as described under Section R414-29-3.

(1[~~8~~]9) "Restricted member" means a Medicaid member who is placed in the Restriction Program.

R414-29-3. Restriction Program.

(1) The [~~D~~]department may enroll a member in the Restriction Program if the member meets one or more of the following restriction criteria within the most recent 12 months of Medicaid eligibility:

(a) accesses four or more non-affiliated PCPs and specialists;

(b) accesses four or more pharmacies for the purchase of abuse potential medications;

(c) accesses three or more non-affiliated providers who prescribe abuse potential medications in a consecutive two-month period;

(d) accesses six or more prescriptions for abuse potential medications in a consecutive two-month period;

(e) accesses emergency department services for five or more non-emergent emergency department visits;

(f) fills concurrent prescriptions for abuse potential medications, written by different prescribers;

(g) pays cash for Medicaid-covered services; or

(h) accesses concurrently prescribed abuse potential medications written by different prescribers without medical necessity or the knowledge or consent of the different prescribers.

(2) The department shall also consider the following when determining whether to place a member in the Restriction Program:

(a) the member's diagnoses and medical necessity;

(b) the member's concurrent prescribers of abuse potential medications;

(c) the member's geographic location and potential of limited access to care in rural areas; and

(d) the member's right to seek a second opinion.

([~~2~~]3) Once a member is found to meet or exceed restriction criteria, the [~~D~~]department shall perform an additional review to determine if overutilization of services was the result of limited access to care or medical necessity.

([~~3~~]4) When an individual is placed in the Restriction Program, the member shall have one assigned PCP and one assigned pharmacy.

([~~4~~]5) The [~~D~~]department may only pay claims for services [~~rendered~~]provided by the assigned PCP, prescriptions written by the assigned PCP, and prescriptions filled by the assigned pharmacy unless:

(a) services were provided upon referral from the assigned PCP;

(b) prescribers were authorized as assigned prescribers by the assigned PCP;

(c) services were provided by an emergency department;

(d) services and resulting prescriptions were provided in a hospital inpatient setting;

(e) services were provided by an urgent care center; or

(f) services were provided by Medicaid-enrolled providers not licensed to prescribe medications, such as behavioral health counselors or physical therapists.

([~~5~~]6) Enrollment in the Restriction Program does not affect the restricted member's ability to access emergency services.

R414-29-4. Assigned PCP and Assigned Pharmacy.

(1) The assigned PCP and assigned pharmacy shall enroll as Medicaid providers.

(2) The restricted member's primary care provider may serve as the assigned PCP if the provider agrees to serve in that capacity and if the [~~D~~]department approves the provider as the assigned PCP.

(3) The assigned PCP shall provide non-emergent services for the restricted member.

(4) The assigned PCP shall coordinate health care services for the restricted member, providing referrals for assigned providers and assigned prescribers as necessary.

R414-29-5. Selection of Assigned PCP and Assigned Pharmacy.

(1) The [~~D~~]department shall approve an assigned PCP and assigned pharmacy for the member when the member is placed in the Restriction Program. When making this assignment, the [~~D~~]department may consider the member's utilization history, geographic location, medical needs, transportation needs, and the quality of services available.

(2) Within 30 days of notification of placement in the Restriction Program, the restricted member may select an assigned PCP and an assigned pharmacy. The restricted member's selection of an assigned PCP and assigned pharmacy are subject to the approval of the [~~D~~]department.

(3) Only the [~~D~~]department may approve of any change in a assigned PCP or an assigned pharmacy.

(4) The assigned PCP and assigned pharmacy shall remain as the assigned PCP and assigned [~~P~~]pharmacy [~~for the duration~~]during of the member's enrollment in the Restriction Program with the following exceptions:

(a) a member requests a change of assigned PCP or assigned pharmacy within 30 days of notification of enrollment in the Restriction Program;

(b) the assigned PCP or assigned pharmacy changes locations;

(c) the assigned PCP or assigned pharmacy discontinues or limits practice;

(d) the assigned PCP or assigned pharmacy requests a change;

(e) a member has a verified change of address, which impacts access to the assigned PCP or assigned pharmacy; or

(f) the [~~D~~]department recommends a change when review indicates continued overutilization by a restricted member, the assigned PCP, or both.

(5) The [~~D~~]department may require a change of assigned PCP, assigned pharmacy, assigned providers, or assigned prescribers when[~~ever~~] it determines the restricted member is not receiving appropriate care.

(6) Requests from a restricted member to change an assigned PCP or assigned pharmacy may be verbal or be in writing.

R414-29-6. Notification of Placement in Restriction Program.

(1) The [~~D~~]department shall provide written notice to a Medicaid member that the [~~D~~]department is placing the member in the Restriction Program at least 10 days before placing the member in the Restriction Program. The notice shall inform the member of:

(a) the effective date of the member's placement in the Restriction Program;

(b) the basis for the member's placement in the Restriction Program;

(c) the specific element of the restriction criteria that supports the placement of the member in the Restriction Program; and

(d) the assigned PCP and assigned pharmacy selected for the member, and known assigned providers and assigned prescribers for the member at the time of placement in the Restriction Program.

(2) The notice shall inform the member that:

(a) upon placement in the Restriction Program, the member's assigned PCP must authorize Medicaid-covered prescriptions, primary care, and specialty care services for payment to be made; and

(b) the member has the right to an administrative hearing, including appropriate forms, instructions, and information sufficient to request an administrative hearing and the time frame for requesting an administrative hearing.

R414-29-7. Length of Restriction.

(1) A restricted member shall remain in the Restriction Program for a total of 12 months of Medicaid eligibility. The months of eligibility need not be continuous.

(2) If a restricted member becomes ineligible for Medicaid, and subsequently reestablishes Medicaid eligibility, the [~~D~~]department shall require the member to continue enrollment in the Restriction Program, unless the restricted member's loss of Medicaid eligibility is greater than one year.

(3) The [~~D~~]department shall perform a review of a member's placement in the Restriction Program once the member has been enrolled in the Restriction Program for 12 months of Medicaid eligibility.

(4) The Restriction Program shall remove a restricted member if an annual review demonstrates the restricted member no longer meets the restriction criteria.

(5) The [~~D~~]department shall inform a restricted member in writing of the member's removal from the Restriction Program.

(6) If at the time of annual review, a Medicaid member still meets the criteria for the Restriction Program, the [~~D~~]department shall inform the restricted member of continued enrollment in the Restriction Program for an additional 12 months of Medicaid eligibility.

(7) The [~~D~~]department shall provide notice to a Medicaid member of continuation in the Restriction Program in accordance with Section R414-29-6.

KEY: Medicaid
Date of Last Change: 2024[~~November 10, 2023~~]
Notice of Continuation: August 22, 2022
Authorizing, and Implemented or Interpreted Law: 26B-1-213; 26B-3-108

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R590-148**	**Filing ID: 56749**

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:

R590-148. Long-Term Care Insurance Rule

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

The rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring the rule text more in line with current rulewriting standards.

Other changes make the language of this rule more clear, and update the Severability section (the new R590-148-28) to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature,and will not change how the department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-22-1404	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:**	08/23/2024

R590. Insurance, Administration.
R590-148. Long-Term Care Insurance Rule.
[~~R590-148-1. Authority.~~
~~This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201 and 31A-22-1404.~~

~~R590-148-2. Purpose.~~
~~The purpose of this rule is to implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.~~

~~R590-148-3. Applicability and Scope.~~
~~Except as otherwise specifically provided, this rule applies to all long-term care insurance, as defined in 31A-1-301, delivered or issued for delivery in this state on or after January 1, 1993, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.~~
~~Additionally, this rule is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:~~
~~(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;~~
~~(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or~~
~~(3) Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.~~

~~R590-148-4. Incorporation by Reference.~~
~~The following tables and appendices are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours or at http://www.insurance.utah.gov/ruleindex.html. These tables and appendices were adopted by the National Association of Insurance Commissioners' Long-Term Care Insurance Model Regulation #641, as approved April 2000.~~
~~(1) Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.~~
~~(2) Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.~~
~~(3) Table III, Triggers for a Substantial Premium Increase.~~
~~(4) Table IV, Long-Term Care Insurance Outline of Coverage.~~
~~(5) Appendix A, Rescission Reporting Form.~~
~~(6) Appendix B, Long-Term Care Insurance Personal Worksheet.~~
~~(7) Appendix C, Things You Should Know Before You Buy Long-Term Care Insurance.~~
~~(8) Appendix D, Long-Term Care Insurance Suitability Letter.~~
~~(9) Appendix E, Claims Denial Reporting Form Long-Term Care Insurance.~~
~~(10) Appendix F, Worksheet Potential Rate Increase Disclosure Form.~~
~~(11) Appendix G, Replacement and Lapse Reporting Form.~~

~~R590-148-5. Definitions.~~
~~(1) For the purpose of this rule, the terms "applicant," "long-term care insurance," "certificate," "commissioner," and "policy" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.~~
~~(2) In addition, the following definitions apply:~~
~~(a) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.~~
~~(b) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.~~

(c) "Adult day care" means a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or disabled adults who can benefit from care in a group setting outside the home.

(d) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(e) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(f) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(g)(i) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

(h) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(i) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup or table, or by a feeding tube or intravenously.

(j)(i) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

(A) due to changes in laws and rules applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(ii) Except as provided in Section R590-148-24, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(iii) The commissioner may request review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(iv) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(k) "Hands-on assistance" means physical assistance, minimal, moderate or maximal, without which the individual would not be able to perform the activity of daily living.

(l) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(m) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(n) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(o) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(p) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(q) "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(r) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

(s) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(t) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(u) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:

(i) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(v) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(w) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

~~(x) "Transferring" means moving into or out of a bed, chair or wheelchair.~~

~~(3) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.~~

~~R590-148-6. Required Provisions and Practices.~~

~~(1) Renewability.~~

~~The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Subsection R590-148-6(1)(b).~~

~~(a) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."~~

~~(i) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.~~

~~(ii) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.~~

~~(b) Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.~~

~~(c) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.~~

~~(2) Limitations and Exclusions.~~

~~(a) No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:~~

~~(i) preexisting conditions or diseases;~~

~~(ii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, or any other mental or nervous disorder of organic origin;~~

~~(iii) alcoholism and drug addiction;~~

~~(iv) illness, treatment or medical condition arising out of:~~

~~(A) war or act of war, whether declared or undeclared;~~

~~(B) participation in a felony, riot or insurrection;~~

~~(C) service in the armed forces or auxiliary units;~~

~~(D) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or~~

~~(E) aviation for non-fare-paying passengers;~~

~~(v) treatment provided in a government facility, unless otherwise required by law,~~

~~(vi) services for which benefits are paid under:~~

~~(A) Medicare or other governmental program, except Medicaid;~~

~~(B) any state or federal workers' compensation;~~

~~(C) employer's liability or occupational disease law; or~~

~~(D) any motor vehicle no-fault law;~~

~~(vii) services provided by a member of the covered person's immediate family;~~

~~(viii) services for which no charge is normally made in the absence of insurance;~~

~~(ix) benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.~~

~~(b) Subsection R590-148-6(2)(a) is not intended to prohibit exclusions and limitations by type of provider or territorial limitations outside the United States.~~

~~(3) Preexisting Condition Limitation. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."~~

~~(4) Benefit Triggers. Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.~~

~~(5) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.~~

~~(6) Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:~~

~~(a) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and~~

~~(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.~~

~~(7) Premiums.~~

~~(a) The term "level premium" may only be used when the insurer does not have the right to change the premium.~~

~~(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.~~

~~(c) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section R590-148-14, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.~~

~~(d) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section R590-148-14, the initial annual premium shall be based on the reduced benefits.~~

~~(8) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider or endorsement.~~

~~(9) Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.~~

~~(10) Eligibility for Benefits Limitations and Conditions. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."~~

~~(11) Disclosure of Tax Consequences. With regard to life insurance policies which provide for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the benefit payment request is submitted that receipt of these benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.~~

~~(12) Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.~~

~~(13) Nonqualified Contracts. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract.~~

~~(14) Long-term care insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate rider complying with all provisions of this Rule. Long-term care insurance shall not be incorporated into a life insurance policy or annuity contract.~~

~~R590-148-7. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies.~~

~~(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care services, limit or exclude benefits:~~

~~(a) by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided;~~

~~(b) by requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;~~

~~(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;~~

~~(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the aid or worker's licensure or certification;~~

~~(e) by excluding coverage for personal care services provided by a home health aide;~~

~~(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;~~

~~(g) by requiring that the insured have an acute condition before home health care services are covered;~~

~~(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or~~

~~(i) by excluding coverage for adult day care services.~~

~~(2) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.~~

~~(3) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing~~

~~home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.~~

~~R590-148-8. Standards for Benefit Triggers.~~

~~(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than 3 of the activities of daily living or the presence of cognitive impairment.~~

~~(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-148-5(2)(a) as long as they are defined in the policy.~~

~~(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections R590-148-8(1) and (2).~~

~~(4) For purposes of this section the determination of a deficiency shall not be more restrictive than:~~

~~(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuing by another person is needed in order to protect the insured or others.~~

~~(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.~~

~~(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.~~

~~(7) The requirements set forth in this section shall be effective January 1, 2003 and shall apply as follows:~~

~~(a) Except as provided in Subsection R590-148-8(7)(b), the provisions of this section apply to a long-term care policy issued in this state on or after July 1, 2002.~~

~~(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy that was in force at the time this rule became effective, the provisions of this section shall not apply.~~

~~R590-148-9. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts.~~

~~(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.~~

~~(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.~~

~~(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection R590-148-9(2) shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.~~

~~(4) Certifications required pursuant to Subsection R590-148-9(2) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.~~

~~(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.~~

~~R590-148-10. Continuation and Conversion.~~

~~(1) Group long-term care insurance issued in this state on or after July 1, 2002 shall provide covered individuals with a basis for continuation or conversion of coverage.~~

~~(2) For the purposes of this section:~~

~~(a) "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.~~

~~(b) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.~~

~~(c) "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into~~

consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.

(d) a "Managed Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(3) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(4) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy shall not exceed the insurer's customary rate at the time of the termination, which is applicable to the form and amount of the individual policy, and to the class of risk to which the person belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-148-10(4).

(7) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

R590-148-11. Unintentional Lapse and Reinstatement.

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(b) The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(c) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan the requirements contained in Subsection R590-148-11(1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on a payroll or pension deduction plan.

(d) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-148-11(1)(a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in Subsection R590-148-11(1)(a), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

~~R590-148-12. Applications, Enrollment and Replacement of Coverage.~~

~~(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.~~

~~(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.~~

~~(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.~~

~~(3) All applications shall clearly indicate the payment plan selected by the applicant.~~

~~(4) Except for policies or certificates which are guaranteed issue:~~

~~(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:~~

~~Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.~~

~~(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:~~

~~Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)~~

~~(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:~~

~~(a) a report of a physical examination;~~

~~(b) an assessment of functional capacity;~~

~~(c) an attending physician's statement; or~~

~~(d) copies of medical records.~~

~~(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.~~

~~(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.~~

~~(a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?~~

~~(b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?~~

~~(i) If so, with which company?~~

~~(ii) If that policy lapsed, when did it lapse?~~

~~(c) Are you covered by Medicaid?~~

~~(d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?~~

~~(8) Agents shall list any other health insurance policies they have sold to the applicant.~~

~~(a) List policies sold which are still in force.~~

~~(b) List policies sold in the past five years which are no longer in force.~~

~~(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.~~

~~(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.~~

~~(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.~~

~~(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93, Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.~~

~~(13) Electronic Enrollment for Group Policies:~~

~~(a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:~~

~~(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;~~

~~(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and~~

~~(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63G-2-202, is maintained.~~

~~(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.~~

~~R590-148-13. Requirement to Offer Inflation Protection.~~

~~(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:~~

~~(a) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;~~

~~(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The premium rate for the additional benefit shall not exceed the insurer's customary rate at the time the offer is made, which is applicable to the form and amount of the policy, the class of risk to which the person belonged at the time of issue of the policy, and to the age attained on the effective date of the increase. The amount of the additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or~~

~~(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.~~

~~(2) Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection R590-148-13(1) shall be made to the group policyholder and to each proposed certificateholder.~~

~~(3) Insurers shall include the following information in or with the outline of coverage:~~

~~(a) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and~~

~~(b) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.~~

~~(4) Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.~~

~~(5) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.~~

~~(6)(a) Inflation protection as provided in Subsection R590-148-13(1)(a) shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.~~

~~(b) The rejection shall be considered a part of the application and shall state:~~

~~I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.~~

~~R590-148-14. Nonforfeiture and Contingent Benefit Requirements.~~

~~(1) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-1412:~~

~~(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-148-14(4); and~~

~~(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.~~

~~(2) If the offer required to be made under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.~~

~~(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after July 1, 2002, the insurer shall provide a contingent benefit upon lapse.~~

~~(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.~~

~~(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in Table III, Triggers for a Substantial Premium Increase, based on the insured's issue age, and the policy or certificate lapses within 120 days of the due~~

~~date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.~~

~~(d) On or before the effective date of a substantial premium increase as defined in Subsection R590-148-14(3)(c), the insurer shall:~~

~~(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;~~

~~(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-148-14(4). This option may be elected at any time during the 120-day period referenced in Subsection R590-148-14(3)(c); and~~

~~(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection R590-148-14(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-148-14(3)(d)(ii).~~

~~(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection:~~

~~(a) For purposes of this subsection, attained-age rating is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year beyond age 50.~~

~~(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, amounts and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-148-14(4)(c).~~

~~(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-148-14(5).~~

~~(d)(i) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.~~

~~(ii) Notwithstanding Subsection R590-148-14(4)(d)(i), for a policy or certificate with attained-age rating, the nonforfeiture benefit shall begin on the earlier of:~~

~~(A) the end of the tenth year following the policy or certificate issue date; or~~

~~(B) the end of the second year following the date the policy or certificate is no longer subject to attained-age rating.~~

~~(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.~~

~~(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium paying status.~~

~~(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.~~

~~(7) The requirements set forth in this section shall become effective January 1, 2003 and shall apply as follows:~~

~~(a) Except as provided in Subsection R590-148-14(7)(b), the provisions of this section apply to any long-term care policy issued in this state on or after July 1, 2002.~~

~~(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall not apply.~~

~~(8) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section R590-148-22 treating the policy as a whole.~~

~~(9) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-148-14(3)(c), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.~~

~~(10) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:~~

~~(a) the nonforfeiture provision shall be appropriately captioned;~~

~~(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and~~

~~(c) the nonforfeiture provision shall provide at least one of the following:~~

~~(i) reduced paid-up insurance;~~

~~(ii) extended term insurance;~~

~~(iii) shortened benefit period; or~~

~~(iv) other similar offerings approved by the commissioner.~~

~~R590-148-15. Standard Format Outline of Coverage.~~

~~This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in Subsection 31A-22-1409(2).~~

~~(1) The outline of coverage shall be a free-standing document, using no smaller than ten point type.~~

~~(2) The outline of coverage may contain no material of an advertising nature.~~

~~(3) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.~~

~~(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.~~

~~(5) The format for outline of coverage can be found in Table IV, Long-Term Care Insurance Outline of Coverage.~~

~~R590-148-16. Requirement to Deliver Shopper's Guide.~~

~~(1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.~~

~~(a) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.~~

~~(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.~~

~~(2) Life insurance policies or riders that provide long-term care benefits are not required to furnish the above-referenced guide if the long-term care benefits are incidental, but shall furnish the policy summary required under Subsection 31A-22-1409(8).~~

~~R590-148-17. Suitability.~~

~~(1) Every insurer shall:~~

~~(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;~~

~~(b) train its agents in the use of its suitability standards; and~~

~~(c) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.~~

~~(2)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:~~

~~(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;~~

~~(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and~~

~~(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.~~

~~(b) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Subsection R590-148-17(2)(a). The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the commissioner.~~

~~(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.~~

~~(d) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet in Appendix B is prohibited.~~

~~(3) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.~~

~~(4) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.~~

~~(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C in not less than 12 point type.~~

~~(6) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Appendix D, Long-Term Care Insurance Suitability Letter. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.~~

~~(7) If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.~~

~~R590-148-18. Marketing Standards.~~

~~(1) Every insurer shall:~~

~~(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.~~

~~(b) Establish marketing procedures to assure excessive insurance is not sold or issued.~~

~~(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:~~

~~"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."~~

~~(d) Provide copies of the disclosure forms required in Subsection R590-148-19(2) to the applicant. See Appendix B, Long-Term Care Insurance Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form.~~

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(f) Every insurer or entity marketing long-term care insurance shall establish audit able procedures for verifying compliance with this Subsection R590-148-18(1).

(g) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

(h) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsections R590-148-6(1)(a)(ii) and R590-148-6(6)(a).

(i) Provide an explanation of contingent benefit upon lapse provided for in Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Part 3, Chapter 23 of Title 31A, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

R590-148-19. Required Disclosure of Rating Practices to Consumer.

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-148-19(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future;

(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-148-19(2)(b) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-148-19(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-148-19(2)(e)(iv) files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-148-19(2)(e)(iv), the acquiring insurer shall make all disclosures required by Subsection R590-148-19(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-148-19(2)(e)(iv).

~~(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections R590-148-19(2)(a) and (c). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.~~

~~(4) An insurer shall use the forms in Appendix B, Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form, to comply with the requirements of Subsections R590-148-19(1) and (2).~~

~~(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-148-19(2) when the rate increase is implemented.~~

~~R590-148-20. Filing Requirements.~~

~~(1) Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 31A-22-1403, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.~~

~~(2)(a) Every insurer shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the insurance commissioner of this state upon request.~~

~~(b) All advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.~~

~~(c) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.~~

~~R590-148-21. Initial Filing Requirements.~~

~~(1) This section shall apply to any long-term care policy issued in this state on or after January 1, 2003.~~

~~(2) An insurer shall file the information listed in this subsection to the commissioner prior to making a long-term care insurance form available for sale:~~

~~(a) a copy of the disclosure documents required in Section R590-148-19; and~~

~~(b) an actuarial certification consisting of at least the following:~~

~~(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;~~

~~(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;~~

~~(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;~~

~~(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:~~

~~(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;~~

~~(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;~~

~~(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and~~

~~(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;~~

~~(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and~~

~~(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection R590-148-21(3) based on a standard age distribution;~~

~~(v)(A) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or~~

~~(B) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.~~

~~(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.~~

~~(4) The premiums charged to an insured for long-term care insurance may not increase due to either:~~

~~(a) the increasing age of the insured at ages beyond 65; or~~

~~(b) the duration the insured has been covered under the policy.~~

~~R590-148-22. Loss Ratio.~~

~~(1) This section shall apply to all individual long-term care insurance policies except those covered in Sections R590-148-21 and R590-148-24.~~

~~(2) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk.~~

~~(3) In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:~~

~~(a) statistical credibility of incurred claims experience and earned premiums;~~

~~(b) the period for which rates are computed to provide coverage;~~

~~(c) experienced and projected trends;~~

~~(d) concentration of experience within early policy duration;~~
~~(e) expected claim fluctuation;~~
~~(f) experience refunds, adjustments or dividends;~~
~~(g) renewability features;~~
~~(h) all appropriate expense factors;~~
~~(i) interest;~~
~~(j) experimental nature of the coverage;~~
~~(k) policy reserves;~~
~~(l) mix of business by risk classification; and~~
~~(m) product features such as long elimination periods, high deductibles and high maximum limits.~~
~~(4) The premiums charged to an insured for long-term care insurance may not increase due to either:~~
~~(a) the increasing age of the insured at ages beyond 65; or~~
~~(b) the duration the insured has been covered under the policy.~~
~~(5) Rate filings documents must contain all information required in R590-85-4.~~

~~R590-148-23. Reserve Standards.~~
~~(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with Subsection 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.~~
~~Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.~~
~~In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:~~
~~(a) definition of insured events;~~
~~(b) covered long-term care facilities;~~
~~(c) existence of home convalescence care coverage;~~
~~(d) definition of facilities;~~
~~(e) existence or absence of barriers to eligibility;~~
~~(f) premium waiver provision;~~
~~(g) renewability;~~
~~(h) ability to raise premiums;~~
~~(i) marketing method;~~
~~(j) underwriting procedures;~~
~~(k) claims adjustment procedures;~~
~~(l) waiting period;~~
~~(m) maximum benefit~~
~~(n) availability of eligible facilities;~~
~~(o) margins in claim costs;~~
~~(p) optional nature of benefit;~~
~~(q) delay in eligibility for benefit;~~
~~(r) inflation protection provisions; and~~
~~(s) guaranteed insurability option.~~
~~Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.~~
~~(2) When long-term care benefits are provided other than as in Subsection R590-148-23(1), reserves shall be determined in accordance with Minimum Reserve Standards for Individual and Group Health Insurance Contracts, Appendix A-010, Accounting Practices and Procedures Manual, edition March 2001, published by the National Association of Insurance Commissioners.~~
~~R590-148-24. Premium Rate Schedule Increases.~~
~~(1) This section shall apply as follows:~~
~~(a) except as provided in Subsection R590-148-24(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.~~
~~(b) for certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.~~
~~(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner prior to the notice to the policyholders and shall include:~~
~~(a) information required by Section R590-148-19;~~
~~(b) certification by a qualified actuary that:~~

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) the premium rate filing is in compliance with the provisions of this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with Subsection R590-148-24(3); and

(D) for exceptional increases:

(I) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines as provided in Section R590-148-5(2)(j)(iv) that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that at least 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%; and

(iv) 85% percent of the present value of future projected premiums not in Subsection R590-148-24(3)(b)(iii) on an earned basis;

(c) in the event that a policy form has both exceptional and other increases, the values in Subsections R590-148-24(3)(b)(ii) and (iv) will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves which is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract. The actuary shall disclose as part of the actuarial memorandum, the use of any appropriate averages.

(4)(a) The insurer may request a premium rate schedule increase that is lower than the rate increase necessary to provide the certification required in R590-148-24(2)(b)(i) and the commissioner may accept such premium rate schedule increase, without submission of the certification required in R590-148-24(2)(b)(i), if:

(i) in the opinion of the commissioner accepting such lower premium rate schedule increase is in the best interest of Utah policyholders;

(ii) the actuarial memorandum discloses the rate increase necessary to provide the certification required in R590-148-24(2)(b)(i); and

(iii) the rate increase filing satisfies all other requirements of this section.

(b) The commissioner may condition the acceptance of the premium rate schedule increase under Subsection R590-148-24(4)(a) upon:

(i) the disclosure, to the affected policyholders, of the premium rate schedule increase necessary to provide the certification required in R590-148-24(2)(b)(i); and

(ii) the extension of a contingent nonforfeiture benefit upon lapse to policyholders who would have been eligible for contingent nonforfeiture benefit upon lapse based on the premium rate schedule increase necessary to provide certification required in R590-148-24(2)(b)(i).

(5) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in Subsection R590-148-24(2)(c)(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection R590-148-24(12), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection R590-148-24(2)(c)(i), shall be filed for review by the commissioner every five years

~~following the end of the required period in Subsection R590-148-24(5). For group insurance policies that meet the conditions in Subsection R590-148-24(12), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.~~

~~(7)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection R590-148-24(3), the commissioner may require the insurer to implement any of the following:~~

~~(i) premium rate schedule adjustments; or~~

~~(ii) other measures to reduce the difference between the projected and actual experience.~~

~~(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection R590-148-24(2)(e)(v), if applicable.~~

~~(8) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:~~

~~(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection R590-148-24(9); and~~

~~(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection R590-148-24(3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in Subsection R590-148-24(3)(a)(i) and (iii).~~

~~(9)(a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:~~

~~(i) the rate increase is not the first rate increase requested for the specific policy form or forms;~~

~~(ii) the rate increase is not an exceptional increase; and~~

~~(iii) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.~~

~~(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.~~

~~(i) The offer shall:~~

~~(A) be subject to the approval of the commissioner;~~

~~(B) be based on actuarially sound principles, but not be based on attained age; and~~

~~(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.~~

~~(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:~~

~~(A) the maximum rate increase determined based on the combined experience; and~~

~~(B) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.~~

~~(10) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection R590-148-24(9), prohibit the insurer from either of the following:~~

~~(a) filing and marketing comparable coverage for a period of up to five years; or~~

~~(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.~~

~~(11) Subsections R590-148-24(1) through (10) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Subsection R590-148-5(2)(m), if the policy complies with all of the following provisions:~~

~~(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;~~

~~(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:~~

~~(i) Section 31A-22-408; and~~

~~(ii) Section 31A-22-409;~~

~~(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and (8) and 31A-22-1410;~~

~~(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:~~

~~(i) policy illustrations as required by R590-177; and~~

~~(ii) disclosure requirements in R590-133;~~

~~(e) an actuarial memorandum is filed with the insurance department that includes:~~

~~(i) a description of the basis on which the long-term care rates were determined;~~

~~(ii) a description of the basis for the reserves;~~

~~(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;~~

(iv) a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(12) Subsections R590-148-24(7) and (9) shall not apply to group insurance policies where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R590-148-25. Reporting Requirements.

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(a) Every insurer shall report the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-148-25(1).

(b) Every insurer shall report the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(c) Every insurer shall report the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(d) The reports required by Subsection R590-148-25(1)(a),(b), and (c) must be reported on the "Replacement and Lapse Reporting Form," Appendix G.

(e) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(2) Every insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The report used by the insurer shall contain, at a minimum, the information in the format contained in Appendix E, Claims Denial Reporting Form Long-Term Care Insurance, in not less than 12-point type.

(3) Every insurer shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually report this information in the format currently prescribed by the National Association of Insurance Commissioners.

(4) Every insurer shall report the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter. The report must be submitted on the Suitability Reporting Form, Appendix H.

(5) For purposes of this section:

(a) "policy" shall mean only long-term care insurance;

(b) "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "denied" means that the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "report" means on a statewide basis.

(6) Reports required under this section shall be filed with the commissioner annually on or before June 30. All reports must be submitted in compliance with Rule R590-220-13, Submission of Accident and Health Insurance Filings: Additional Procedures for Long Term Products.

R590-148-26. Licensing.

A producer is not authorized to sell, solicit or negotiate with respect to long-term care insurance except as authorized by Chapter 23 of Title 31A.

R590-148-27. Discretionary Powers of Commissioner.

The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) the modification or suspension would be in the best interest of the insured; and

(2) the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3) one of the following occur:

(a) the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(b) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

~~(c) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.~~

~~**R590-148-28. Penalties.**~~

~~In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the rule of long-term care insurance or the marketing of this insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.~~

~~**R590-148-29. Enforcement Date.**~~

~~Effective July 1, 2002, the department will enforce all sections of the rule that do not have a different compliance date.~~

~~**R590-148-30. Severability.**~~

~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.~~]

R590-148-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-1404.

R590-148-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance;

(b) protect applicants from unfair or deceptive sales or enrollment practices;

(c) facilitate public understanding and comparison of long-term care insurance; and

(d) facilitate flexibility and innovation in the development of long-term care insurance.

(2)(a) This rule applies to long-term care insurance delivered to or issued for delivery in this state on or after January 1, 1993.

(b) This rule also applies to an income replacement policy offering indemnity benefits triggered by activities of daily living, if:

(i) the benefits are dependent on or vary in amount based on the receipt of long-term care services;

(ii) the income replacement policy is advertised, marketed, or offered as insurance for long-term care services; or

(iii) the benefits under the policy may commence after the insured has reached Social Security's normal retirement age, unless the benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

R590-148-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-1402. Additional terms are defined as follows:

(1) "Attained age rating" means a schedule of premiums starting from the issue date that increases with age at least 1% per year before age 50, and at least 3% per year beyond age 50.

(2)(a) "Benefit trigger" means a provision conditioning the payment of a benefit on a determination of the insured's:

(i) ability to perform activities of daily living; and

(ii) cognitive impairment.

(b) "Benefit trigger," when used in a tax-qualified long-term care insurance contract, includes a determination by a licensed health care practitioner that an insured is a chronically ill individual.

(3) "Cold lead advertising" means using, directly or indirectly, any method of marketing that fails to disclose in a conspicuous manner the method of marketing is a solicitation of insurance and that contact will be made by a producer or an insurer.

(4) "Chronically ill individual" has the same meaning as defined in Section 7702B(c)(2), Internal Revenue Code.

(5) "Continuation of coverage" means a provision that:

(a) maintains coverage under the existing group policy when the coverage would otherwise terminate; and

(b) is subject only to the continued timely payment of premium when due.

(6) "Conversion of coverage" means a provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, is entitled to the issuance of a converted policy by the insurer, without evidence of insurability, if the individual was continuously insured under the group policy or another group policy that it replaced six months immediately before termination.

(7) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional that the commissioner determines is justified due to:

(a) a change in laws applicable to long-term care insurance; or

(b) an increased and unexpected utilization that affects the majority of insurers of a similar product.

(8) "High pressure tactics" means using a method of marketing to induce, or tend to induce, the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(9) "Incidental" means the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy measured as of the date of issue.

(10) "Independent review organization" means an organization that conducts an independent review of a long-term care benefit trigger decision.

(11) "Licensed health care practitioner" has the same meaning as defined in Section 7702B(c)(4), Internal Revenue Code.

(12) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field to determine, by record review, an insured's actual functional or cognitive impairment.

(13)(a) "Maintenance or personal care services" means any care that is primarily intended to provide needed assistance with any disability that causes an individual to be certified as a chronically ill individual.

(b) "Maintenance or personal care services" includes protection from threats to health and safety due to severe cognitive impairment.

(14) "Managed care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

(15) "Misrepresentation" means presenting a material fact in an incomplete, incorrect, partially complete, or partially correct manner when selling or offering to sell a policy or certificate.

(16) "Policy" means a long-term care insurance policy, contract subscriber agreement, rider, or endorsement that is delivered or issued in this state.

(17) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(18) "Qualified long-term care services" has the same meaning as defined in Section 7702B(c), Internal Revenue Code.

(19)(a) "Similar policy forms" means all long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered.

(b) A group long-term care insurance certificate issued under Subsection 31A-22-504(1)(a) is not considered similar to policies or certificates otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications.

(c) For purposes of determining "similar policy forms," a long-term care benefit classification is defined as:

(i) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(20) "Twisting" means knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policy or insurer to induce, or tend to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out an insurance policy with another insurer.

R590-148-4. Policy Definitions.

A policy may not use the terms in this section unless the terms are defined and comply with Section R590-148-3 and this section.

(1) "Activities of daily living" means bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means an individual is medically unstable and requires frequent monitoring by a medical professional, such as a physician or registered nurse, to maintain their health status.

(3)(a) "Adult day care" means a facility licensed and operating within the scope of the license.

(b) An adult day care facility may not be defined more restrictively than a program, for three or more individuals, of social and health-related services provided during the day in a community group setting to support frail, impaired, elderly, or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself:

(a) by sponge bath; or

(b) in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's:

(a) short-term or long-term memory;

(b) orientation as to person, place, and time;

(c) deductive or abstract reasoning; or

(d) safety awareness judgment.

(6) "Continence" means the ability to maintain control of bowel and bladder function or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup, or table, or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance, whether minimal, moderate, or maximal, without which the individual would not be able to perform the activity of daily living.

(10)(a) "Home health care services" means medical and nonmedical services provided to an ill, disabled, or infirm individual in the individual's residence.

(b) "Home health care services" may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Mental or nervous disorder" means, and may not be defined more restrictively than, a neurosis, psychoneurosis, psychopathy, psychosis, or other mental or emotional disease or disorder that does not have a demonstrable organic cause.

(12) "Personal care" means hands-on services to assist an individual with activities of daily living.

(13) "Skilled nursing care," "intermediate care," "personal care," "home care," "assisted living care," and any other service shall be defined in relation to the level of skill required, the nature of the care, and the setting where the care is delivered.

(14)(a) "Skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," "home care agency," and any other provider of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services.

(b) When the definition requires the provider to be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state where the service is to be furnished does not require a provider of these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.

(15) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(16) "Transferring" means moving into or out of a bed, chair, or wheelchair.

R590-148-5. Required Forms, Reports, and Disclosures.

The documents in this section shall be used by an insurer offering a long-term care insurance policy or certificate. The documents were adopted by the NAIC, Long-Term Care Insurance Model Regulation, number 641, and are available on the department's website, http://insurance.utah.gov:

(1) Claims Denial Reporting Form Long-Term Care Insurance Rescission Reporting Form;

(2) Long-Term Care Insurance Outline of Coverage;

(3) Long-Term Care Insurance Personal Worksheet;

(4) Long-Term Care Insurance Suitability Letter;

(5) Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance;

(6) Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance;

(7) Rescission Reporting Form;

(8) Replacement and Lapse Reporting Form;

(9) Suitability Reporting Form;

(10) Things You Should Know Before You Buy Long-Term Care Insurance;

(11) Triggers for a Substantial Premium Increase; and

(12) Worksheet Potential Rate Increase Disclosure Form.

R590-148-6. Required Provisions and Practices.

(1) The terms "guaranteed renewable" and "noncancellable" may not be used in an individual policy without further explanatory language in accordance with the disclosure requirements of Subsection (1)(b).

(a) An individual policy may not contain a renewal provision other than "guaranteed renewable" or "noncancellable."

(i) The term "guaranteed renewable" may be used only when:

(A) an insured has the right to continue the policy in force by the timely payment of premiums; and

(B) an insurer does not have a unilateral right to make a change in a policy or rider provision while the insurance is in force, and may not decline to renew, except that rates may be revised by the insurer on a class basis.

(ii) The term "noncancellable" may be used only when an insured has the right to continue the policy in force by the timely payment of premiums during which period the insurer does not have a right to unilaterally make any change to any policy provision or the premium rate.

(b)(i) An individual policy shall contain a renewability provision.

(ii) The provision shall:

(A) be appropriately captioned;

(B) appear on the first page of the policy;

(C) clearly state the duration, when limited, of renewability and the duration of the term of coverage for which the policy is issued; and

(D) how the policy may be renewed.

(iii) The provision does not apply to a policy when the right to non-renew the policy is reserved solely to the policyholder.

(c) A qualified long-term care insurance contract shall be guaranteed renewable as defined in Section 7702B(b)(1)(C), Internal Revenue Code.

(2)(a) Except as provided in Subsection (2)(b), a policy may not be delivered or issued for delivery in this state if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident.

(b) An insurer may have an exclusion or limitation:

(i) by provider type; or

(ii) for territorial limitations outside the United States.

(3) If a policy or certificate contains a preexisting condition limitation, the limitation shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4)(a) Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care benefits and shall be described in the policy or certificate as a separate paragraph, including any additional benefit triggers, and be labeled "Eligibility for the Payment of Benefits."

(b) Any additional benefit triggers shall also be explained in the paragraph.

(c) If the triggers differ for different benefits, an explanation of each trigger shall accompany each benefit description.

(d) If an attending physician or other specified person is required to certify a certain level of functional dependency to qualify for benefits, the requirements shall be specified.

(5)(a) Termination of long-term care insurance shall be without prejudice to any benefit payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination.

(b) The extension of a benefit beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefit and may be subject to any policy waiting period and any other applicable policy provision.

(6)(a) If a group policy is replaced by another group policy issued to the same policyholder, the succeeding insurer shall offer coverage to each person covered under the previous group policy on the date of termination.

(b) Coverage provided or offered to an individual and the premium charged to an insured under the new group policy may not:

(i) result in an exclusion for a preexisting condition that would have been covered under the group policy being replaced; or

(ii) vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

(7)(a) The term "level premium" may be used only if an insurer may not change the premium.

(b) A policy or certificate, other than one for which an insurer may not change the premium, shall include a statement that premium rates may change.

(c) For the calculation required under Section R590-148-14:

(i)(A) the purchase of additional coverage is not considered a premium rate increase; and

(B) the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium; and

(ii)(A) a reduction in a benefit is not considered a premium change; and

(B) the initial annual premium shall be based on the reduced benefits under Section R590-148-14.

(8)(a) A rider or endorsement added to a policy after the date of issue or at reinstatement or renewal that reduces or eliminates a benefit or coverage in the policy shall require a signed acceptance by the insured, unless the insurer:

(i) is effectuating a request made in writing by the insured; or

(ii) is exercising a specifically reserved right under a policy.

(b) After the issue date of a policy, a rider or endorsement that increases a benefit or coverage with an associated increase in premium during the policy term shall be agreed to in writing and signed by the insured, unless the increased benefit or coverage is required by law.

(c) When a separate additional premium is charged for a benefit provided in connection with a rider or endorsement, the premium charge shall be set forth in the policy, rider, or endorsement.

(9) A policy or certificate providing payment of a benefit based on a standard described as "usual and customary," "reasonable and customary," or similar language, shall include a definition of the term and an explanation of the term in the outline of coverage.

(10) If a policy or certificate contains a limitation or condition for eligibility, other than those prohibited in Section 31A-22-1407, the limitation, including any required number of days of confinement, shall appear in a separate paragraph of the policy or certificate and be labeled "Limitations or Conditions on Eligibility for Benefits."

(11)(a) A life insurance policy that includes a long-term care benefit shall include a disclosure statement, at the time of application for a policy or a rider and at the time a benefit payment request is submitted, that receipt of these benefits may be taxable and that assistance should be sought from a personal tax advisor.

(b) The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related document.

(c) This subsection does not apply to a qualified long-term care insurance contract.

(12) A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage stating that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b), Internal Revenue Code.

(13) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage stating that the policy is not intended to be a qualified long-term care insurance contract.

(14)(a) Long-term care insurance sold in conjunction with another insurance product, including a life insurance policy or annuity contract, shall be in a separate rider and shall comply with this rule.

(b) Long-term care insurance may not be incorporated into a life insurance policy or an annuity contract.

R590-148-7. Minimum Standards for Home Health and Community Care Benefits in a Long-Term Care Insurance Policy.

(1) If a policy or certificate provides benefits for home health care services, it may not limit or exclude benefits by:

(a) requiring the insured would need care in a skilled nursing facility if home health care services are not provided;

(b) requiring the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before covering home health care services;

(c) limiting eligible services to services provided by a registered nurse or a licensed practical nurse;

(d) requiring that a nurse or therapist provide covered services that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of the aide or worker's licensure or certification;

(e) excluding coverage for personal care services provided by a home health aide;

(f) requiring that the home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) requiring that the insured have an acute condition before covering home health care services;

(h) limiting benefits to services provided by a Medicare-certified agency or provider; or

(i) excluding coverage for adult day care services.

(2) Home health care coverage may be applied to non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(3)(a) A policy or certificate, if it provides for home care or community care services, shall provide total home care or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, when covered home care or community care services are received.

(b) The requirement in Subsection (3)(a) does not apply to a policy or certificate issued to a resident of a continuing care retirement community.

R590-148-8. Benefit Trigger Standards.

(1)(a) A policy shall condition the payment of benefits on a determination of the insured's:

(i) ability to perform activities of daily living; or

(ii) cognitive impairment.

(b) Eligibility for the payment of benefits may not be more restrictive than requiring either:

(i) a deficiency in the ability to perform not more than three of the activities of daily living; or

(ii) the presence of cognitive impairment.

(2) An insurer may use additional activities of daily living to trigger covered benefits in addition to those listed in Section R590-148-4 if the terms are defined in the policy.

(3) An insurer may use additional provisions to determine when benefits are payable, but the provisions may not restrict, and are not in lieu of, the requirements under Subsections (1) and (2).

(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, needing supervision or verbal cuing by another person to protect the insured or others.

(5) An assessment of activities of daily living or cognitive impairment shall be performed by a licensed or certified professional, such as a physician, nurse, or social worker.

(6) A policy shall include a clear description of the process for appealing and resolving a benefit determination.

(7) The requirements in this section are effective January 1, 2003.

(a) This section applies to a policy issued in this state on or after July 1, 2002.

(b) This section does not apply to a certificate issued on or after July 1, 2002, under a group policy that was in force before July 1, 2002.

R590-148-9. Benefit Trigger Standards for Qualified Long-Term Care Insurance Contracts.

(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided under a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform the activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or severe cognitive impairment.

(3) A certification regarding the activities of daily living or cognitive impairment required under Subsection R590-148-9(2) shall be performed by a licensed or certified:

(a) physician;

(b) registered professional nurse;

(c) social worker; or

(d) another individual who meets the requirements prescribed by the Secretary of the Treasury.

(4)(a) Except as provided in Subsection (4)(b), a certification required under Subsection (2) may be performed by a licensed health care professional at the direction of the insurer as reasonably necessary for a specific claim.

(b) When a licensed health care practitioner certifies that an insured is unable to perform the activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and an additional certification may not be performed until after the expiration of the 90-day period.

(5) A qualified long-term care insurance contract shall include a clear description of the process for appealing and resolving a dispute with respect to a benefit determination.

R590-148-10. Continuation and Conversion.

(1) A group policy issued in this state on or after July 1, 2002, shall include a provision for continuation of coverage or conversion of coverage.

(2)(a) A group policy that restricts benefits and services or contains incentives to use certain providers or facilities may provide continuation of coverage or conversion of coverage benefits that are substantially equivalent to the benefits of the existing group policy.

(b) The commissioner shall make a determination as to the substantial equivalency of benefits, taking into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels, and administrative complexity.

(3)(a) The insured shall make a written application for the converted policy and pay the first premium, if any, as directed by the insurer within 60 days after the termination of coverage under the group policy.

(b) The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(4)(a) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated based on the insured's age at inception of coverage under the group policy replaced.

(b) If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated based on the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy may not exceed the insurer's premium rate at the time of the termination applicable to:

(a) the policy form;

(b) the benefit amount of the individual policy; and

(c) the class of risk to which the individual belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy is mandatory, except when:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced within 31 days after termination by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided by the terminating coverage; and

(ii) having premiums calculated in a manner consistent with the requirements of Subsection (4).

(7)(a) Notwithstanding any other provision of this section, a converted policy issued to an individual who, at the time of conversion, is covered by another long-term care insurance policy that provides benefits on the basis of an incurred expense, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, result in payment of more than 100% of incurred expenses.

(b) Subsection (7)(a) applies only if the converted policy provides for a premium decrease or refund that reflects the reduction in benefits payable.

(8) The converted policy may provide that the converted policy benefits, together with the benefits payable under the group policy from which conversion is made, not exceed what would have been payable had the individual's coverage under the group policy remained in force and in effect.

(9) Notwithstanding any other provision of this section, if an insured's eligibility for a group policy is based upon the insured's relationship to another insured, the insured is entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

R590-148-11. Unintentional Lapse and Reinstatement.

(1)(a) An applicant may designate at least one person to receive the notice of lapse or termination, in addition to the applicant.

(i) Designation of an additional person does not constitute acceptance of any liability on the third party for services provided to the insured.

(ii) The form used for the written designation shall provide space clearly designated for listing at least one additional person, including each person's full name and home address.

(iii) A policy or certificate may not be issued until the insurer has received from the applicant:

(A) a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium; or

(B) a written waiver dated and signed by the applicant electing not to designate an additional person to receive notice of lapse or termination.

(iv) If an applicant elects not to designate an additional person, the waiver shall state, "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(v) The form used for the written designation shall provide a space clearly designated for listing at least one person that includes each person's full name and home address.

(vi) The insurer shall notify the insured of the right to change their written designation at least once every two years.

(b) If an insured pays a premium through a payroll or pension deduction plan, the insurer shall meet the requirements of this subsection within 60 days after the insured is no longer on the payment plan.

(c)(i) A policy or certificate may not lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, gives notice to the insured and each person designated under Subsection (1)(a), at the address provided by the insured for receiving notice of lapse or termination.

(ii) The notice in Subsection (1)(c)(i):

(A) shall be given by postage prepaid first-class United States mail;

(B) may not be given until 30 days after a premium is due and unpaid; and

(C) is considered given five days after the date of mailing.

(2) A policy or certificate shall include a provision for providing for reinstatement of coverage in the event of lapse if the insurer is provided proof that the insured was cognitively impaired or had a loss of functional capacity before the grace period expired.

(a) The option in this subsection shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, when appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity may not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate.

R590-148-12. Requirements for Application Forms and Replacement Coverage.

(1) An application or enrollment form for a policy or certificate, except those that are guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application or enrollment form contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the prescribed medication.

(b) If the prescribed medications listed in the application are known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) An application or enrollment form shall clearly state the payment plan selected by the applicant.

(4) Except for a policy or certificate that is guaranteed issue:

(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application or enrollment form, "Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy."; and

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the policy or certificate at the time of delivery, "Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)."

(5) Before issuing a policy or certificate to an applicant age 80 or older, the insurer shall obtain:

(a) a report of a physical examination;

(b) an assessment of functional capacity;

(c) an attending physician's statement; or

(d) copies of medical records.

(6) A copy of the completed application or enrollment form shall be delivered to the insured with the policy or certificate, unless it was provided to the applicant at the time of application.

(7)(a) An application or enrollment form shall include questions designed to elicit information as to whether, as of the date of the application:

(i) the applicant currently has another long-term care insurance policy or certificate in force; or

(ii) the long-term care policy or certificate is intended to replace any other accident and health insurance or long-term care insurance policy or certificate currently in force.

(b) A supplementary application or other form signed by the applicant and producer may be used, except when the coverage is sold without a producer.

(c) For a replacement policy issued to a group, other than an employee or labor union group, the questions may be modified to the extent necessary to elicit information about other accident and health insurance or long-term care insurance other than the group policy being replaced, provided that the certificate holders have been notified of the replacement.

(d) The questions in Subsection (7)(a) shall include:

(i) "Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?";

(ii) "Did you have another long-term care insurance policy or certificate in force during the last 12 months?

If so, with which company?

If that policy lapsed, when did it lapse?";

(iii) "Are you covered by Medicaid?"; and

(iv) "Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?".

(8) A producer shall list all other accident and health insurance policies they have sold to the applicant, including a list of each policy sold:

(a) that is still in force; and

(b) in the past five years, that is no longer in force.

(9)(a) An insurer using a solicitation method other than direct response shall, upon determining that a sale involves a replacement, provide to the applicant, before issuance or delivery of the individual policy, a notice regarding replacement of accident and health insurance or long-term care insurance.

(b) A copy of the notice shall be provided to the applicant and an additional copy signed by the applicant shall be retained by the insurer.

(c) The required notice shall be provided in a manner substantially similar to the Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10)(a) An insurer using a direct response solicitation method shall deliver a notice regarding replacement of accident and health insurance or long-term care insurance to the applicant upon issuance of the policy.

(b) The required notice in Subsection (10)(a) shall be provided in a manner substantially similar to the Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11)(a) If replacement is intended, the replacing insurer shall notify the existing insurer in writing of the proposed replacement, identifying the insurer, the insured, and the policy number or address including zip code.

(b) The notice shall be made within five working days from the date the application is received by the insurer or the date the policy or certificate is issued, whichever is sooner.

(12)(a) A life insurance policy or certificate that provides long-term care benefits shall comply with this section if the policy being replaced is a long-term care insurance policy.

(b) If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Rule R590-93.

(c) If a life insurance policy that provides long-term care benefits is replaced by another similar policy, the replacing insurer shall comply with both the long-term care insurance and the life insurance replacement requirements in Subsections (12)(a) and (12)(b).

(13) A requirement under a group policy that a signature of an insured be obtained by a producer or an insurer is satisfied if:

(a) consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer;

(b) verification of enrollment information is provided to the enrollee; and

(c) telephonic or electronic enrollment provides necessary and reasonable safeguards to assure:

(i) accuracy, retention, and prompt retrieval of records; and

(ii) the ongoing confidentiality of individually identifiable information and privileged information under Section 63G-2-202.

R590-148-13. Requirement to Offer Inflation Protection.

(1) An insurer may not offer a policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that account for reasonably anticipated increases in the cost of long-term care services covered by the policy.

(a) An insurer shall offer to a policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than the following:

(i) increases benefit levels that are compounded annually at a rate not less than 5%;

(ii) guarantees the insured the right to periodically increase benefit levels without providing evidence of insurability or health status if the option for the previous period was not declined; or

(iii) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(b) The offer under Subsection (1)(a)(ii) shall comply with this subsection.

(i) The premium rate for the additional benefit may not exceed the insurer's customary rate at the time the offer is made, that applies to:

(A) the form and amount of the policy;

(B) the class of risk to which the person belonged at the time of issue of the policy; and

(C) the age attained on the effective date of the increase.

(ii) The amount of the additional benefit may not be less than the difference between the existing policy benefit and the benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year the offer is made.

(2) If a policy is issued to a group, except a continuing care retirement community center, the offer under Subsection (1) shall be made to the group policyholder and to each proposed certificate holder.

(3)(a) An insurer shall include the following information in or with the outline of coverage:

(i) a graphic comparison of the benefit levels over at least a 20-year period of a policy that increases benefits over the policy period with a policy that does not increase benefits; and

(ii) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy that contains this benefit shall continue without regard to an insured's age, claim status, claim history, or the length of time the individual has been insured under the policy.

(5)(a) An inflation protection offer that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant.

(b) The offer shall disclose, in a conspicuous manner, that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection under Subsection (1)(a)(i) shall be included unless an insurer obtains a rejection of inflation protection signed by the policyholder or certificate holder, either in the application or on a separate form.

(b) The rejection is considered a part of the application and shall state, "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection."

R590-148-14. Nonforfeiture and Contingent Benefit Requirements.

(1) To comply with the requirement to offer a nonforfeiture benefit under Section 31A-22-1412:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits;

(b) the nonforfeiture benefit included in the offer shall be the benefit described in Subsection (4); and

(c) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(2) If the offer required under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse as described in this section.

(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after July 1, 2002, the insurer shall provide a contingent benefit upon lapse.

(b) If a group policyholder elects to make the nonforfeiture benefit an option to a certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c)(i) A contingent benefit upon lapse shall be triggered each time an insurer:

(A) increases the premium rates to a level that results in a cumulative increase of the annual premium, based on the insured's issue age, equal to or exceeding the percentage of the insured's initial annual premium shown in the Triggers for a Substantial Premium Increase; and

(B) the policy or certificate lapses within 120 days of the due date of the increased premium.

(ii) Unless otherwise required, each policyholder shall be notified at least 30 days before the due date of the increased premium.

(d) On or before the effective date of a substantial premium increase, the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage without additional underwriting so required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period under Subsection (4), if elected at any time during the 120-day period referenced in Subsection (3)(c)(i)(B); and

(iii) notify the insured that a default or lapse at any time during the 120-day period referenced in Subsection (3)(c)(i)(B) is an election of the offer to convert in Subsection (3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection.

(a)(i) For purposes of this subsection, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse;

(ii) the same benefits, amounts, and frequency in effect at the time of lapse, but not increased thereafter, will be payable for a qualifying claim; and

(iii) the lifetime maximum dollars or days of benefits shall be determined under Subsection (4)(b).

(b)(i) The standard nonforfeiture credit shall be equal to 100% of the sum of all premiums paid, including the premiums paid before any changes in benefits.

(ii) An insurer may offer additional shortened benefit period options, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration.

(iii) The minimum nonforfeiture credit may not be less than 30 times the daily nursing home benefit at the time of lapse.

(iv) The calculation of the nonforfeiture credit is subject to Subsection (5).

(c)(i)(A) The nonforfeiture benefit shall begin no later than the end of the third year following the policy or certificate issue date.

(B) The contingent benefit upon lapse shall be effective during the first three years and thereafter.

(ii) Notwithstanding Subsection (4)(c)(i), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(A) the end of the tenth year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(d) Nonforfeiture credits may be used for all care and services that qualify for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status, and in the paid-up status, may not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(6) There is no difference in the minimum nonforfeiture benefits under this section for a group or individual policy.

(7)(a) Except as provided in Subsection (7)(b), the requirements set forth in this section are effective January 1, 2003, and apply to a policy issued in this state on or after July 1, 2002.

(b) This section does not apply to a certificate issued on or after July 1, 2002, under a group policy that was in force on January 1, 2002.

(8) A premium charged for a policy or certificate containing a nonforfeiture benefit or a contingent benefit upon lapse is subject to the loss ratio requirements of Section R590-148-22 treating the policy as a whole.

(9) To determine whether a contingent nonforfeiture upon lapse provision is triggered under Subsection (3)(c), a replacing insurer that purchased or otherwise assumed a block of policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(10) A nonforfeiture benefit for a qualified long-term care insurance contract offering a level premium shall:

(a) be appropriately captioned;

(b) provide a benefit available in the event of a default in the payment of a premium and state that the amount of the benefit may be adjusted after being initially granted as necessary to reflect a change in claims, persistency, and interest as reflected in a change in rates for a premium paying contract approved by the commissioner for the same contract form; and

(c) provide at least one of the following:

(i) reduced paid-up insurance;

(ii) extended term insurance;

(iii) shortened benefit period; or

(iv) a similar offering approved by the commissioner.

R590-148-15. Standard Format Outline of Coverage.

(1) An insurer shall use an outline of coverage that conforms with the Long-Term Care Insurance Outline of Coverage.

(2) The outline of coverage shall be in at least ten-point font.
(3) The outline of coverage may not contain advertising material.
(4) Capitalized or underscored text in the standard format outline of coverage may be emphasized by other means that provide equal prominence to capitalization or underscoring.
(5) The text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically stated.

R590-148-16. Requirement to Deliver Shopper's Guide.
(1)(a) A long-term care insurance shopper's guide, in the format developed by the NAIC, shall be provided to a prospective applicant.
(b) A producer shall deliver the shopper's guide before the presentation of an application or enrollment form.
(c) For a direct response solicitation, the shopper's guide must be presented in conjunction with an application or enrollment form.
(2) A life insurance policy or rider that provides incidental long-term care benefits:
(a) is not required to furnish the shopper's guide; and
(b) shall furnish the policy summary required under Subsection 31A-22-1409(8).

R590-148-17. Suitability.
(1) An insurer shall:
(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
(b) train its producers in its suitability standards; and
(c) maintain a copy of its suitability standards.
(2)(a) To determine whether an applicant meets the insurer's standards, the producer and insurer shall develop a procedure that considers:
(i) the applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
(ii) the applicant's goals or needs regarding long-term care and the advantages and disadvantages of insurance to meet those goals or needs; and
(iii) the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.
(b)(i) The insurer and producer shall:
(A) make a reasonable effort to obtain the information in Subsection (2)(a); and
(B) present to the applicant, at or before application, the Long-Term Care Insurance Personal Worksheet, in at least 12-point font.
(ii) The insurer may request that the applicant provide additional information to comply with the insurer's suitability standards.
(c)(i) A completed Long-Term Care Insurance Personal Worksheet shall be returned to the insurer before the insurer considers the applicant for coverage.
(ii) The Long-Term Care Insurance Personal Worksheet is not required for a sale to an employee and their spouse under an employer group policy.
(d) The sale or dissemination, outside the company or agency by the insurer or producer, of information obtained through the Long-Term Care Insurance Personal Worksheet is prohibited.
(3) An insurer shall use its suitability standards to determine whether issuing long-term care insurance coverage to an applicant is appropriate.
(4) A producer shall use the insurer's suitability standards.
(5) When the Long-Term Care Insurance Personal Worksheet is provided to the applicant, the Things You Should Know Before You Buy Long-Term Care Insurance disclosure shall be provided in at least 12-point font.
(6)(a) If an insurer determines that the applicant does not meet its suitability standards, or if the applicant declines to provide the requested information, the insurer may reject the application.
(b)(i) The insurer shall send the applicant a letter similar to the Long-Term Care Insurance Suitability Letter.
(ii) If the applicant declines to provide financial information, the insurer may use another method to verify the applicant's intent.
(c) Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.
(7) If replacing a policy or certificate, the replacing insurer shall waive all time periods applicable to a preexisting condition and probationary period in the new policy or certificate for a similar benefit, to the extent the exclusions were satisfied under the original policy.

R590-148-18. Marketing Standards.
(1) An insurer shall:
(a) establish marketing procedures to assure that a comparison of policies by its producers is fair and accurate;
(b) establish marketing procedures to assure excessive insurance is not sold or issued;
(c) display prominently, on the first page of the outline of coverage and the policy, "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.";
(d) provide to the applicant a copy of the Long-Term Care Insurance Personal Worksheet and the Worksheet Potential Rate Increase Disclosure Form;
(e)(i) identify whether a prospective applicant for long-term care insurance has accident and health or long-term care insurance, including the insurance types and amounts;

(ii) in the case of a qualified long-term care insurance contract, an inquiry into whether a prospective applicant has accident and health insurance is not required;

(f) establish an audit procedure to verify compliance with this Subsection (1);

(g) provide written notice to the prospective insured that a senior insurance counseling program is available, with the name, address, and telephone number of the program;

(h) use the terms "noncancellable" or "level premium" only when the policy or certificate complies with Subsections R590-148-6(1)(c) and R590-148-6(1)(d); and

(i) provide an explanation of contingent benefits upon lapse under Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Title 31A, Chapter 23a, Part 4, Marketing Practices, the following acts and practices are prohibited:

(a) cold lead advertising;

(b) high pressure tactics;

(c) misrepresentation; and

(d) twisting.

R590-148-19. Required Disclosure of Rating Practices to Consumer.

(1)(a) Except as provided in Subsection (1)(b), this section applies to a policy or certificate issued on or after January 1, 2003.

(b) For a certificate issued on or after July 1, 2002, under a group policy that was in force on July 1, 2002, this section shall apply on the first policy anniversary after January 1, 2003.

(2)(a) Except for a policy for which no applicable premium rate or rate schedule increase can be made, an insurer shall provide the information in Subsection (3) to the applicant at the time of application or enrollment.

(b) If the method of application or enrollment does not allow for delivery at the time of application or enrollment, an insurer shall provide the information in this Subsection (3) to the applicant or enrollee no later than at delivery of the policy or certificate.

(3)(a) The information to be disclosed under Subsection (2) includes:

(i) a statement that the policy may be subject to rate increases in the future;

(ii) an explanation of potential future premium rate revisions that includes the insured's options in the event of a premium rate revision;

(iii) the premium rate or rate schedule in effect until a request is made for an increase;

(iv) a general explanation for applying a premium rate or rate schedule adjustment that includes:

(A) a description of when a premium rate or rate schedule adjustment will be effective, such as the next policy anniversary date or the next billing date; and

(B) the right to a revised premium rate or rate schedule under Subsection (3)(b), if the premium rate or rate schedule is changed;

(v) information regarding each premium rate increase on the policy form or a similar policy form during the past ten years for this state or any other state that, at a minimum, identifies:

(A) each policy form for which a premium rate has been increased;

(B) each calendar year the policy form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase, expressed as a percentage of the premium rate before the increase, or as a minimum and a maximum percentage, if the rate increase is variable by rating characteristics; and

(vi) additional explanatory information related to the rate increases, as necessary.

(b)(i) An insurer may exclude from the disclosure a premium rate increase that only applies to a block of business acquired from a nonaffiliated insurer or the policies acquired from a nonaffiliated insurer when the increase occurred before the acquisition.

(ii) If an acquiring insurer files a rate increase on a policy form or a block of policy forms acquired from a nonaffiliated insurer on or before the effective date of this section, or the end of a 24-month period following the acquisition, the acquiring insurer may exclude that rate increase from the disclosure, however, the selling company shall include the disclosure of the rate increase under this subsection.

(iii) If the acquiring insurer files for a subsequent rate increase on the same policy form or block of policy forms acquired from a nonaffiliated insurer, the acquiring insurer shall make each disclosure required by this subsection, including disclosure of an earlier rate increase.

(4)(a) An applicant shall sign an acknowledgment at the time of application that the insurer made the disclosure required under this subsection, unless the method of application does not allow for signature at that time.

(b) If, due to the method of application, the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign the acknowledgment no later than at delivery of the policy or certificate.

(5) An insurer shall use the Long-Term Care Insurance Personal Worksheet and Worksheet Potential Rate Increase Disclosure Form to comply with this section.

(6) An insurer shall provide notice of an upcoming premium rate schedule increase to each insured, if applicable, at least 45 days before the implementation of a premium rate schedule increase.

R590-148-20. Filing Requirements for Advertising.

(1) Upon request, an insurer shall file with the commissioner a copy of any long-term care insurance advertisement intended for use in this state.

(2) An insurer shall retain an advertisement for at least three years from the date the advertisement was first used.

R590-148-21. Initial Filing Requirements for Long-Term Care Policies Issued After January 1, 2003.

(1) An insurer shall file the following information before making a policy form available for sale:

(a) a copy of the disclosure documents required under Section R590-148-19; and
(b) an actuarial certification that includes:
(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
(ii) a statement that the policy design and coverage provided have been reviewed and considered;
(iii) a statement that the underwriting and claim adjudication processes have been reviewed and considered;
(iv) a complete description of the basis for contract reserves anticipated to be held under the form, including:
(A) sufficient detail or sample calculations to ensure a complete depiction of the reserve amounts to be held;
(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;
(C) a statement that the net valuation premium for renewal years does not increase, except for attained age rating when permitted; and
(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if such a statement cannot be made, a complete description of the situations when this does not occur;
(I) an aggregate distribution of anticipated issues may be used if the underlying gross premiums maintain a reasonably consistent relationship; and
(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection (2) based on a standard age distribution; and
(v)(A) a statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms available from the insurer, except for reasonable differences attributable to benefits; or
(B) a comparison of the premium schedules for similar policy forms that are currently available from the insurer, with an explanation of the differences.
(2)(a) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums.
(b) The actuarial demonstration shall include:
(i) premium and claim experience on similar policy forms, adjusted for any premium or benefit differences;
(ii) relevant and credible data from other studies; or
(iii) both.
(3) The premium charged to an insured may not increase due to:
(a) the increasing age of the insured at an age beyond 65; or
(b) the duration the insured has been covered under the policy.

R590-148-22. Loss Ratio.
(1) This section applies to all individual long-term care insurance policies except those covered in Sections R590-148-21 and R590-148-24.
(2) Benefits under an individual policy are considered reasonable in relation to the premium if the expected loss ratio is at least 60%, calculated in a manner that provides for adequate reserving of the long-term care insurance risk.
(3) In evaluating the expected loss ratio, consideration shall be given to each relevant factor, including:
(a) statistical credibility of incurred claims experience and earned premiums;
(b) the period that rates are computed to provide coverage;
(c) experienced and projected trends;
(d) concentration of experience within early policy duration;
(e) expected claim fluctuation;
(f) experience refunds, adjustments, or dividends;
(g) renewability features;
(h) all appropriate expense factors;
(i) interest;
(j) experimental nature of the coverage;
(k) policy reserves;
(l) mix of business by risk classification; and
(m) product features such as long elimination periods, high deductibles, and high maximum limits.
(4) The premium charged to an insured may not increase due to:
(a) the increasing age of the insured at an age beyond 65; or
(b) the duration the insured has been covered under the policy.
(5) Rate filing documents shall contain the information required in Section R590-85-4.

R590-148-23. Reserve Standards.
(1)(a) When long-term care benefits are provided through the acceleration of benefits under a life insurance policy or rider, policy reserves for the benefits shall be determined in accordance with Subsection 31A-17-504(7).
(b) Claim reserves shall be established when the policy or rider is in claim status.
(c)(i) Reserves for a policy or rider subject to this subsection shall be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates.
(ii) Single decrement approximations are acceptable if the calculation produces similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial.

(iii) The calculations may consider the reduction in life insurance benefits due to the payment of long-term care benefits, however in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(d) In the development and calculation of reserves for policies and riders subject to this subsection, due consideration shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that have an impact on projected claim costs, including:

(i) definition of insured events;

(ii) covered long-term care events;

(iii) existence of home convalescence care coverage;

(iv) definition of facilities;

(v) existence or absence of barriers to eligibility;

(vi) premium waiver provision;

(vii) renewability;

(viii) ability to raise premiums;

(ix) marketing method;

(x) underwriting procedures;

(xi) claims adjustment procedures;

(xii) waiting period;

(xiii) maximum benefit;

(xiv) availability of eligible facilities;

(xv) margins in claim costs;

(xvi) optional nature of benefit;

(xvii) delay in eligibility for benefit;

(xviii) inflation protection provisions; and

(xix) guaranteed insurability option.

(e) Any applicable valuation morbidity table shall be certified, as appropriate, as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in Subsection (1), reserves shall be determined according to the Minimum Reserve Standards for Individual and Group Health Insurance Contracts, Appendix A-010, Accounting Practices and Procedures Manual, edition March 2001, published by the NAIC.

R590-148-24. Premium Rate Schedule Increases.

(1)(a) This section applies to a policy or certificate issued in this state on or after January 1, 2003; and

(b) for a certificate issued on or after July 1, 2002, under a group policy that was in force on July 1, 2002, this section shall apply on the first policy anniversary after January 1, 2003.

(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, with the commissioner before sending the notice to a policyholder. The notice shall include:

(a) information required under Section R590-148-19;

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions that reflect moderately adverse conditions are realized, no further premium rate schedule increases are anticipated; and

(ii) the premium rate filing complies with this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i)(A) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used to determine the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with Subsection (3); and

(D) for an exceptional increase:

(I) the projected experience shall be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves are incorporated in this rate increase when the rate increase triggers contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions are not realized and why, and what other actions taken by the insurer were relied on by the actuary;

(iv) a statement that policy design, underwriting, and claim adjudication practices were considered; and

(v) if it is necessary to maintain a consistent premium rate for a new certificate and a certificate receiving a rate increase, the insurer shall file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase.

(3) A premium rate schedule increase shall be determined using the following requirements:

(a) an exceptional increase shall provide that at least 70% of the present value of projected additional premium from the exceptional increase will be returned to a policyholder in benefits;

(b) a premium rate schedule increase shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premium times 58%; and

(iv) 85% of the present value of future projected premium not included in Subsection (3)(b)(iii) on an earned basis;

(c) if a policy form has both exceptional and other increases, the values in Subsections (3)(b)(ii) and (3)(b)(iv) shall also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves that is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance policy.

(4) The actuary shall disclose, as part of the actuarial memorandum, the use of any appropriate averages.

(5)(a) An insurer may request a premium rate schedule increase that is lower than the rate increase necessary to provide the certification required in Subsection (2)(b)(i) and the commissioner may accept such premium rate schedule increase, without submission of the certification required in Subsection (2)(b)(i), if:

(i) in the opinion of the commissioner, accepting a lower premium rate schedule increase is in the best interest of Utah insureds;

(ii) the actuarial memorandum discloses the rate increase necessary to provide the certification required in Subsection (2)(b)(i); and

(iii) the rate increase filing satisfies each requirement of this section.

(b) The commissioner may condition the acceptance of the premium rate schedule increase under Subsection (4)(a) upon:

(i) the disclosure, to the affected policyholder, of the premium rate schedule increase necessary to provide the certification required in Subsection (2)(b)(i); and

(ii) the extension of a contingent nonforfeiture benefit upon lapse to policyholders who would have been eligible for contingent nonforfeiture benefit upon lapse based on the premium rate schedule increase necessary to provide certification required in Subsection (2)(b)(i).

(6)(a) For each rate increase that is implemented, an insurer shall annually file a report with the commissioner for the next three years updated projections, as provided in Subsection (2)(c)(i), and include a comparison of actual results to projected values.

(b) The commissioner may extend the period to more than three years if actual results are not consistent with projected values from prior projections.

(c) For a group insurance policy that meets the conditions in Subsection (13), the projections required by this Subsection (6) shall be provided to the policyholder in lieu of filing with the commissioner.

(7)(a) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, under Subsection (2)(c)(i), shall be filed every five years following the end of the required period in Subsection (6).

(b) For a group insurance policy that meets the conditions in Subsection (13), the projections required by Subsection (6) shall be provided to the policyholder in lieu of filing with the commissioner.

(8)(a) If the commissioner determines that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection (3), the commissioner may require the insurer to implement:

(i) premium rate schedule adjustments; or

(ii) other measures to reduce the difference between the projected and actual experience.

(b) To determine whether the actual experience adequately matches the projected experience, Subsection (2)(c)(v) shall be considered, if applicable.

(9) If the majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claim processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect, otherwise the commissioner may impose the conditions in Subsection (10); and

(b) the original anticipated lifetime loss ratio and the premium rate schedule increase calculated according to Subsection (3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations under Subsections (3)(a)(i) and (3)(a)(iii).

(10)(a) The commissioner shall review, for each policy included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated, for a rate increase filing that:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing, or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists.

(i) Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to each in force insured subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates. The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(A) the maximum rate increase determined based on the combined experience; or

(B) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

(11) If the commissioner determines that an insurer exhibits a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to Subsection (10), prohibit the insurer from:

(a) filing and marketing comparable coverage for a period of up to five years; or

(b) offering any other similar coverages and limit marketing of new applications to the products subject to recent premium rate schedule increases.

(12) Subsections (1) through (11) do not apply to a policy when the long-term care benefits provided by the policy are incidental, if the policy complies with the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in:

(i) Section 31A-22-408; or

(ii) Section 31A-22-409;

(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and 31A-22-1409(8) and Section 31A-22-1410;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the following requirements, as applicable:

(i) policy illustrations under Rule R590-177; and

(ii) disclosure requirements under Rule R590-133; and

(e) an actuarial memorandum is filed with the commissioner that includes:

(i) a description of the basis on how the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used, and for expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii)(A) a statement as to whether underwriting is performed at the time of application;

(B) the statement shall indicate whether underwriting is used and, if used, shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting; and

(C) for a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting will occur; and

(viii) a description of the effect of the policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(13) Subsections (8) and (10) do not apply to a group policy when:

(a) the policy insures 250 or more persons, and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificate holders, pays a material portion of the premium that is not less than 20% of the total premium for the group in the calendar year before the year a rate increase is filed.

(14)(a) An exceptional increase is subject to the same requirements as other premium rate schedule increases.

(b) The commissioner may request that an independent actuary, or a professional actuarial body, review the basis for an insurer's request for an exceptional increase.

(c) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall determine any potential offsets to higher claims costs.

R590-148-25. Reporting Requirements.

(1)(a) An insurer shall maintain records for each producer detailing the:

(i) producer's number of replacement sales as a percent of the agent's total annual sales; and

(ii) amount of lapses of long-term care insurance policies sold by the producer as a percent of the producer's total annual sales.

(b) An insurer shall report the 10% of its producers with the greatest percentage of lapses and replacements under Subsection (1)(a).

(c) An insurer shall report the number of:

(i) lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and

(ii) replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(d) The reports required by this subsection shall be reported on the Replacement and Lapse Reporting Form.

(e) Reported replacement and lapse rates do not, by themselves, constitute a violation of Utah laws nor do they necessarily imply wrongdoing. The reports are for reviewing producer activities regarding the sale of long-term care insurance.

(2)(a) An insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.

(b) The report shall include, at a minimum, the information contained in the Claims Denial Reporting Form Long-Term Care Insurance.

(3) An insurer shall maintain a record of each policy or certificate rescission, both state and nationwide, except those the insured voluntarily effectuated, and shall annually report this information on the Rescission Reporting Form.

(4)(a) An insurer shall report the total number of applications received from Utah residents, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

(b) The report shall be submitted on the Suitability Reporting Form.

(5) For purposes of this section:

(a) "claim" means a request for payment of benefits under an in force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(b) "denied" means that an insurer refused to pay a claim for any reason other than for claims not paid for failure to meet a waiting period or due to a preexisting condition; and

(c) "report" means a report filed on a statewide basis.

(6) A report required under this section shall be filed with the commissioner annually on or before June 30 and in compliance with Rule R590-220.

R590-148-26. Licensing.

A producer is not authorized to sell, solicit, or negotiate long-term care insurance except as authorized by Title 31A, Chapter 23a, Insurance Marketing - Licensing Agents, Brokers, Consultants and Reinsurance Intermediaries.

R590-148-27. Discretionary Powers of the Commissioner.

The commissioner may, upon written request and after a hearing, issue an order modifying or suspending a provision of this rule upon a finding that:

(1) the modification or suspension is in the best interest of the insured;

(2) the purpose of the provision cannot be effectively or efficiently achieved without the modification or suspension; and

(3) one of the following:

(a) the modification or suspension is necessary to the development of an innovative, reasonable approach for insuring long-term care;

(b) the policy or certificate will be issued to residents of a life care or continuing care retirement community, or some other residential community for the elderly, and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

R590-148-28. Severability.

If any provision of this rule, Rule R590-148, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance
Date of Last Change: 2024[~~February 8, 2011~~]
Notice of Continuation: June 30, 2022
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-1404

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R590-262**	**Filing ID: 56748**

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:

R590-262. Health Data Authority Health Insurance Claims Reporting

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

The rule is being amended to update several code citations due to changes in the state code, add precision to certain terms, and other clerical changes.

4. Summary of the new rule or change:

Several provisions of this rule cite provisions of the Utah Code that were updated into Title 26B, Utah Health and Human Services Code; these outdated citations are being updated to point to the correct provisions.

Other changes add precision when referring to a "state funded employee health plan", update a link to a website, and make other clerical changes.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Insurance Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-22-614.5	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:**	08/23/2024

R590. Insurance, Administration.
R590-262. Health Data Authority Health Insurance Claims Reporting.
R590-262-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-614.5.

R590-262-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) establish the requirements for entities that pay for health care to submit data to the Utah Department of Health and Human Services;

(b) coordinate with:

(i) Sections [~~26-1-37~~]26B-8-411 and [~~26-33a-106.1~~]26B-85-504; and

(ii) Rules R428-1 and R428-15;

(c) allow the data to be shared with the state's designated secure health information master patient index, Clinical Health Information Exchange (cHIE), to be used:

(i) in compliance with data security standards established by:

(A) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936: and

(B) the electronic commerce agreements established in a business associate agreement;

(ii) for coordination of health insurance benefits; and

(iii) for the enrollment data elements identified in Rule R428-15.

(2) This rule applies to an insurer offering or administering health insurance, including a self-funded employee health plan that opts-in under Section R590-262-7.

(3) This rule does not apply to:

(a) an insurer that, as of the first day of the reporting period, covers fewer than 2,500 individual Utah residents;

(b) a long-term care insurance policy;

(c) an income replacement policy; or

(d) except as provided in Subsection (2)(c), a self-funded employee [~~welfare~~]health plan.

(4)(a) The submission of data by an insurer on behalf of a self-funded employee health plan is considered mandatory if the [~~self-funded~~]employer sponsoring the self-funded employee health plan opts-in under Section R590-262-7.

(b) An insurer is not obligated to submit data on behalf of a self-funded employee health plan that opts-out or fails to respond to an opt-in request required in Section R590-262-7.

R590-262-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and [~~26-33a-102~~]26B-8-501. Additional terms are defined as follows:

(1) "Data" means information consisting of, or derived directly from, enrollment, medical claims, dental claims, and pharmacy claims that this rule requires an insurer to report.

(2) "Insurer," for purposes of this rule, means:

(a) a person engaged in the business of offering health insurance;

(b) a third-party administrator that settles claims for:

(i) health insurance policies; or

(ii) a self-funded employee [~~welfare benefit~~]health plan if the employer of the self-funded employee health plan opts-in under Section R590-262-7;

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410(d), Internal Revenue Code; or

(e) a licensed professional employer organization that is acting as an administrator of a health insurance policy.

(3) "Office" means the Healthcare Information and Analysis Program[~~s~~] within the Utah Department of Health and Human Services Division of Data, Systems, and Evaluation.

(4) "Reporting period" means a calendar year.

(5)(a) "Self-funded employee health plan" means:

(i) an employee welfare benefit plan as defined in 29 U.S.C. Section 1002(1) whose health coverage is provided other than through an insurance policy; and

(ii) the plan has opted-in under Section R590-262-7.

(b) Self-funded employee health plan does not include:

(i) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(ii) a non-electing church plan as described in Section 410(d), Internal Revenue Code; or

(iii) the Public Employees' Benefit and Insurance Program created in Section 49-20-103.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R590-262-4. Reporting Requirements.

(1) An insurer shall submit the data described in this rule and Section R428-15-3, if Utah is the patient's primary residence, for a service provided in or out of Utah.

(2) An insurer shall permit the Utah Department of Health and Human Services to redisclose the enrollment and eligibility information with the state designated entity for coordination of benefits.

(3) An insurer shall submit monthly data no later than the last day of the following month.

R590-262-5. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee.

(2) The data shall be formatted and submitted according to the technical specifications in Subsection (1).

R590-262-6. Required Data Elements.

(1) An insurer shall submit the data required by Rule R428-15 and the Utah All-Payer Claims Database Data Submission Guide if the data are available to the insurer.

(2) The Utah All-Payer Claims Database Data Submission Guide is available on the Utah Department of Health and Human Services website at https://healthcarestats.utah.gov.

R590-262-7. Voluntary Opt-In for a Self-Funded Employee Health Plan.

(1)(a) An insurer providing claim administration services for a self-funded employee health plan shall provide the employer for the self-funded employee health plan a copy of the APCD Self-funded Employee Health Plan Opt-In [~~form~~]Form, available on the department's website, https://insurance.utah.gov, to determine if the employer agrees to opt-in to submission of its self-funded employee health plan's data as described in this rule.

(b) An insurer may use a form the insurer has developed for multi-state use instead of the form referenced in Subsection (1)(a) if the form is substantially similar and is approved in advance by the office.

(c) An insurer shall provide the APCD Self-funded Employee Health Plan Opt-In [~~form~~]Form within 15 days after claims administration services are retained and it is determined the employer meets the requirements of this section.

(2)(a) Except as provided in Subsection (c), an opt-in is effective for the reporting period in which it is signed and all future reporting periods.

(b) An employer may not opt-in for a partial reporting period.

(c) An employer that has opted-in may opt-out for subsequent reporting periods by notifying the insurer in writing at least 30 days before the beginning of the next reporting period.

(3) For a self-funded employee health plan whose employer has made an affirmative election for the submission of data, the insurer shall include the self-funded employee health plan data as part of the insurer's data submission otherwise required by this rule.

(4) An insurer shall file with the office, annually by January 31 of each year, the following for the prior calendar year:

(a) a list of self-funded employee health plans whose employer made an affirmative election for the submission of data;

(b) a list of employers who previously filed an opt-in request and have elected to opt-out for future reporting periods as provided under Subsection (2)(c);

(c) a certification from an officer of the insurer that the insurer has taken reasonable efforts to provide the form to all known required employers; and

(d) a list identifying the employers to whom the form was provided and their contact information.

(5) The APCD Self-funded Employee Health Plan Opt-In [~~form~~]Form is for use only with self-funded employee health plans and does not affect the mandatory reporting otherwise required by this rule.

(6) Nothing in this section requires an insurer to submit data for claims processed before the insurer was contracted to provide services.

R590-262-8. Third-party Contractors.

The office may contract with a third party to collect and process the data and shall prohibit the third party from using the data in any way not specifically designated in the scope of work.

R590-262-9. Insurer Registration.

An insurer shall register with the office by completing the registration on the office's website, [~~https://stats.health.utah.gov/~~]https://healthcarestats.utah.gov/, no later than 30 days after becoming subject to this rule and annually thereafter by no later than September 1.

R590-262-10. Testing of Files.

An insurer that becomes subject to this rule shall submit to the office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R590-262-11. Rejection of Files.

(1) The office or its designee may reject and return any data submission that fails to conform to the submission requirements.

(2) An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the office, or its designee, within ten state business days of notice that the data does not meet the submission requirements.

R590-262-12. Replacement of Data Files.

(1) An insurer may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted.

(2) The office may allow a later submission if the insurer can establish exceptional circumstances for the replacement.

R590-262-13. Provider Notification.

(1) The following notification shall be provided to a person that receives shared data: "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this section shall be provided in coordination with provider participation in the master patient index and the cHIE programs.

R590-262-14. Limitation of Liability.

(1) A person furnishing information described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner, the executive director of the Utah Department of Health and Human Services, or employees or representatives of the Utah Insurance Department or the Utah Department of Health and Human Services;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

(2) As provided in Section [~~26-25-1~~]26B-1-229, an insurer that submits data pursuant to this rule cannot be held liable for having provided the required information to the office.

R590-262-15. Exemptions and Extensions.

(1) The office may grant an exemption or extension from reporting requirements in this rule under certain circumstances.

(2) The office may grant an exemption from a reporting requirement in this rule to an insurer when the insurer demonstrates that compliance imposes an unreasonable cost.

(a)(i) An insurer may request an exemption from any particular requirement or set of requirements of this rule.

(ii) The insurer must submit a request for exemption no less than 30 calendar days before the date the insurer would have to comply with the requirement.

(b)(i) The office may grant an exemption for a maximum of one calendar year.

(ii) An insurer wishing an additional exemption must submit an additional, separate request.

(3) The office may grant an extension from a reporting requirement in this rule to an insurer when the insurer demonstrates that technical or unforeseen difficulties prevent compliance.

(a)(i) An insurer may request an extension for any deadline required in this rule.

(ii) For each deadline for which the insurer requests an extension, the insurer must submit its request no less than seven calendar days before the deadline in question.

(b)(i) The office may grant an extension for a maximum of 30 calendar days.

(ii) An insurer wishing an additional extension must submit an additional, separate request.

(4) An insurer requesting an extension or exemption shall include:

(a) the insurer's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

R590-262-16. Severability.

If any provision of this rule, Rule R590-262, 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: health insurance claims reporting
Date of Last Change: 2024[~~June 21, 2023~~]
Notice of Continuation: March 3, 2022
Authorizing, and Implemented or Interpreted Law: 31A-22-614.5(3)(a)

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal and Reenact		
Rule or Section Number:	**R590-285**	**Filing ID: 56750**

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:

R590-285. Limited Long-Term Care Insurance

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

The rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Insurance Department (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring the rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of the rule more clear, remove unnecessary sections, and update the Severability (the new R590-285-27) section to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) 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-22-2006	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:**	08/23/2024

R590. Insurance, Administration.
R590-285. Limited Long-Term Care Insurance.
[~~R590-285-1. Purpose.~~

~~The purpose of this regulation is to implement Title 31A, Chapter 22, Part 20, Limited Long-Term Care Insurance Act, to promote the public interest, to promote the availability of limited long-term care insurance coverage, to protect applicants for limited long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of limited long-term care insurance coverages, and to facilitate flexibility and innovation in the development of limited long-term care insurance.~~

~~R590-285-2. Authority.~~

~~This regulation is issued pursuant to the authority vested in the commissioner under Subsection 31A-2-201(3)(a) and Section 31A-22-2006.~~

~~R590-285-3. Applicability and Scope.~~

~~Except as otherwise specifically provided, this regulation applies to all limited long-term care insurance policies delivered or issued for delivery in this state on or after July 1, 2021.~~

~~R590-285-4. Definitions.~~

~~In addition to the definitions in Sections 31A-1-301 and 31A-22-2002, the following definitions shall apply for the purpose of this rule.~~

~~(1) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.~~

~~(2) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.~~

~~(3) "Adult day care" means a facility duly licensed and operating within the scope of such license. An adult day care facility may not be defined more restrictively than a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.~~

~~(4) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.~~

~~(5) "Benefit trigger" for the purposes of independent review, means a contractual provision in the insured's policy of limited long-term care insurance conditioning the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment.~~

~~(6) "Cognitive impairment" means a deficiency in a person's short or long-term memory; orientation as to person, place, and time; deductive or abstract reasoning; or judgment as it relates to safety awareness.~~

~~(7) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.~~

~~(8) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.~~

~~(9) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup, or table, or by a feeding tube or intravenously.~~

~~(10) "Hands-on assistance" means physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.~~

~~(11) "Home care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.~~

~~(12) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field, to determine, by record review, an insured's actual functional or cognitive impairment.~~

~~(13) "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.~~

~~(14) "Mental or nervous disorder" may not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.~~

~~(15) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.~~

~~(16) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.~~

~~(17)(a) "Similar policy forms" means all of the limited long-term care insurance policies and certificates issued by an insurer in the same limited long-term care benefit classification as the policy form being considered.~~

~~(b) Certificates of groups that meet the definition in Subsection 31A-22-2002(3) are not considered similar to certificates or policies otherwise issued as limited long-term care insurance, but are similar to other comparable certificates with the same limited long-term care benefit classifications.~~

~~(c) For purposes of determining similar policy forms, limited long-term care benefit classifications are defined as:~~

~~(i) institutional limited long-term care benefits only;~~

~~(ii) non-institutional limited long-term care benefits only; or~~

~~(iii) comprehensive limited long-term care benefits.~~

~~(18) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.~~

~~(19) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.~~

~~(20) "Transferring" means moving into or out of a bed, chair, or wheelchair.~~

~~(21) "Skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," "home care agency," and all other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of~~

~~these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.~~

~~R590-285-5. Policy Practices and Provisions.~~

~~(1) Renewability. The terms "guaranteed renewable" and "noncancellable" may not be used in any individual limited long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section R590-285-7.~~

~~(a) A policy issued to an individual may not contain renewal provisions other than "guaranteed renewable" or "noncancellable."~~

~~(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.~~

~~(c) The term "noncancellable" may be used only when the insured has the right to continue the limited long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.~~

~~(d) The term "level premium" may only be used when the insurer does not have the right to change the premium.~~

~~(2)(a) Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as limited long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:~~

~~(i) alcoholism and drug addiction;~~

~~(ii) illness, treatment, or medical condition arising out of:~~

~~(A) war or act of war, whether declared or undeclared;~~

~~(B) participation in a felony, riot, or insurrection, when the insured is a voluntary participant;~~

~~(C) service in the armed forces or units auxiliary thereto;~~

~~(D) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury; or~~

~~(E) aviation, only to a non-fare-paying passenger;~~

~~(iii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of cognitive impairment;~~

~~(iv) preexisting conditions or diseases; and~~

~~(v) treatment provided in a government facility, unless otherwise required by law, services for which benefits are available under Medicare or other governmental program, except Medicaid, any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.~~

~~(b)(i) This Subsection R590-285-5(2), is not intended to prohibit exclusions and limitations by type of provider. However, no limited long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:~~

~~(A) when the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification, or registration; or~~

~~(B) when the state other than the state of policy issue licenses, certifies, or registers the provider under another name.~~

~~(ii) For purposes of this subsection, "state of policy issue" means the state in which the individual policy or certificate was originally issued.~~

~~(iii) This subsection is not intended to prohibit territorial limitations outside of the United States.~~

~~(3) Extension of Benefits.~~

~~(a) Termination of limited long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the limited long-term care insurance was in force and continues without interruption after termination.~~

~~(b) The extension of benefits beyond the period the limited long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.~~

~~(4) Continuation or Conversion.~~

~~(a) Group limited long-term care insurance issued in this state shall provide covered individuals with a basis for continuation or conversion of coverage.~~

~~(b) For the purposes of this Subsection R590-285-5(4):~~

~~(i) "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity;~~

~~(ii) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability; and~~

~~(iii) "converted policy" means an individual policy of limited long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion~~

~~is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.~~

~~(c) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.~~

~~(d) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.~~

~~(e) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:~~

~~(i) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or~~

~~(ii) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:~~

~~(A) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and~~

~~(B) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-285-5(4)(d).~~

~~(f) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another limited long-term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.~~

~~(g) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.~~

~~(h) Notwithstanding any other provision of this section, an insured individual whose eligibility for group limited long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.~~

~~(5) Discontinuance and Replacement. If a group limited long-term care policy is replaced by another group limited long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:~~

~~(a) may not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and~~

~~(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of limited long-term care services.~~

~~(6) Premium Changes.~~

~~(a) The premium charged to an insured may not increase due to either:~~

~~(i) the increasing age of the insured at age 66 or older; or~~

~~(ii) the duration the insured has been covered under the policy.~~

~~(b) The purchase of additional coverage may not be considered a premium rate increase, but for purposes of the calculation required under Section R590-285-22, the portion of the premium attributable to the additional coverage shall be added to, and considered part of, the initial annual premium.~~

~~(c) A reduction in benefits may not be considered a premium change, but for purposes of the calculation required under Section R590-285-22, the initial annual premium shall be based on the reduced benefits.~~

~~(7) Electronic Enrollment for Group Policies.~~

~~(a) In the case of a group defined in Subsection 31A-22-2002(3), any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:~~

~~(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;~~

~~(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention, and prompt retrieval of records; and~~

~~(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and privileged information is maintained.~~

~~(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.~~

~~**R590-285-6. Unintentional Lapse.**~~

~~Each insurer offering limited long-term care insurance shall, as a protection against unintentional lapse, comply with the following:~~

~~(1)(a) Notice before lapse or termination.~~

~~(i) No individual limited long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice.~~

~~(ii) The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured.~~

~~(iii) Designation may not constitute acceptance of any liability on the third party for services provided to the insured.~~

~~(iv) The form used for the written designation must provide space clearly designated for listing at least one person.~~

~~(v) The designation shall include each person's full name and home address.~~

~~(vi) In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this limited long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."~~

~~(vii) The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.~~

~~(b) When the policyholder or certificateholder pays premium for a limited long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection R590-285-6(1) need not be met until 60 days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.~~

~~(c) Lapse or termination for nonpayment of premium.~~

~~(i) No individual limited long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-285-6(1), at the address provided by the insured for purposes of receiving notice of lapse or termination.~~

~~(ii) Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid.~~

~~(iii) Notice shall be deemed to have been given as of five days after the date of mailing.~~

~~(2) Reinstatement.~~

~~(a) In addition to the requirement in Subsection R590-285-6(1), a limited long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired.~~

~~(b) This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate.~~

~~(c) The standard of proof of cognitive impairment or loss of functional capacity may not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.~~

~~R590-285-7. Required Disclosure Provisions.~~

~~(1) Renewability. Individual limited long-term care insurance policies shall contain a renewability provision.~~

~~(a) The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable.~~

~~(b) A limited long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.~~

~~(2) Riders and Endorsements.~~

~~(a) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual limited long-term care insurance policy, all riders or endorsements added to an individual limited long-term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured.~~

~~(b) After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law.~~

~~(c) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.~~

~~(3) Payment of Benefits. A limited long-term care insurance policy that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.~~

~~(4) Limitations. If a limited long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."~~

~~(5) Other Limitations or Conditions on Eligibility for Benefits. A limited long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Subsection 31A-22-2004(3)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."~~

~~(6) Benefit Triggers.~~

~~(a) Activities of daily living and cognitive impairment shall be used to measure an insured's need for limited long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section.~~

~~(b) If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description.~~

~~(c) If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.~~

~~R590-285-8. Required Disclosure of Rating Practices to Consumers.~~

~~(1) This section shall apply as follows:~~

~~(a) Except as provided in Subsection R590-285-8(2), this section applies to any limited long-term care policy or certificate issued in this state on or after July 1, 2021.~~

~~(b) For certificates issued on or after the effective date of this regulation under a group limited long-term care insurance policy as defined in Subsection 31A-22-2002(3), which policy was in force at the time this regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2022.~~

~~(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.~~

~~(a) A statement that the policy may be subject to rate increases in the future.~~

~~(b) An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's options in the event of a premium rate revision.~~

~~(c) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase.~~

~~(d) A general explanation for applying premium rate or rate schedule adjustments that shall include:~~

~~(i) a description of when premium rate or rate schedule adjustments will be effective, e. g., next anniversary date, next billing date, etc.; and~~

~~(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-285-8(2)(c) if the premium rate or rate schedule is changed.~~

~~(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this state or any other state that, at a minimum, identifies:~~

~~(A) the policy forms for which premium rates have been increased;~~

~~(B) the calendar years when the form was available for purchase; and~~

~~(C) the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.~~

~~(ii) The insurer may provide additional explanatory information related to the rate increases.~~

~~(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the limited long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.~~

~~(iv) If an acquiring insurer files for a rate increase on a limited long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers, on or before the later of the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-285-8(2)(e)(i).~~

~~(v) If the acquiring insurer in Subsection R590-285-8(2)(e)(iv) files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-285-8(2)(e)(iv), the acquiring insurer shall make all disclosures required by R590-285-8(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-285-8(2)(e)(iv).~~

~~(3) An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsection R590-285-8(2)(a) and (e). If, due to the method of application, the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.~~

~~(4) An insurer shall use the form in Appendix A to comply with the requirements of Subsections R590-285-8(2) and (3).~~

~~(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-285-8(2) when the rate increase is implemented.~~

~~R590-285-9. Initial Filing Requirements.~~

~~(1) This section applies to any limited long-term care policy issued in this state on or after July 1, 2021.~~

~~(2) An insurer shall provide the information listed in this subsection to the commissioner prior to making a limited long-term care insurance form available for sale:~~

~~(a) a copy of the disclosure documents required in Section R590-285-8;~~

~~(b) a complete rate schedule; and~~

~~(c) an actuarial memorandum that shall include:~~

~~(i) a statement regarding actuary's qualifications;~~

~~(ii) an explanation of the review performed by the actuary;~~

~~(iii) complete description of all pricing assumptions, including sources and credibility of data;~~

~~(iv) development of the anticipated lifetime loss ratio supported by an exhibit showing lifetime projection of earned premiums and incurred claims based upon the pricing assumptions;~~

~~(v) a statement that the premium rate schedule is expected to result in a lifetime loss ratio not less than 55%;~~
~~(vi) a statement that the policy design and coverage provided have been reviewed and taken into consideration;~~
~~(vii) a statement that the underwriting and claim adjudication processes have been reviewed and taken into consideration;~~
~~(viii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including sensitivity to the mix of business;~~
~~(ix) a statement that the reserve requirements have been reviewed and taken in consideration;~~
~~(x) a description of the valuation assumptions with sufficient detail or sample calculation as to have a complete depiction of the reserve amounts to be held;~~
~~(xi) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situations where this does not occur. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and~~
~~(xii) an actuarial certification dated and signed by the qualified actuary that all information presented in the actuarial memorandum is accurate and complete.~~
~~(3) Retention Requirements.~~
~~(a) An insurer offering a limited long-term care policy shall retain sufficient documentation from the initial pricing that a qualified actuary could recreate the initial rates at a later date.~~
~~(i) The documentation shall be sufficient to provide actual to expected analyses of:~~
~~(A) claims;~~
~~(B) incidence rates;~~
~~(C) persistency;~~
~~(D) mix of business; and~~
~~(E) loss ratios at the same level of detail used in the initial pricing.~~
~~(ii) If an insurer retains a consultant to price a limited long-term care product, the insurer shall require that the documentation be provided to the insurer, rather than being retained solely by the consultant.~~
~~(iii) If an insurer sells or cedes complete risk responsibility for a limited long-term care product, the insurer or cedant shall provide to the buyer or reinsurer the initial pricing documentation.~~
~~(b) An insurer that requests a future premium rate schedule increase but has not retained the initial pricing documentation shall be limited to a lifetime loss ratio not less than 80%.~~
~~(c) The insurer shall retain the initial pricing documentation at least until one year after the final policyholder is no longer eligible for benefits under the policy.~~

~~R590-285-10. Prohibition Against Post-Claims Underwriting.~~
~~(1) All applications for limited long-term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.~~
~~(2)(a) If an application for limited long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.~~
~~(b) If the medications listed in the application were known by the insurer or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.~~
~~(3) Except for policies or certificates that are guaranteed issue:~~
~~(a) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a limited long-term care insurance policy or certificate: "Caution: If your answers on this application are incorrect or untrue, (insert name of insurer) has the right to deny benefits or rescind your policy"; and~~
~~(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the limited long-term care insurance policy or certificate at the time of delivery: "Caution: The issuance of this limited long-term care insurance (insert either policy or certificate) is based upon your responses to the questions on your application. A copy of your (insert either application or enrollment form) (insert either is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)."~~
~~(c) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.~~

~~R590-285-11. Minimum Standards for Home and Community Care Benefits in Limited Long-Term Care Insurance Policies.~~
~~(1) A limited long-term care insurance policy or certificate may not, if it provides benefits for home care or community care services, limit or exclude benefits:~~
~~(a) by requiring that the insured or claimant would need care in a skilled nursing facility if home care services were not provided;~~
~~(b) by requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before home care services are covered;~~
~~(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;~~
~~(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;~~

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home care services be at a level of certification or licensure greater than that required by the eligible service;

(g) by requiring that the insured or claimant have an acute condition before home care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) A limited long-term care insurance policy or certificate, if it provides for home or community care services, shall provide total home or community care coverage that is a dollar amount equivalent to at least one-half of the coverage available for nursing home benefits under the policy or certificate, at the time covered home or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home care coverage may be applied to the non-home care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

R590-285-12. Requirement to Offer Inflation Protection.

(1) No insurer may offer a limited long-term care insurance policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of limited long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner that the increases are compounded annually at a rate not less than 3%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 3% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in Subsection R590-285-12(1) shall be made to the group policyholder and to each proposed certificateholder.

(3)(a) An insurer shall include the following information in or with the outline of coverage:

(i) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period; and

(ii) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy that contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-285-12(1)(a) shall be included in a limited long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection."

R590-285-13. Requirements for Application Forms and Replacement Coverage.

(1) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another limited long-term care insurance policy or long-term care insurance policy, or certificate in force, or whether a limited long-term care policy, or long-term care insurance policy, or certificate is intended to replace any other accident and sickness, or limited long-term care policy, or long-term care insurance policy, or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing the questions may be used, except where the coverage is sold without an agent. With regard to a replacement policy issued to a group, the following questions may be modified only to the extent necessary to elicit information about health or limited long-term care insurance policies other than the group policy being replaced, provided that the certificateholder has been notified of the replacement.

(a) Do you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force (including health care service contract, health maintenance organization contract)?

(b) Did you have another limited long-term care insurance policy, or long-term care insurance policy, or certificate in force during the last twelve (12) months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?

~~(2) Agents shall list any other health insurance policies they have sold to the applicant.~~
~~(a) List policies sold that are still in force.~~
~~(b) List policies sold in the past five years that are no longer in force.~~
~~(3) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:~~
~~(a) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. Notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.~~
~~(b) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods or its agent, shall furnish the applicant, prior to issuance or delivery of the individual limited long-term care insurance policy, a notice regarding replacement of accident and sickness or limited long-term care or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner described in Appendix B.~~

~~R590-285-14. Reporting Requirements.~~
~~(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of limited long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.~~
~~(2) Every insurer shall report annually by June 30 the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-285-14(1).~~
~~(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of limited long-term care insurance.~~
~~(4) Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. Refer to Appendix E.~~
~~(5) Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. Refer to Appendix E.~~
~~(6) For purposes of this section:~~
~~(a) "Policy" means only limited long-term care insurance.~~
~~(b) "Report" means on a statewide basis.~~
~~(7) Reports required under this section shall be filed with the commissioner.~~
~~(8) Annual rate certification requirements.~~
~~(a) This subsection applies to any limited long-term care policy issued in this state on or after July 1, 2021.~~
~~(b) The following annual submission requirements apply subsequent to initial rate filings for individual limited long-term care insurance policies made under this section.~~
~~(c) An actuarial certification prepared, dated and signed by a qualified actuary who provides the information shall be included and shall provide at least the following information:~~
~~(i) a statement of the sufficiency of the current premium rate schedule;~~
~~(ii) for the rate schedules that are no longer marketed;~~
~~(A) that the premium rate schedule continues to be sufficient to cover anticipated costs under best estimate assumptions; or~~
~~(B) that the premium rate schedule may no longer be sufficient. In this situation, the insurer shall provide to the commissioner, within 60 days of the date the actuarial certification is submitted to the commissioner, a plan of action, including a time frame, for the re-establishment of adequate margins for moderately adverse experience; and~~
~~(iii) a description of the review performed that led to the statement.~~
~~(d) An actuarial memorandum dated and signed by a qualified actuary who prepares the information shall be prepared to support the actuarial certification and provide at least the following information:~~
~~(i) a detailed explanation of the data sources and review performed by the actuary prior to making the statement;~~
~~(ii) a complete description of experience assumptions and their relationship to the initial pricing assumptions;~~
~~(iii) a description of the credibility of the experience data; and~~
~~(iv) an explanation of the analysis and testing performed in determining the current presence of margins.~~
~~(e) The actuarial certification required pursuant to Subsection R590-285-14(8)(c) must be based on calendar year data and submitted annually no later than May 1 of each year, starting in the second year following the year in which the initial rate schedules are first used. The actuarial memorandum required pursuant to R590-285-14(8)(d) must be submitted at least once every three years with the certification.~~

~~R590-285-15. Premium Rate Schedule Increases.~~
~~(1) This section applies to any limited long-term care policy or certificate issued in this state, on or after July 1, 2021.~~
~~(2) No rate increase may be requested by an insurer until the projected lifetime loss ratio, under best estimate assumptions, exceeds the anticipated lifetime loss ratio plus 2%.~~
~~(3) An insurer shall provide notice of a pending premium rate schedule increase to the commissioner prior to the notice to the policyholders and shall include:~~
~~(a) a revised rate schedule;~~
~~(b) an actuarial memorandum that shall include:~~

(i) a statement regarding the actuary's qualifications;
(ii) an explanation of the review performed by the actuary;
(iii) complete description of all pricing assumptions and any changes from the initial and any prior filing;
(iv) an exhibit showing policy count, actual incurred claims, and earned premiums by duration both on a state and nationwide basis, and any revised projections based on the revised pricing assumptions;
(v) an exhibit showing actual to expected loss ratios by duration;
(vi) a statement that the revised premium schedule is expected to result in a lifetime loss ratio not less than 55%;
(vii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including any revised assumptions, including sensitivity to the mix of business;
(viii) a description of the valuation assumptions, including any revisions since the initial and any prior filing, with sufficient detail or sample calculation to have a complete depiction of the reserve amounts to be held; and
(ix) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such statement cannot be made, a complete description of the situation where this does not occur; and
(c) an actuarial certification dated and signed by the actuary that all information presented in the actuarial memorandum is accurate and complete.
(4) An insurer that is granted a premium rate schedule increase shall retain similar documentation related to the rate increase request as is required in Section R590-285-9(3).

R590-285-16. Filing Requirements for Advertising.
(1) Every insurer providing limited long-term care insurance or benefits in this state shall provide a copy of any limited long-term care insurance advertisement intended for use or used in this state, whether through written, radio, or television medium to the commissioner, for review or approval by the commissioner, when requested.
(2) All advertisements shall be retained for at least three years from the date the advertisement was first used.

R590-285-17. Standards for Marketing.
(1) Every insurer or other entity marketing limited long-term care insurance coverage in this state, directly or through a producer, shall:
(a)(i) establish marketing procedures and training requirements to assure that:
(ii) any marketing activities, including any comparison of policies, by its producers will be fair and accurate; and
(b) excessive insurance is not sold or issued;
(c) display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with limited long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations";
(d) provide copies of the disclosure form required in Appendix A to the applicant;
(e) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for limited long-term care or long-term care insurance already has accident and sickness or limited long-term care insurance and the types and amounts of any such insurance;
(f) establish auditable procedures for verifying compliance with Subsection R590-285-17(1);
(g) use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsection R590-285-5(1)(c) or (d), as applicable; and
(h) provide an explanation of contingent benefit upon lapse provided for in Subsection R590-285-22(4).
(2) In addition to the practices prohibited in Section 31A-23a-402, the following acts and practices are prohibited.
(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy, or to take out a policy of insurance with another insurer.
(b) High pressure tactics. Employing any method of marketing having the effect of, or tending to induce the purchase of, insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase, or recommend the purchase of insurance.
(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.
(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a limited long-term care insurance policy.
(3)(a) An insurer offering a limited long-term care policy to an association, shall require the association:
(i) when endorsing or selling limited long-term care insurance to educate its members concerning limited long-term care issues in general so that its members can make informed decisions;
(ii) to provide objective information regarding limited long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold; and
(iii) disclose in any limited long-term care insurance solicitation:
(A) the specific nature and amount of the compensation arrangements, including all fees, commissions, administrative fees, and other forms of financial support, that the association receives from endorsement or sale of the policy or certificate to its members; and
(B) a brief description of the process under which the policies and the insurer issuing the policies were selected.

(b) If the association and the insurer have interlocking directorates or trustee arrangements, the insurer shall require the association to disclose that fact to its members.

(c) The insurer shall require the board of directors of associations selling or endorsing limited long-term care insurance policies or certificates to review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(d) The insurer shall also:

(i) actively monitor the marketing efforts of the association and any producer; and

(ii) review and approve all marketing materials or other insurance communications used to promote sales or marketing sent to members, regarding the policies or certificates.

(e) The insurer may not issue a limited long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this subsection.

(f) An insurer's failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of Section 31A-23a-402.

R590-285-18. Suitability.

(1) An insurer marketing limited long-term care insurance shall:

(a) develop and use suitability standards and procedures to determine whether the purchase or replacement of limited long-term care insurance is appropriate for the needs of the applicant;

(b) include in its suitability standards and procedures:

(i) consideration of the advantages and disadvantages of insurance to meet the needs of the applicant; and

(ii) discussion with applicants of how the benefits and costs of limited long-term care insurance compare with long-term care insurance;

(c) train its producers in its suitability standards and procedures; and

(d) maintain a copy of its suitability standards and procedures and make them available for inspection upon request by the commissioner.

(2) If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

R590-285-19. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates.

If a limited long-term care insurance policy or certificate replaces another limited long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new limited long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

R590-285-20. Availability of New Services or Providers.

(1) An insurer shall notify policyholders of the availability of any new limited long-term policy series that provides coverage for new limited long-term care services or new providers material in nature not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date that the new policy series is made available for sale in this state.

(2) Notwithstanding Subsection R590-285-20(1), notification is not required for any policy issued prior to the effective date of this rule or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(3) The insurer shall make the new coverage available in one of the following ways:

(a) by adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) by exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

(c) by exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) by an alternative program developed by the insurer that meets the intent of this section.

(4) An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders who purchased such a new proprietary policy shall be notified when a new limited long-term care policy series that provides coverage for new limited long-term care services or new providers material in nature and were not previously available to that limited distribution channel.

(5) Policies issued pursuant to this Section R590-285-20 shall be considered exchanges and not replacements. These exchanges may not be subject to Sections R590-285-13 and R590-285-19, and the reporting requirements of Subsections R590-285-14(1) through (5).

~~(6) Where the policy is offered through an employer, labor organization, professional, trade, or occupational association, the required notification in Subsection R590-285-20(1) shall be made to the offering entity. However, if the policy is issued to a group under Subsection 31A-22-701(2)(b) or (c), the notification shall be made to each certificateholder.~~

~~(7) Nothing in this section shall prohibit an insurer from offering any policy, rider, certificate, or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.~~

~~(8) This section does not apply to life insurance policies or riders containing accelerated limited long-term care benefits.~~

~~(9) This section shall become effective on policies issued on or after July 1, 2021.~~

~~R590-285-21. Right to Reduce Coverage and Lower Premiums.~~

~~(1)(a) Every limited long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:~~

~~(i) reducing the maximum benefit; or~~

~~(ii) reducing the daily, weekly, or monthly benefit amount.~~

~~(b) The insurer may also offer other reduction options that are consistent with the policy or certificate design, or the insurer's administrative processes.~~

~~(c) In the event the reduction in coverage involves the reduction or elimination of the inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.~~

~~(2) The provision shall include a description of the process for requesting and implementing a reduction in coverage.~~

~~(3) The premium for the reduced coverage shall:~~

~~(a) be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and~~

~~(b) be consistent with the approved rate table.~~

~~(4) The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.~~

~~(5) If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of the policyholder's or certificateholder's right to reduce coverage and premiums in the notice required by Subsection R590-285-6(1)(c) of this regulation.~~

~~(6) The requirements of Subsections R590-285-21(1) through (5) shall apply to any limited long-term care policy issued in this state on or after January 1, 2022.~~

~~(7)(a) A premium increase notice required by Subsection R590-285-8(5) shall include:~~

~~(i) an offer to reduce policy benefits provided by the current coverage consistent with the requirements of this section; and~~

~~(ii) a disclosure stating that all options available to the policyholder may not be of equal value.~~

~~(b) The requirements of this Subsection R590-285-21(7) shall apply to any rate increase implemented in this state on or after January 1, 2022.~~

~~R590-285-22. Nonforfeiture Benefit Requirement.~~

~~(1) To comply with the option to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-2005:~~

~~(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-285-22(4); and~~

~~(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.~~

~~(2) Should the offer made under Section 31A-22-2005 be rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit on lapse in Subsection R590-285-22(3)(d) shall still apply.~~

~~(3)(a) After rejection of the offer made under Section 31A-22-2005, for individual and group policies without nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse.~~

~~(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.~~

~~(c) A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding 50% of the insured's initial annual premium. Unless otherwise required, policyholders shall be notified at least 45 days prior to the due date of the premium reflecting the rate increase.~~

~~(d) On or before the effective date of a substantial premium increase as defined in R590-285-22(3)(c), the insurer shall:~~

~~(i) offer to reduce policy benefits provided by the current coverage consistent with the requirements of Section R590-285-21 so that required premium payments are not increased;~~

~~(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-285-22(4). This option may be elected at any time during the 45-day period referenced in Subsection R590-285-22(3)(c); and~~

~~(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 45-day period referenced in Subsection R590-285-22(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-285-22(3)(d)(ii).~~

~~(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with Subsection R590-285-22(3)(c), are described in this subsection.~~

~~(a) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up limited long-term care insurance coverage after lapse. The same benefits, amounts, and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-285-22(4)(c).~~

~~(b) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-285-22(5).~~

~~(c) The nonforfeiture benefit shall begin no later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.~~

~~(d) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.~~

~~(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid-up status will not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.~~

~~(6) There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.~~

~~(7) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-285-22(3)(c) or (d), a replacing insurer that purchased or otherwise assumed a block or blocks of limited long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.~~

~~R590-285-23. Standards for Benefit Triggers.~~

~~(1) A limited long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits may not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.~~

~~(2)(a) Activities of daily living shall include at least the following as defined in Subsection R590-285-4(1) and in the policy:~~

~~(i) bathing;~~

~~(ii) continence;~~

~~(iii) dressing;~~

~~(iv) eating;~~

~~(v) toileting; and~~

~~(vi) transferring.~~

~~(b) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-285-23(2)(a) as long as they are defined in the policy.~~

~~(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however, the provisions may not restrict, and are not in lieu of, the requirements contained in Subsections R590-285-23(1) and (2).~~

~~(4) For purposes of this section, the determination of a deficiency may not be more restrictive than:~~

~~(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or~~

~~(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.~~

~~(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses, or social workers.~~

~~(6) Limited long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.~~

~~R590-285-24. Appealing an Insurer's Determination That the Benefit Trigger is Not Met.~~

~~(1) For purposes of this section, "authorized representative" is authorized to act as the covered person's personal representative within the meaning of 45 CFR 164.502(g) promulgated by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act and means the following:~~

~~(a) a person to whom a covered person has given express written consent to represent the covered person in an external review;~~

~~(b) a person authorized by law to provide substituted consent for a covered person; or~~

~~(c) a family member of the covered person or the covered person's treating health care professional only when the covered person is unable to provide consent.~~

~~(2) If an insurer determines that the benefit trigger of a limited long-term care insurance policy has not been met, it shall provide a clear, written notice to the insured and the insured's authorized representative, if applicable, of all of the following:~~

~~(a) the reason that the insurer determined that the insured's benefit trigger has not been met;~~

~~(b) the insured's right to internal appeal in accordance with Subsection R590-285-24(3), and the right to submit new or additional information relating to the benefit trigger denial with the appeal request; and~~

~~(c) the insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination reviewed under the independent review process in accordance with Section R590-285-25.~~

~~(3) Internal Appeal.~~

~~(a) The insured or the insured's authorized representative may appeal the insurer's adverse benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within 180 days after the insured and the insured's authorized representative, if applicable, receives the insurer's benefit determination notice.~~

~~(b) The internal appeal shall be considered by an individual or group of individuals designated by the insurer, provided that the individual or individuals making the internal appeal decision may not be the same individual or individuals who made the initial benefit determination.~~

~~(c) The internal appeal shall be completed, and written notice of the internal appeal decision shall be sent to the insured and the insured's authorized representative, if applicable, within 30 calendar days of the insurer's receipt of all necessary information upon which a final determination can be made.~~

~~(d) If the insurer's original determination is upheld after the internal appeal process has been exhausted and new or additional information has not been provided to the insurer, the insurer shall provide a written description of the insured's right to request an independent review of the benefit determination as described in Section R590-285-25 to the insured and the insured's authorized representative, if applicable.~~

~~(e) As part of the written description of the insured's right to request an independent review, an insurer shall include the following, or substantially equivalent, language: "We have determined that the benefit eligibility criteria ("benefit trigger") of your (policy) (certificate) has not been met. You may have the right to an independent review of our decision conducted by long-term care professionals who are not associated with us. Please send a written request for independent review to us at (address). You must inform us, in writing, of your election to have this decision reviewed within 180 days of receipt of this letter. We will choose an independent review organization for you and refer the request for independent review to it."~~

~~(f) If the insurer does not believe the benefit trigger decision is eligible for independent review, the insurer shall inform the insured and the insured's authorized representative, if applicable, in writing and include in the notice the reasons for its determination of independent review ineligibility.~~

~~(g) The appeal process is not deemed to be a "new service or provider" as referenced in Section R590-285-20 and therefore does not trigger the notice requirements of that section.~~

~~R590-285-25. Independent Review of Benefit Trigger Determination.~~

~~(1) Request. The insured or the insured's authorized representative may request an independent review of the insurer's benefit trigger determination after the internal appeal process outlined in Subsection R590-285-24(3) has been exhausted. A written request for independent review may be made by the insured or the insured's authorized representative to the insurer within 180 days after the insurer's written notice of the final internal appeal decision is received by the insured and the insured's authorized representative, if applicable.~~

~~(2) Cost. The cost of the independent review shall be borne by the insurer.~~

~~(3) Independent Review Process.~~

~~(a) Within five business days of receiving a written request for independent review, the insurer shall refer the request to the independent review organization. The insurer shall choose an independent review organization approved by the commissioner. The insurer shall vary its selection of authorized independent review organizations on a rotating basis.~~

~~(b) The insurer shall refer the request for independent review of a benefit trigger determination to an independent review organization, subject to the following:~~

~~(i) the independent review organization shall be on a list of approved independent review organizations that satisfy the requirements of a qualified long-term care insurance independent review organization contained in this section;~~

~~(ii) the independent review organization may not have any conflicts of interest with the insured, the insured's authorized representative, if applicable, or the insurer; and~~

~~(iii) such review shall be limited to the information or documentation provided to and considered by the insurer in making its determination, including any information or documentation considered as part of the internal appeal process.~~

~~(c) If the insured or the insured's authorized representative has new or additional information not previously provided to the insurer, whether submitted to the insurer or the independent review organization, such information shall first be considered in the internal review process, as set forth in Subsection R590-285-24(3).~~

~~(i) While this information is being reviewed by the insurer, the independent review organization shall suspend its review and the time period for review is suspended until the insurer completes its review.~~

~~(ii) The insurer shall complete its review of the information and provide written notice of the results of the review to the insured and the insured's authorized representative, if applicable, and the independent review organization within five business days of the insurer's receipt of such new or additional information.~~

~~(iii)(A) If the insurer maintains its denial after such review, the independent review organization shall continue its review, and render its decision within the time period specified in Subsection R590-285-25(3)(i).~~

~~(B) If the insurer overturns its decision following its review, the independent review request shall be considered withdrawn.~~

~~(d) The insurer shall acknowledge in writing to the insured and the insured's authorized representative, if applicable, and the commissioner that the request for independent review has been received, accepted, and forwarded to an independent review organization for review. Such notice will include the name and address of the independent review organization.~~

~~(e) Within five business days of receipt of the request for independent review, the independent review organization assigned shall notify the insured and the insured's authorized representative, if applicable, and the insurer, that it has accepted the independent review request and identify the type of licensed health care professional assigned to the review. The assigned independent review organization shall include in the notice a statement that the insured or the insured's authorized representative may submit in writing to the independent review organization, within seven days following the date of receipt of the notice, additional information and supporting documentation that the independent review organization should consider when conducting its review.~~

~~(f) The independent review organization shall review all of the information and documents that are provided to the independent review organization. The independent review organization shall provide copies of any documentation or information provided by the insured or the insured's authorized representative to the insurer for its review, if it is not part of the information or documentation submitted by the insurer to the independent review organization. The insurer shall review the information and provide its analysis of the new information in accordance with Subsection R590-285-25(3)(h).~~

~~(g) The insured or the insured's authorized representative may submit, at any time, new or additional information not previously provided to the insurer but that is pertinent to the benefit trigger denial. The insurer shall consider such information and affirm or overturn its benefit trigger determination. If the insurer affirms its benefit trigger determination, the insurer shall promptly provide such new or additional information to the independent review organization for its review, along with the insurer's analysis of such information.~~

~~(h) If the insurer overturns its benefit trigger determination:~~

~~(i) the insurer shall provide notice to the independent review organization, the insured, and the insured's authorized representative, if applicable, of its decision; and~~

~~(ii) the independent review process shall immediately cease.~~

~~(i) The independent review organization shall provide the insured and the insured's authorized representative, if applicable, and the insurer written notice of its decision, within 30 days from receipt of the referral. If the independent review organization overturns the insurer's decision, it shall:~~

~~(i) establish the precise date within the specific period of time under review that the benefit trigger was deemed to have been met; and~~

~~(ii) specify the specific period of time under review for which the insurer declined eligibility, but during which the independent review organization deemed the benefit trigger to have been met.~~

~~(j) The decision of the independent review organization with respect to whether the insured met the benefit trigger will be final and binding on the insurer.~~

~~(k) The independent review organization's determination shall be used solely to establish liability for benefit trigger decisions, and is intended to be admissible in any proceeding only to the extent it establishes the eligibility of benefits payable.~~

~~(l) Nothing in this section shall restrict the insured's right to submit a new request for benefit trigger determination after the independent review decision, should the independent review organization uphold the insurer's decision.~~

~~(m)(i) The commissioner shall utilize the criteria set forth in Appendix F, Guidelines for Long-Term Care Independent Review Entities, in approving entities to review long-term care insurance benefit trigger decisions.~~

~~(ii) The commissioner shall accept another state's certification of an independent review organization, provided such state requires the independent review organization to meet substantially similar qualifications as those contained in Appendix F.~~

~~(n) The commissioner shall maintain and periodically update a list of approved independent review organizations.~~

~~(4) Certification of Long-Term Care Insurance Independent Review Organizations. The commissioner shall certify or approve a qualified long-term care insurance independent review organization, provided the independent review organization demonstrates to the satisfaction of the commissioner that it is unbiased and meets the following qualifications:~~

~~(a) have on staff, or contract with, a qualified and licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment such as physical therapy, occupational therapy, neurology, physical medicine, and rehabilitation, to conduct the review;~~

~~(b) neither it nor any of its licensed health care professionals may, in any manner, be related to or affiliated with an entity that previously provided medical care to the insured;~~

~~(c) utilize a licensed health care professional who is not an employee of the insurer or related in any manner to the insured;~~

~~(d) neither it nor its licensed health care professional who conducts the reviews may receive compensation of any type that is dependent on the outcome of the review;~~

~~(e) be approved by the commissioner to conduct such reviews if the state requires such approvals or certifications;~~

~~(f) provide a description of the fees to be charged by it for independent reviews of a limited long-term care insurance benefit trigger decision. Such fees shall be reasonable and customary for the type of limited long-term care insurance benefit trigger decision under review; and~~

~~(g) provide the name of the medical director or health care professional responsible for the supervision and oversight of the independent review procedure.~~

~~(5) Maintenance of Records and Reporting Obligations by Independent Review Organizations. Each certified independent review organization shall comply with the following:~~

~~(a) maintain written documentation establishing the date it receives a request for independent review, the date each review is conducted, the resolution, the date such resolution was communicated to the insurer and the insured, the name and professional status of the reviewer conducting such review in an easily accessible and retrievable format for the year in which it received the information, plus three calendar years;~~

~~(b) be able to document measures taken to appropriately safeguard the confidentiality of such records and prevent unauthorized use and disclosures in accordance with applicable federal and state law;~~

~~(c) report annually to the commissioner, by June 1 for the previous calendar year, in the aggregate and for each limited long-term care insurer all of the following:~~

~~(i) the total number of requests received for independent review of limited long-term care benefit trigger decisions;~~

~~(ii) the total number of reviews conducted and the resolution of such reviews;~~

~~(iii) the number of reviews withdrawn prior to review; and~~

~~(iv) the percentage of reviews conducted within the prescribed timeframe set forth in Subsection R590-285-25(3)(i); and~~

~~(d) report immediately to the commissioner any change in its status which would cause it to cease meeting any of the qualifications required of an independent review organization performing independent reviews of limited long-term care benefit trigger decisions.~~

~~(6) Additional Rights. Nothing contained in this section shall limit the ability of an insurer to assert any rights an insurer may have under the policy related to:~~

~~(a) an insured's misrepresentation;~~

~~(b) changes in the insured's benefit eligibility; and~~

~~(c) terms, conditions, and exclusions of the policy, other than failure to meet the benefit trigger.~~

~~**R590-285-26. Standard Format Outline of Coverage.**~~

~~(1) The outline of coverage shall be substantially similar to Appendix D.~~

~~(2) The outline of coverage shall be a free-standing document, using no smaller than ten-point type.~~

~~(2) The outline of coverage shall contain no material of an advertising nature.~~

~~(3) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.~~

~~(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.~~

~~**R590-285-27. Documents Incorporated by Reference.**~~

~~(1) Appendix A. Potential Premium Increase Disclosure Form, January 2021 revision.~~

~~(2) Appendix B. Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.~~

~~(3) Appendix C. Notice to Applicant Regarding Replacement of Accident and Sickness or Limited Long-Term Care Insurance or Long-Term Care Insurance, January 2021 revision.~~

~~(4) Appendix D. Outline of Coverage, January 2021 revision.~~

~~(5) Appendix E. Replacement and Lapse Reporting Form, January 2021 revision.~~

~~(6) Appendix F. Guidelines for Long-Term Care Independent Review Entities, January 2021 revision.~~

~~**R590-285-28. Effective Date.**~~

~~The commissioner will begin enforcing the provisions of this rule on July 1, 2021.~~

~~**R590-285-29. Severability.**~~

~~If any provision of this rule, R590-285, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~]

R590-285-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-22-2006.

R590-285-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) protect applicants from unfair or deceptive sales or enrollment practices;

(b) facilitate public understanding and comparison of limited long-term care insurance; and

(c) facilitate flexibility and innovation in the development of limited long-term care insurance.

(2) Except as otherwise specifically provided, this rule applies to any limited long-term care insurance delivered or issued for delivery in this state on or after July 1, 2021.

R590-285-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-2002. Additional terms are defined as follows:

(1)(a) "Authorized representative" means an individual authorized to act as an insured's personal representative under 45 CFR 164.502(g).

(b) "Authorized representative" includes:

(i) a person to whom an insured gives express written consent to represent the insured in an external review;

(ii) a person authorized by law to provide substituted consent for an insured; or

(iii) only when the insured is unable to provide consent:

(A) a family member of the insured; or

(B) the insured's treating health care professional

(2) "Benefit trigger," for the purposes of independent review, means a contractual provision conditioning the payment of benefits on a determination of the insured's:

(a) ability to perform activities of daily living; or

(b) cognitive impairment.

(3) "Certificate" means a limited long-term care insurance certificate.

(4) "Cold lead advertising" means using, directly or indirectly, any method of marketing that fails to disclose in a conspicuous manner the method of marketing is a solicitation of insurance and that contact will be made by a producer or an issuer.

(5) "Continuation of coverage" means a provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, and that is subject only to the continued timely payment of premium when due.

(6) "Conversion of coverage" means a provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, shall be entitled to the issuance of a converted policy by the insurer, without evidence of insurability, if the individual was continuously insured under the group policy or another group policy which it replaced six months immediately before termination.

(7) "Converted policy" means an individual policy providing benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided under the group policy from which the conversion is made.

(8) "High pressure tactics" means using a method of marketing to induce, or tend to induce, the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(9) "Licensed health care professional" means an individual qualified by education and experience in an appropriate field to determine, by record review, an insured's actual functional or cognitive impairment.

(10) "Limited distribution channel" means a sale through a discrete entity, such as a financial institution or brokerage, where a specialized product is available that is not available for sale to the general public.

(11) "Limited long-term care benefit classification" means policy benefits classified as:

(a) institutional limited long-term care benefits only;

(b) non-institutional limited long-term care benefits only; or

(c) comprehensive limited long-term care benefits.

(12) "Misrepresentation" means misrepresenting a material fact when selling or offering to sell a policy or certificate.

(13) "Policy" means a limited long-term care insurance policy.

(14) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(15)(a) "Similar policy forms" means all limited long-term care insurance policies and certificates issued by an insurer in the same limited long-term care benefit classification.

(b) Group limited long-term care insurance certificates are not considered similar to certificates or policies otherwise issued as limited long-term care insurance, but are similar to other comparable certificates with the same limited long-term care benefit classifications.

(16) "State of policy issue" means the state in which a policy was originally issued.

(17) "Twisting" means knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policy or issuer to induce, or tend to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out an insurance policy with another issuer.

R590-285-4. Policy and Certificate Definitions.

A policy or certificate may not use the terms set forth in this section unless the terms are defined and comply with this section.

(1) "Activities of daily living" means bathing, continence, dressing, eating, toileting, and transferring.

(2) "Acute condition" means an individual is medically unstable and requires frequent monitoring by a medical professional, such as a physician or a registered nurse, to maintain their health status.

(3)(a) "Adult day care" means a facility licensed and operating within the scope of the license.

(b) An adult day care facility may not be defined more restrictively than a program, for three or more individuals, of social and health-related services provided during the day in a community group setting to support frail, impaired, elderly, or other disabled adults who can benefit from care in a group setting outside the home.

(4) "Bathing" means washing oneself by sponge bath, in either a tub or shower, including the task of getting into or out of the tub or shower.

(5) "Cognitive impairment" means a deficiency in a person's:

(a) short-term or long-term memory;

(b) orientation as to person, place, and time;

(c) deductive or abstract reasoning; or

(d) safety awareness judgment.

(6) "Continence" means the ability to maintain control of bowel and bladder function or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for a catheter or a colostomy bag.

(7) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(8) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup, or table, or by a feeding tube or intravenously.

(9) "Hands-on assistance" means physical assistance, whether minimal, moderate, or maximal, that without the assistance the individual would not be able to perform the activity of daily living.

(10)(a) "Home care services" means medical and nonmedical services provided to an ill, disabled, or infirm person in the person's residence.

(b) "Home care services" may include homemaker services, assistance with activities of daily living, and respite care services.

(11) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

(12) "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.

(13)(a) "Skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," "home care agency," and all other providers of services shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services.

(b) When the definition requires that the provider be appropriately licensed, certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.

(14) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(15) "Transferring" means moving into or out of a bed, chair, or wheelchair.

R590-285-5. Renewability, Limitations, Exclusions, Termination, and Premium Provisions.

(1) The terms "guaranteed renewable" and "noncancellable" may not be used in an individual policy without further explanatory language in accordance with the disclosure requirements of Section R590-285-7.

(a) An individual policy may not contain a renewal provision other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when:

(i) an insured has the right to continue the policy in force by timely payment of premiums; and

(ii) an insurer does not have a unilateral right to make a change in a provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only if an insured has the right to continue the policy in force by timely payment of premiums during which period the insurer does not have a right to unilaterally make a change in a provision of the policy or in the premium rate.

(d) The term "level premium" may be used only if an insurer may not change the premium.

(2)(a) A policy or certificate may not be delivered or issued for delivery in this state if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(i) alcoholism and drug addiction;

(ii) illness, treatment, or medical condition arising out of:

(A) aviation, only to a non-fare-paying passenger;

(B) participation in a felony, riot, or insurrection, when the insured is a voluntary participant;

(C) service in the armed forces or auxiliary units;

(D) suicide, attempted suicide, or intentionally self-inflicted injury; or

(E) war or act of war, whether declared or undeclared;

(iii) mental health condition, except for cognitive impairment;

(iv) preexisting condition or disease;

(v) service for which a benefit is payable under:

(A) employer's liability or occupational disease law;

(B) Medicare or other governmental program, except Medicaid;

(C) motor vehicle no-fault law; or

(D) state or federal workers' compensation;

(vi) service for which no charge is normally made in the absence of insurance; and

(vii) service provided by a member of the covered person's immediate family.

(b) An insurer may have an exclusion or limitation by provider type.

(c)(i) An insurer may not deny a claim because a service is provided in a state other than the state of policy issue under the following conditions:

(A) when the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, but the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification, or registration; or

(B) when the state other than the state of policy issue licenses, certifies, or registers the provider under another name.

(ii) This subsection doe not prohibit territorial limitations outside of the United States.

(3)(a) Termination of limited long-term care insurance shall be without prejudice to any benefit payable for institutionalization if the institutionalization began while the limited long-term care insurance was in force and continues without interruption after termination.

(b) The extension of a benefit beyond the period the limited long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefit and may be subject to a policy waiting period, and all other applicable provisions of the policy.

(4) A group policy issued in this state shall include a provision for continuation of coverage or conversion of coverage.

(a)(i) A group policy that restricts benefits and services or contains incentives to use certain providers or facilities may provide continuation of coverage or conversion of coverage benefits that are substantially equivalent to the benefits of the existing group policy.

(ii) The commissioner shall make a determination as to the substantial equivalency of benefits, taking into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels, and administrative complexity.

(b)(i) Written application for the converted policy shall be made and the first premium, if any, shall be paid as directed by the insurer within 60 days after the termination of coverage under the group policy.

(ii) The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(c)(i) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated based on the insured's age at inception of coverage under the group policy.

(ii) If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated based on the insured's age at inception of coverage under the group policy replaced.

(d) Continuation of coverage or issuance of a converted policy is mandatory, except when:

(i) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(ii) the terminating coverage is replaced within 31 days after termination by group coverage effective on the day following the termination of coverage:

(A) providing benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided by the terminating coverage; and

(B) having premiums calculated in a manner consistent with the requirements of Subsection (4)(c).

(e)(i) Notwithstanding any other provision of this section, a converted policy issued to an individual who, at the time of the conversion, is covered by another policy that provides benefits on the basis of an incurred expense, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, result in payment of more than 100% of incurred expenses.

(ii) The provision in Subsection (4)(e)(i) applies only if the converted policy provides for a premium decrease or refund that reflects the reduction in benefits payable.

(f) The converted policy may provide that the converted policy benefits, together with the benefits payable under the group policy from which conversion is made, not exceed what would have been payable had the individual's coverage under the group policy remained in force and in effect.

(g) Notwithstanding any other provision of this section, if an insured's eligibility for a group policy is based upon the insured's relationship to another insured, the insured is entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(5)(a) If a group policy is replaced by another group policy issued to the same policyholder, the succeeding insurer shall offer coverage to each person covered under the previous group policy on the date of termination.

(b) Coverage provided or offered to an individual and premiums charged under the new group policy may not:

(i) result in an exclusion for a preexisting condition that would have been covered under the group policy being replaced; and

(ii) vary or otherwise depend on the individual's health or disability status, claim experience, or use of limited long-term care services.

(6)(a) The premium charged to an insured may not increase due to either:

(i) the increasing age of the insured at age 66 or older; or

(ii) the duration the insured has been covered under the policy.

(b)(i) The purchase of additional coverage is not a premium rate increase.

(ii) For the calculation required under Section R590-285-22, the portion of the additional coverage premium shall be added to, and considered part of, the initial annual premium.

(c)(i) A reduction in benefits is not a premium change.

(ii) For the purposes of the calculation required under Section R590-285-22, the initial premium shall be based on the reduced benefits.

(7)(a) In the case of a group policy under Subsection 31A-22-2002(3), a requirement that a signature of an insured be obtained by a producer or insurer shall be satisfied if:

(i) consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer;

(ii) verification of enrollment information is provided to the enrollee; and

(iii) telephonic or electronic enrollment provides necessary and reasonable safeguards to assure:

(A) accuracy, retention, and prompt retrieval of records; and

(B) the ongoing confidentiality of individually identifiable information and privileged information.

(b) An insurer shall make available, upon request of the commissioner, records that demonstrate the insurer's ability to confirm enrollment and coverage amounts.

R590-285-6. Unintentional Lapse, Notice, and Reinstatement.

(1)(a) An applicant may designate at least one person to receive the notice of lapse and termination, in addition to the applicant.

(i) Designation of an additional person does not constitute acceptance of any liability on the third party for services provided to the insured.

(ii) The form used for the written designation shall provide space clearly designated for listing at least one additional person, including each person's full name and home address.

(iii) A policy or certificate may not be issued until the insurer receives from the applicant:

(A) a written designation of at least one person, in addition to the applicant, to receive notice of lapse and termination of the policy or certificate for nonpayment of premium; or

(B) a written waiver dated and signed by the applicant electing not to designate an additional person to receive notice of lapse and termination.

(iv) If an applicant elects not to designate an additional person, the waiver shall state, "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this limited long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(v) The insurer shall notify the insured of the right to change their written designation at least once every two years.

(b)(i) If a policyholder or certificate holder pays a premium through a payroll or pension deduction plan, the insurer shall meet the requirements of this subsection within 60 days after the policyholder or certificate holder is no longer on the payment plan.

(ii) The application or enrollment form shall clearly indicate the payment plan selected by the applicant.

(c)(i) A policy or certificate may not lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, gives notice to the insured and each person designated under this Subsection (1), at the address provided by the insured for purposes of receiving notice of lapse or termination.

(ii) The notice in Subsection (1)(c)(i):

(A) shall be given by postage prepaid first-class United States mail;

(B) may not be given until 30 days after a premium is due and unpaid; and

(C) is considered given five days after the date of mailing.

(2) A policy or certificate shall include a provision providing for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period expired.

(a) The option in this Subsection (2) shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, when appropriate.

(b) The standard of proof of cognitive impairment or loss of functional capacity may not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy or certificate.

R590-285-7. Required Disclosure Provisions.

(1) An individual policy shall contain a renewability provision.

(a) The provision in this Subsection (1) shall:

(i) be appropriately captioned;

(ii) appear on the first page of the policy; and

(iii) clearly state that the coverage is guaranteed renewable or noncancellable.

(b) A policy or certificate, other than a policy or certificate where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(2)(a) A rider or endorsement added to a policy after the date of issue or at reinstatement or renewal that reduces or eliminates a benefit or coverage in the policy shall require a signed acceptance by the insured, unless the insurer:

(i) is effectuating a request made in writing by the insured; or

(ii) is exercising a specifically reserved right under a policy.

(b) After the date of policy issue, any rider or endorsement that increases a benefit or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, except if the increased benefit or coverage is required by law.

(c) When a separate additional premium is charged for a benefit provided in connection with a rider or an endorsement, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) A policy providing payment of benefits based on a standard described as "usual and customary," "reasonable and customary," or similar language, shall include a definition of the term and an explanation of the term in the outline of coverage.

(4) If a policy or certificate contains a preexisting condition limitation, the limitation shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(5) If a policy or certificate contains a limitation or condition for eligibility, the limitation, including any required number of days of confinement, shall appear in a separate paragraph of the policy or certificate and be labeled "Limitations or Conditions on Eligibility for Benefits."

(6) Activities of daily living and cognitive impairment shall be used to measure an insured's need for limited long-term care benefits and shall be described in a policy or certificate in a separate paragraph, including any additional benefit triggers, and be labeled "Eligibility for the Payment of Benefits."

(a) If the triggers differ for different benefits, an explanation of each trigger shall accompany each benefit description.

(b) If an attending physician or other specified person is required to certify a certain level of functional dependency to qualify for benefits, the requirements shall be specified.

R590-285-8. Required Disclosure of Rating Practices to Consumers.

(1) This section applies to:

(a) a policy or certificate issued in this state on or after July 1, 2021; and

(b) a certificate issued under a policy that was in force on July 1, 2021, that became effective on the policy anniversary following January 1, 2022.

(2)(a) Except as provided in Subsections (2)(b) and (2)(c), an insurer shall provide the information listed in this Subsection (2)(a) to the applicant at the time of application or enrollment.

(i) A statement that the policy may be subject to rate increases in the future.

(ii) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's options in the event of a premium rate revision.

(iii) The premium rate or rate schedule applicable to the applicant that is in effect until a request is made for an increase.

(iv) An explanation for applying premium rate or rate schedule adjustments that include:

(A) a description of when premium rate or rate schedule adjustments are effective, such as the next anniversary date or the next billing date; and

(B) the right to a revised premium rate or rate schedule as provided in Subsection (2)(a)(iii) if the premium rate or rate schedule is changed.

(v)(A) Information regarding each premium rate increase on the policy form or similar policy forms in all states over the past 10 years that, at a minimum, identifies:

(I) each policy form for which a premium rate has been increased;

(II) each calendar year the form was available for purchase; and

(III) the amount or percent of each increase expressed as a percentage of the premium rate before the increase, or expressed as a minimum and maximum percentage if the rate increase varies by rating characteristics.

(B) An insurer may provide additional explanatory information related to a rate increase.

(C) An insurer has the right to exclude from the disclosure a premium rate increase that only applies to blocks of business acquired from other nonaffiliated insurers or the policies acquired from another nonaffiliated insurer when increases occurred before the acquisition.

(D)(I) If an acquiring insurer files for a rate increase on a policy form acquired from a nonaffiliated insurer or a block of policy forms acquired from a nonaffiliated insurer, on or before the later of July 1, 2021, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure.

(II) The nonaffiliated insurer shall include the disclosure of that rate increase.

(E) If an acquiring insurer in Subsection (2)(a)(v)(D) files for a subsequent rate increase on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from a nonaffiliated insurer referenced in Subsection (2)(a)(v)(D), the acquiring insurer shall make all required disclosures required by Subsection (2)(a)(v), including disclosure of the earlier rate increase referenced in Subsection (2)(a)(v)(D).

(b) If the method of application does not allow for delivery of the information in Subsection (2)(a) at the time of application or enrollment, an insurer shall provide the information to the applicant before or with the delivery of the policy or certificate.

(c) This Subsection (2) does not apply to a policy if the insurer may not increase the premium rate or rate schedule.

(3)(a) An applicant shall sign an acknowledgement at the time of application that the insurer made the disclosure required under Subsections (2)(b)(i) and (2)(b)(v), unless the method of application does not allow for signature at that time.

(b) If, due to the method of application, the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign an acknowledgement no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use a form substantially similar to Appendix A of the NAIC Limited Long-Term Care Insurance Model Regulation to comply with the requirements of Subsections (2) and (3).

(5)(a) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least 45 days before the implementation of the premium rate schedule increase by the insurer.

(b) The notice shall include the information required by Subsection (2) when the rate increase is implemented.

R590-285-9. Initial Filing Requirements.

(1) An insurer shall file the following information before making a policy form available for sale:

(a) a copy of the disclosure documents required under Section R590-285-8;

(b) a complete rate schedule; and

(c) an actuarial memorandum that includes:

(i) a statement regarding the actuary's qualifications;

(ii) an explanation of the review performed by the actuary;

(iii) a complete description of all pricing assumptions, including sources and credibility of the data;

(iv) development of the anticipated lifetime loss ratio supported by an exhibit showing lifetime projection of earned premiums and incurred claims based upon the pricing assumptions;

(v) a statement that the premium rate schedule is expected to result in a lifetime loss ratio not less than 55%;

(vi) a statement that the policy design and coverage provided have been reviewed and considered;

(vii) a statement that the underwriting and claim adjudication processes have been reviewed and considered;

(viii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including sensitivity to the mix of business;

(ix) a statement that the reserve requirements have been reviewed and considered;

(x) a description of the valuation assumptions with sufficient detail or sample calculation as to have a complete depiction of the reserve amounts to be held;

(xi)(A) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or

(B) if the statement in Subsection (1)(c)(xi)(A) cannot be made but the underlying gross premiums are expected to maintain a reasonably consistent relationship:

(A) a complete description of the situations where this does not occur; and

(B) an aggregate distribution of anticipated issues; and

(xii) an actuarial certification dated and signed by the qualified actuary that all information presented in the actuarial memorandum is accurate and complete.

(2) An insurer shall retain sufficient documentation from the initial pricing that a qualified actuary could recreate the initial rates.

(a) The documentation shall be sufficient to provide actual to expected analyses of:

(i) claims;
(ii) incidence rates;
(iii) persistency;
(iv) mix of business; and
(v) loss ratios at the same level of detail used in the initial pricing.
(b) If an insurer retains a consultant to price a policy form, the insurer shall require the consultant to provide the documentation to the insurer, rather than being retained solely by the consultant.
(c) If an insurer sells or cedes complete risk responsibility for a policy form, the insurer or cedant shall provide to the buyer or reinsurer the initial pricing documentation.
(d) An insurer that requests a future premium rate schedule increase but has not retained the initial pricing documentation is limited to a lifetime loss ratio not less than 80%.
(e) An insurer shall retain the initial pricing documentation until one year after the final policyholder is no longer eligible for benefits under the policy.

R590-285-10. Prohibition Against Post-Claims Underwriting.
(1) An application or enrollment form, except one that is guaranteed issue, shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.
(2)(a) If an application or enrollment form contains a question that asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the prescribed medication.
(b) If the medications listed in the application or enrollment form were known by the insurer, or should have been known at the time of application or enrollment, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.
(3)(a) Except for a policy or a certificate that is guaranteed issue:
(i) the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a policy or a certificate: "Caution: If your answers on this application are incorrect or untrue, (insert name of insurer) has the right to deny benefits or rescind your policy."; and
(ii) the following language, or language substantially similar to the following, shall be set out conspicuously on the policy or certificate at the time of delivery: "Caution: The issuance of this limited long-term care insurance (insert either policy or certificate) is based upon your responses to the questions on your application. A copy of your (insert either application or enrollment form) (insert either is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)."
(b) The insurer shall deliver to the insured a copy of the completed application or enrollment form no later than at the time of delivery of the policy or certificate unless it was retained by the insured at the time of application or enrollment.

R590-285-11. Minimum Standards for Home and Community Care Benefits in a Limited Long-Term Care Insurance Policy.
(1) If a policy or certificate provides benefits for home care or community care services, it may not limit or exclude benefits by:
(a) requiring that the insured would need care in a skilled nursing facility if home care services are not provided;
(b) requiring the insured to first or simultaneously receive nursing or therapeutic services, or both, in a home, community, or institutional setting before covering home care services;
(c) limiting eligible services to services provided by a registered nurse or a licensed practical nurse;
(d) requiring that a nurse or therapist provide covered services that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of their licensure or certification;
(e) excluding coverage for personal care services provided by a home health aide;
(f) requiring that the provision of home care services be at a level of certification or licensure greater than that required for the eligible service;
(g) requiring that the insured have an acute condition before covering home care services;
(h) limiting benefits to services provided by a Medicare-certified agency or provider; or
(i) excluding coverage for adult day care services.
(2)(a) A policy or certificate, if it provides for home care or community care services, shall provide total home care or community care coverage that is a dollar amount equivalent to at least one-half of the coverage available for nursing home benefits under the policy or certificate, at the time covered home care or community care services are received.
(b) The requirement in Subsection (2)(a) does not apply to a policy or certificate issued to a resident of a continuing care retirement community.
(3) Home care coverage may be applied to non-home care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

R590-285-12. Requirement to Offer Inflation Protection.
(1)(a) An insurer may not offer a policy unless the insurer also offers to the policyholder, in addition to any other inflation protection, the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of limited long-term care services covered by the policy.

(b) An insurer shall offer to a policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(i) increases benefit levels annually so that the increases are compounded annually at a rate not less than 3%;

(ii) guarantees the insured the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined and in an amount no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 3% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(iii) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) If a policy is issued to a group, the insurer shall make the required offer to the group policyholder and to each proposed certificate holder.

(3)(a) An insurer shall include the following in or with the outline of coverage:

(i) a graphic comparison of the benefit levels over at least a 20-year period of a policy that increases benefits over the policy period with a policy that does not increase benefits; and

(ii) any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy that contains these benefits shall continue regardless of an insured's age, claim status, claim history, or the length of time the individual has been insured under the policy.

(5)(a) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant.

(b) The offer in Subsection (5)(a) shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) An insurer shall include inflation protection in a policy unless the insurer obtains a rejection of inflation protection signed by the policyholder, either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (insert plan name) and I reject inflation protection."

R590-285-13. Requirements for Application Forms and Replacement Coverage.

(1)(a) An application or enrollment form shall include questions to elicit information as to whether, as of the date of the application, the applicant:

(i) currently has:

(A) a limited long-term care insurance policy or certificate; or

(B) a long-term care insurance policy or certificate; and

(ii) whether the policy or certificate is intended to replace any other accident and health insurance policy or certificate currently in force.

(b) The questions in Subsection (1)(a) shall include:

(i) "Do you currently have limited long-term care insurance or long-term care insurance?";

(ii) "Did you have limited long-term care insurance or long-term care insurance in force during the last twelve (12) months?

If so, with which company?

If the policy lapsed, when did it lapse?";

(iii) "Are you covered by Medicaid?; and

(iv) "Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?"

(c) A supplementary application signed by the applicant and producer may be used, except when the coverage is sold without a producer.

(d) For a replacement policy issued to a group, the questions may be modified to the extent necessary to elicit information about other health insurance or limited long-term care insurance other than the group policy being replaced, provided the certificate holders have been notified of the replacement.

(2) A producer shall list other accident and health insurance policies they sold to the applicant, identifying policies sold:

(a) that are still in force; and

(b) in the past five years that are no longer in force.

(3)(a)(i) An insurer using a direct response solicitation method shall deliver a notice regarding replacement of accident and health insurance, limited long-term care insurance, or long-term care insurance to the applicant when the policy or certificate is issued.

(ii)(A) If replacement is intended, the replacing insurer shall notify the existing insurer in writing of the proposed replacement identifying the insurer, the insured, and the policy number or address including zip code.

(B) The notice shall be made within five working days from the date the application is received by the insurer or the date the policy or certificate is issued, whichever is sooner.

(b)(i) An insurer using a solicitation method other than direct response shall, upon determining that a sale will involve a replacement, provide to the applicant, before issuance or delivery of the individual policy, a notice regarding replacement of accident and health insurance, limited long-term care insurance, or long-term care insurance.

(ii) A copy of the notice shall be provided to the applicant and an additional copy signed by the applicant shall be retained by the insurer.

(c) A replacement notice shall be provided in a manner substantially similar to the following NAIC Limited Long-Term Care Insurance Model Regulation form:

(i) "NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LIMITED LONG-TERM CARE INSURANCE OR LONG-TERM CARE INSURANCE"; or

(ii) "NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR LIMITED LONG-TERM CARE INSURANCE OR LONG-TERM CARE INSURANCE".

R590-285-14. Reporting Requirements.

(1)(a) An insurer shall maintain records of each producer's:

(i) amount of replacement sales as a percent of the producer's total annual sales; and

(ii) amount of lapses of policies sold by the producer as a percent of the producer's total annual sales.

(b) An insurer shall file with the commissioner annually by June 30, using a form substantially similar to Appendix B of the NAIC Limited Long-Term Care Model Regulation:

(i) the 10% of its producers with the greatest percentages of lapses and replacements as measured by Subsection (1)(a);

(ii) the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and

(iii) the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(2) This subsection applies to an individual policy issued in this state on or after July 1, 2021.

(a)(i) Starting in the second year following the year in which an initial rate schedule is first used, an insurer shall file, by May 1 of each year, an actuarial certification prepared, dated, and signed by a qualified actuary that includes the following information:

(A) a statement of the sufficiency of the current premium rate schedule;

(B) for a rate schedule that is no longer marketed, a statement that the rate schedule:

(I) continues to be sufficient to cover anticipated costs under best estimate assumptions; or

(II) may no longer be sufficient; and

(C) a description of the review performed that led to the statement.

(ii) If a rate schedule is no longer sufficient under Subsection (2)(a)(i)(B)(II), an insurer shall file, within 60 days of the actuarial certification submission, a plan of action and time frame for the re-establishment of adequate margins for moderately adverse experience.

(b)(i) An actuarial memorandum dated and signed by a qualified actuary who prepares the information shall be prepared to support the actuarial certification and provide the following:

(A) a detailed explanation of the data sources and review performed by the actuary before making the statement;

(B) a complete description of experience assumptions and their relationship to the initial pricing assumptions;

(C) a description of the credibility of the experience data; and

(D) an explanation of the analysis and testing performed to determine the current presence of margins.

(ii) The insurer shall submit the actuarial memorandum at least once every three years with the actuarial certification under Subsection (2)(a).

R590-285-15. Premium Rate Schedule Increases.

(1) This section applies to any policy or certificate issued in this state on or after July 1, 2021.

(2) An insurer may not request a rate increase until the projected lifetime loss ratio, under best estimate assumptions, exceeds the anticipated lifetime loss ratio plus 2%.

(3) An insurer shall file with the commissioner a premium rate schedule increase before sending the notice to the policyholders and shall include:

(a) a revised rate schedule;

(b) an actuarial memorandum that includes;

(i) a statement regarding the actuary's qualifications;

(ii) an explanation of the review performed by the actuary;

(iii) a complete description of all pricing assumptions and any changes from the initial and any prior filing;

(iv) an exhibit showing policy count, actual incurred claims, and earned premiums by duration both on a state and nationwide basis, and any revised projections based on the revised pricing assumptions;

(v) an exhibit showing actual to expected loss ratios by duration;

(vi) a statement that the revised premium schedule is expected to result in a lifetime loss ratio not less than 55%;

(vii) a sensitivity analysis of the anticipated lifetime loss ratio to the changes in the individual assumptions, including any revised assumptions, including sensitivity to the mix of business;

(viii) a description of the valuation assumptions, including any revisions since the initial and any prior filing, with sufficient detail or sample calculation to have a complete depiction of the reserve amounts to be held; and

(ix) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses, or if such statement cannot be made, a complete description of the situation where this does not occur; and

(c) an actuarial certification dated and signed by the actuary that the information presented in the actuarial memorandum is accurate and complete.

(4) An insurer that is granted a premium rate schedule increase shall retain similar documentation related to the rate increase request as required in Subsection R590-285-9(2).

R590-285-16. Filing Requirements for Advertising.

(1) Upon request, an insurer shall file with the commissioner a copy of any limited long-term care insurance advertisement used in, or intended for use in, Utah.

(2) An advertisement shall be retained for at least three years from the date the advertisement was first used.

R590-285-17. Standards for Marketing.

(1) An insurer or other entity marketing limited long-term care insurance in this state, directly or through a producer, shall:

(a) establish marketing procedures and training requirements to ensure that:

(i) any marketing activities, including a comparison of policies, by its producers are fair and accurate; and

(ii) excessive insurance is not sold or issued;

(b) display prominently on the first page of the policy and outline of coverage, by type, stamp, or other appropriate means, the following: "Notice to buyer: This policy may not cover all of the costs associated with limited long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.";

(c) provide to an applicant copies of the disclosure form under Subsection R590-285-8(4);

(d) make every reasonable effort to identify whether a prospective applicant already has accident and health insurance, limited long-term care insurance, or long-term care insurance including the types and amounts of any such insurance;

(e) establish auditable procedures for verifying compliance with this Subsection (1);

(f) use the terms "noncancellable" or "level premium" only when the policy or certificate conforms with Subsection R590-285-5(1), as applicable; and

(g) if included, provide an explanation of contingent benefit upon lapse provided under Section R590-285-22.

(2) In addition to the practices prohibited under Section 31A-23a-402, the following acts and practices are prohibited:

(a) cold lead advertising;

(b) high pressure tactics;

(c) misrepresentation; and

(d) twisting.

(3)(a) An insurer offering a policy to an association shall require the association to:

(i) educate its members concerning limited long-term care issues so the members can make informed decisions;

(ii) provide objective information regarding a policy or certificate endorsed or sold by the association to ensure the members receive a balanced and complete explanation of the features in the policy or certificate that is being endorsed or sold; and

(iii) disclose in each limited long-term care insurance solicitation:

(A) the specific nature and amount of the compensation arrangements, including all fees, commissions, administrative fees, and other forms of financial support, that the association receives from the endorsement or sale of the policy or certificate to its members; and

(B) a brief description of the process under which the policy and the insurer issuing the policy were selected.

(b) If an association and an insurer have interlocking directorates or trustee arrangements, the insurer shall require the association to disclose that fact to its members.

(c) An insurer shall require the board of directors of an association selling or endorsing a policy or certificate to review and approve the policy and the compensation arrangements made with the insurer.

(d) An insurer shall:

(i) actively monitor the marketing efforts of an association and a producer; and

(ii) review and approve all marketing materials or other insurance communications used to promote sales or marketing sent to members regarding a policy or certificate.

(e) An insurer may not issue a policy to an association or a certificate to an association policy, or continue to market a policy or certificate, unless the insurer certifies annually that the association complies with the requirements in this Subsection (3).

(f) An insurer's failure to comply with the filing and certification requirements of this section constitutes an unfair trade practice in violation of Section 31A-23a-402.

R590-285-18. Suitability.

(1) An insurer shall:

(a) develop and use suitability standards and procedures, including a suitability letter for an applicant, to determine whether the purchase or replacement of limited long-term care insurance is appropriate for the needs of the applicant;

(b) include in its suitability standards and procedure:

(i) consideration of the advantages and disadvantages of insurance to meet the needs of the applicant; and

(ii) discussion with the applicant how the benefits and costs of limited long-term care insurance compare with long-term care insurance;

(c) train its producers in its suitability standards and procedures; and

(d) maintain a copy of its suitability standards and procedures.

(2)(a) If an insurer determines that the applicant does not meet its financial suitability standards, or if the applicant declines to provide the information, the insurer may reject the application.

(b) If the applicant declines to provide financial information, the insurer may use another method to verify the applicant's intent.

(3) The insurer shall include either the applicant's signed suitability letter or a record of the alternative method of verification as part of the applicant's file.

R590-285-19. Prohibition Against Preexisting Conditions and Probationary Periods in a Replacement Policy or Certificate.

If a policy or certificate replaces another policy or certificate, the replacing insurer shall waive any time periods applicable to a preexisting condition or probationary period in the new policy for similar benefits to the extent that similar exclusions were satisfied under the original policy.

R590-285-20. Availability of New Services or Providers.

(1) This section applies to a policy issued on or after July 1, 2021.

(2)(a) An insurer shall notify a policyholder of the availability of a new policy series that provides coverage not previously available to the general public for new providers or new limited long-term care services.

(b) The insurer shall provide the notice within 12 months of the date the new policy series is made available in this state.

(3)(a) A notice is not required for:

(i) a policy issued before July 1, 2021; or

(ii) a policyholder or certificate holder who:

(A) is currently eligible for benefits;

(B) is within an elimination period or on a claim;

(C) previously had been in claim status; or

(D) is not eligible to apply for coverage due to issue age limitations under the new policy.

(b) The insurer may require that a policyholder meet each eligibility requirement, including underwriting and payment of the required premium, to add the new services or providers.

(4) The insurer shall make the new coverage available by:

(a) adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) exchanging the existing policy or certificate for one with an issue age based on the present age of the insured by:

(i) recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate; and

(ii) basing premium credits on premiums paid or reserves held for the prior policy or certificate;

(c) exchanging the existing policy or certificate for a new policy or certificate where:

(i) consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged; and

(ii) the cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(d) an alternative program developed by the insurer that meets the intent of this section.

(5)(a) An insurer is not required to notify a policyholder of a new proprietary policy series created for use in a limited distribution channel.

(b) An insurer shall notify a policyholder who purchased a proprietary policy through a limited distribution channel of a new policy series that provides coverage for new providers or limited long-term care services not previously available to that limited distribution channel.

(6) A new policy issued pursuant to this section:

(a) is an exchange;

(b) is not a replacement; and

(c) is not subject to Section R590-285-13 or R590-285-19, or Subsection R590-285-14(1).

(7)(a) If the policy is offered through an employer, a labor organization, or an occupational, professional, or trade association, the required notification in Subsection (2) shall be made to the policyholder.

(b) If the policy is issued to a group under Section 31A-22-504, 31A-22-505, or 31A-22-507, or Subsection 31A-22-701(1)(b), the notification shall be made to each certificate holder.

(8)(a) This section does not prohibit an insurer from offering a policy, rider, certificate, or coverage change to any policyholder or certificate holder.

(b)(i) Upon request, a policyholder may apply for currently available coverage that includes the new services or providers.

(ii) The insurer may require that a policyholder meet each eligibility requirement, including underwriting and payment of the required premium, to add the new services or providers.

(9) This section does not apply to a life insurance policy or rider containing accelerated limited long-term care benefits.

R590-285-21. Right to Reduce Coverage and Lower Premiums.

(1)(a) A policy or certificate shall include a provision that allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

(i) reducing the maximum benefit; or

(ii) reducing the daily, weekly, or monthly benefit amount.

(b) An insurer may also offer another reduction option that is consistent with the policy or certificate design, or the insurer's administrative processes.

(c) If the reduction in coverage involves the reduction or elimination of an inflation protection provision, the insurer shall allow the policyholder to continue the benefit amount in effect at the time of the reduction.

(2) The provision in Subsection (1) shall include the process to request and implement a reduction in coverage.

(3) The premium for the reduced coverage shall:

(a) be based on the same age and underwriting class used to determine the premium for the coverage currently in force; and

(b) be consistent with the approved rate table.

(4) An insurer may limit a reduction in coverage to a plan or an option available for a policy form and to the benefits available after consideration of a claim paid or a claim that is payable.

(5) If a policy or certificate is about to lapse, an insurer shall provide a written notice to the policyholder or certificate holder of the policyholder's or certificate holder's right to reduce coverage and premiums under Subsection R590-285-6(1)(c).

(6) The requirements of Subsections (1) through (5) shall apply to a policy issued in this state on or after January 1, 2022.

(7)(a) A premium increase notice under Subsection R590-285-8(5) shall include:

(i) an offer to reduce policy benefits provided by the current coverage consistent with the requirements of this section; and

(ii) a disclosure stating that all options available to the policyholder may not be of equal value.

(b) The requirements of this Subsection (7) apply to any rate increase implemented in this state on or after January 1, 2022.

R590-285-22. Nonforfeiture Benefit and Contingent Benefit Upon Lapse Requirement.

(1)(a) A policy or certificate offered with a nonforfeiture benefit shall have coverage elements, eligibility, benefit triggers, and benefit length that are the same as coverage to be issued without nonforfeiture benefits.

(b) The nonforfeiture benefit included in the offer shall be the benefit described in Subsection (4) and be in writing, if the nonforfeiture benefit is not otherwise described in the outline of coverage or other materials given to the prospective policyholder.

(2) If a policy does not offer a nonforfeiture benefit, the policy shall include a contingent benefit upon lapse described in this section.

(3)(a) If a group policyholder elects to make a nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(b)(i) A contingent benefit upon lapse shall be triggered every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding 50% of the insured's initial annual premium.

(ii) Unless otherwise required, the insurer shall notify an insured at least 45 days before the due date of the premium reflecting the rate increase.

(c) On or before the effective date of a substantial premium increase described in Subsection (3)(b), an insurer shall:

(i) offer to reduce the policy benefits provided by the current coverage consistent with the requirements of Section R590-285-21 so required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection (4) at any time during the 45-day period in Subsection (3)(b); and

(iii) notify the policyholder or certificate holder that a default or lapse at any time during the 45-day period in Subsection (3)(b) shall be considered the election of the offer to convert under Subsection (3)(c)(ii).

(4) Benefits continued as a nonforfeiture benefit, including contingent benefits upon lapse, are described in this subsection.

(a) A nonforfeiture benefit shall be a shortened benefit period providing paid-up limited long-term care insurance after lapse.

(i) The same benefits, amounts, and frequency in effect at the time of lapse, but not increased thereafter, shall be payable for a qualifying claim.

(ii) The lifetime maximum dollars or days of benefits shall be determined under Subsection (4)(c).

(b) A standard nonforfeiture credit shall be equal to 100% of the sum of all premiums paid, including the premiums paid before a change in benefits.

(i) An insurer may offer an additional shortened benefit period option, if the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration.

(ii) The calculation of the nonforfeiture credit is subject to Subsection (5).

(c) A nonforfeiture benefit begins no later than the end of the third year following the policy or certificate issue date.

(d) A contingent benefit upon lapse is effective during the first three years and thereafter.

(e) A nonforfeiture credit may be used for care and services that qualify for benefits under the policy or certificate, up to the policy or certificate limits.

(5) All benefits paid by an insurer while a policy or certificate is in premium paying status and in the paid-up status may not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium paying status.

(6) To determine whether a contingent benefit upon lapse or nonforfeiture benefit provision is triggered under Subsection (3)(b), a replacing insurer that purchased or otherwise assumed a block or blocks of policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

R590-285-23. Standards for a Benefit Trigger.

(1)(a) A policy shall condition the payment of benefits on a determination of the insured's:

(i) ability to perform activities of daily living; or

(ii) cognitive impairment.

(b) Eligibility for the payment of benefits may not be more restrictive than requiring either:

(i) a deficiency in the ability to perform not more than three of the activities of daily living; or

(ii) the presence of cognitive impairment.

(2)(a) Activities of daily living shall include at least:

(i) bathing;

(ii) continence;

(iii) dressing;

(iv) eating;

(v) toileting; and

(vi) transferring.

(b) An insurer may use additional activities of daily living to trigger a covered benefit if the terms are defined in the policy or certificate.

(3) An insurer may use additional provisions to determine when benefits are payable, but the provisions may not restrict, and are not in lieu of, the requirements under Subsections (1) and (2).

(4) For the purposes of this section, the determination of a deficiency may not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, needing supervision or verbal cueing by another person to protect the insured or others.

(5) An assessment of activities of daily living or cognitive impairment shall be performed by a licensed or certified professional, such as a physician, nurse, or social worker.

(6) A policy or certificate shall include a clear description of the process for appealing and resolving a benefit determination.

R590-285-24. Appealing an Insurer's Determination That the Benefit Trigger is Not Met.

(1) If an insurer determines that a benefit trigger is not met, it shall provide a clear, written notice to the insured and the insured's authorized representative, if applicable, of the following:

(a) the reason the insurer determined the insured's benefit trigger is not met;

(b) the insured's right to an internal appeal, including the right to submit new or additional information relating to the benefit trigger denial; and

(c) the insured's right, after exhaustion of the insurer's internal appeal process, to have the benefit trigger determination reviewed under an independent review process.

(2)(a) An insured or an insured's authorized representative may appeal the insurer's adverse benefit trigger determination by sending a written request to the insurer, along with any additional supporting information, within 180 days after the insured and the insured's authorized representative, if applicable, receives the adverse benefit trigger determination notice.

(b) An internal appeal shall be considered by an individual or group of individuals designated by the insurer, provided that the individual or individuals making the internal appeal decision may not be the same individual or group of individuals who made the initial adverse benefit trigger determination.

(c) An internal appeal shall be completed and written notice of the internal appeal decision shall be sent to the insured and the insured's authorized representative, if applicable, within 30 calendar days of the insurer's receipt of all information necessary to make a final determination.

(d) If an insurer's original determination is upheld after an internal appeal process has been exhausted, and new or additional information was not provided to the insurer, the insurer shall provide a written description of the insured's right to request an independent review of the adverse benefit trigger determination under Section R590-285-25 to the insured and the insured's authorized representative, if applicable.

(e) The written description of the insured's right to request an independent review shall include the following, or substantially equivalent, language: "We have determined that the benefit eligibility criteria ("benefit trigger") of your (insert either policy or certificate) has not been met. You may have the right to an independent review of our decision conducted by long-term care professionals who are not associated with us. Please send a written request for independent review to us at (insert address). You must inform us, in writing, of your election to have this decision reviewed within 180 days of receipt of this letter. We will choose an independent review organization for you and refer the request for independent review."

(f) If an insurer does not believe the adverse benefit trigger decision is eligible for an independent review, the insurer shall inform the insured and the insured's authorized representative, if applicable, in writing and include the reasons for its determination of independent review ineligibility.

(g) The appeal process is not a new service or provider under Section R590-285-20 and does not trigger the notice requirements of that section.

R590-285-25. Independent Review of an Adverse Benefit Trigger Determination.

(1)(a) An insured or an insured's authorized representative may request an independent review of an insurer's adverse benefit trigger determination after an internal appeal process under Subsection R590-285-24(2) is exhausted.

(b) An insured or an insured's authorized representative may make a written request for an independent review within 180 days after the insurer's written notice of the final internal appeal decision is received by the insured and the insured's authorized representative, if applicable.

(c) The insurer shall bear the cost of an independent review.

(2)(a) Within five business days of receiving a written request for an independent review, an insurer shall refer the request to an independent review organization.

(i) The insurer shall choose an independent review organization approved by the commissioner.

(ii) The insurer shall vary its selection of authorized independent review organization on a rotating basis.

(b) An insurer shall refer the request for independent review of an adverse benefit trigger determination to an independent review organization, subject to the following:

(i) the independent review organization shall be on a list of approved independent review organizations that satisfy the requirements of a qualified long-term care insurance independent review organization under this section;

(ii) the independent review organization may not have a conflict of interest with the insured, the insured's authorized representative, if applicable, or the insurer; and

(iii) the review is limited to the information or documentation provided to and considered by the insurer in making its determination, including any information or documentation considered as part of the internal appeal process.

(3) If the insured or the insured's authorized representative has new or additional information not previously provided to the insurer, whether submitted to the insurer or the independent review organization, the information shall first be considered in the insurer's internal review process under Subsection R590-285-24(2).

(a) While the new or additional information is being reviewed by the insurer, the independent review organization shall suspend its review and stay the time period for review until the insurer completes its review.

(b) The insurer shall complete its review of the new or additional information and provide written notice of its decision to the insured and the insured's authorized representative, if applicable, and the independent review organization within five business days of the insurer's receipt of the new or additional information.

(i) If the insurer maintains its denial after the review, the independent review organization shall continue its review and make its decision within the time period specified in this section.

(ii) If the insurer overturns its decision following its review of the new or additional information, the independent review request is considered withdrawn.

(4)(a) An insurer shall acknowledge, in writing, to the insured and the insured's authorized representative, if applicable, and the commissioner that the request for an independent review has been received, accepted, and forwarded to an independent review organization.

(b) The notice shall include the name and address of the independent review organization.

(5)(a) Within five business days of receipt of a request for an independent review, the independent review organization assigned shall notify the insured and the insured's authorized representative, if applicable, and the insurer, that it accepted the independent review request and identify the type of licensed health care professional assigned to the review.

(b) The assigned independent review organization shall include in the notice a statement that the insured or the insured's authorized representative may submit, in writing, to the independent review organization, within seven days following the date of receipt of the notice, additional information and supporting documentation that the independent review organization shall consider when conducting its review.

(6)(a) The independent review organization shall:

(i) review all information and documents provided to the independent review organization; and

(ii) provide copies of any documentation or information provided by the insured or the insured's authorized representative to the insurer for its review, if it is not part of the information or documentation submitted by the insurer to the independent review organization.

(b) The insurer shall review the information and provide its analysis of new information submitted under this Subsection (6).

(7)(a) During the independent review process, the insured or the insured's authorized representative may submit new or additional information not previously provided to the insurer that is pertinent to the benefit trigger denial.

(b) The insurer shall consider any new or additional information and affirm or overturn its benefit trigger determination.

(c) If the insurer affirms its benefit trigger determination, the insurer shall promptly provide the new or additional information to the independent review organization for its review, along with the insurer's analysis of the information.

(d) If the insurer overturns its benefit trigger determination:

(i) the insurer shall provide notice of its decision to the independent review organization, the insured, and the insured's authorized representative, if applicable; and

(ii) the independent review process shall immediately cease.

(8)(a) An independent review organization shall provide the insured and the insured's authorized representative, if applicable, and the insurer written notice of its decision within 30 days from receipt of the referral.

(b) If an independent review organization overturns the insurer's decision, it shall:

(i) establish the precise date within the specific time period under review that the benefit trigger is determined to have been met; and

(ii) specify the specific time period under review that the insurer declined eligibility, but during which the independent review organization determines the benefit trigger was met.

(c) The decision of the independent review organization regarding whether the insured met the benefit trigger is final and binding on the insurer.

(d) The independent review organization's determination shall be used solely to establish liability for benefit trigger decisions and is admissible in a proceeding to the extent that it establishes the eligibility of benefits payable.

(9) This section may not restrict the insured's right to submit a new request for a benefit trigger determination after the independent review decision, if the independent review organization upholds the insurer's decision.

(10) The commissioner shall maintain and periodically update a list of qualified independent review organizations.

(a) To qualify as an independent review organization for limited long-term care insurance, an independent review organization shall demonstrate to the satisfaction of the commissioner that it is unbiased and meets the following qualifications:

(i) have on staff, or contract with, a qualified and licensed health care professional in an appropriate field for determining an insured's functional or cognitive impairment to conduct the review;

(ii) the independent review organization or any of its licensed health care professionals may not, in any manner:

(A) be related to or affiliated with an entity that previously provided medical care to the insured;

(B) receive compensation of any type that is dependent on the outcome of the review; or

(C) use a licensed health care professional who is an employee of the insurer or related in any manner to the insured.

(b) An independent review organization shall provide to the commissioner:

(i) a description of the fees charged for an independent review of a limited long-term care insurance benefit trigger decision that are reasonable and customary for the type of limited long-term care insurance benefit trigger decision under review;

(ii) the name of the medical director or health care professional responsible for the supervision and oversight of the independent review process;

(iii) a description of the qualifications of each reviewer retained to conduct an independent review, including the reviewer's:

(A) current and past employment history;

(B) current and past practice affiliations; and

(C) past experience with decisions relating to:

(I) long-term care;

(II) functional capacity;

(III) dependency in activities of daily living; and

(IV) assessing cognitive impairment;

(iv) a description of the procedures used to ensure reviewers are:

(A) appropriately licensed, registered, or certified;

(B) trained in the principles, procedures, and standards of the independent review organization; and

(C) knowledgeable about the functional or cognitive impairments associated with the diagnosis and disease staging processes, including expected duration of such impairment;

(v) the number of reviewers retained by the independent review organization and a description of the areas of expertise for each reviewer, including the types of cases a reviewer is qualified to review;

(vi) a description of the policies and procedures employed to protect the confidentiality of protected health information, in accordance with federal and state law;

(vii) a description of the independent review organization's quality assurance program;

(viii) the names of all corporations and organizations owned or controlled by the independent review organization, or that own or control the organization, and the nature and extent of any such ownership or control; and

(ix) the names and resumes of all directors, officers, and executives.

(c) The commissioner shall accept another state's certification of an independent review organization if the state requires the independent review organization to meet qualifications that are substantially similar to the qualifications in this section.

(11) A certified independent review organization shall:

(a) maintain written documentation, in an easily accessible and retrievable form, for the year it received the information, plus three calendar years, establishing:

(i) the date it receives a request for independent review;

(ii) the date each review is conducted;

(iii) the resolution;

(iv) the date the resolution was communicated to the insurer and the insured; and

(v) the name and professional status of the reviewer conducting the review;

(b) document the measures taken to safeguard the confidentiality of the records and prevent unauthorized use and disclosures;

(c) report annually to the commissioner by June 1 for the previous calendar year, in the aggregate and for each limited long-term care insurer, the following:

(i) the total number of requests received for an independent review of limited long-term care benefit trigger decisions;

(ii) the total number of reviews conducted;

(iii) the resolution of the reviews;

(iv) the number of reviews withdrawn before review; and

(v) the percentage of reviews conducted within the prescribed time frame under Section R590-285-25; and

(d) report immediately to the commissioner any change in status that would cause the certified independent review organization to cease meeting any of the qualifications required of an independent review organization performing independent reviews of limited long-term care benefit trigger decisions.

(12) This section may not limit the ability of an insurer to assert a right the insurer has under a policy related to:

(a) an insured's misrepresentation;

(b) changes in the insured's benefit eligibility; or

(c) terms, conditions, and exclusions of the policy, other than failure to meet the benefit trigger.

R590-285-26. Outline of Coverage Standard Format.

(1)(a) The outline of coverage shall:

(i) be substantially similar to the standard format outline of coverage in Appendix D of the NAIC Limited Long-Term Care Insurance Model Regulation; and

(ii) be a free-standing document, using no smaller than 10-point font.

(b) The outline of coverage may not contain advertising material.

(2) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by another means that provides prominence equivalent to the capitalization or underscoring.

(3) The text and sequence of text of the standard format outline of coverage shall be used unless otherwise specifically indicated.

R590-285-27. Severability.

If any provision of this rule, Rule R590-285, 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, health, long-term care
Date of Last Change: 2024[~~February 23, 2021~~]
Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)(a), 31A-22-2006

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R813-2**	**Filing ID: 56693**

Agency Information

1. Title catchline:	Higher Education (Utah Board of), Utah State University	
Building:	Old Main	
Street address:	1465 Old Main Hill	
City, state:	Logan, UT 84322-1465	
Contact persons:		
Name:	**Phone:**	**Email:**
Mica McKinney	435-797-1156	legal@usu.edu
Crystal Giordano	435-797-8305	policy@usu.edu
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R813-2. Disclosure of University Records

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

Utah State University (USU) is committed to conducting the business of the University in an open and transparent manner.

The purpose of this rule is to implement GRAMA and to outline the retention, designation, and disclosure requirements for Utah State University records. This rule applies to all records received, created, or maintained by USU.

4. Summary of the new rule or change:

This rule delegates authority to the USU Records Manager to report record designations to the Utah State Archives.

It also outlines how to request records and fees associated with these requests. It includes how the Family Educational Rights and Privacy Act is handled during record requests.

The rule also includes an appeal process and delegates responsibilities to various campus officials.

Fiscal Information

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

A) State budget:

This rule is not expected to have a fiscal impact on state government revenues or expenditures. There is no anticipated cost or savings to the state budget as this rule is explanatory in nature and will have no impact on how the Higher Education (Utah Board of) or the state operates or conducts its business under this rule.

B) Local governments:

This rule is not expected to have a fiscal impact on local governments' revenues or expenditures. There is no expected cost or savings to local governments as this rule is explanatory in nature and will not affect how local governments operate or conduct business.

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

This rule is not expected to have a fiscal impact on small businesses' revenues or expenditures, nor will a service be required of small businesses to implement this rule.

The rule implements the Government Records Access and Management Act (GRAMA) and does not affect how small businesses operate or conduct business.

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

This rule is not expected to have a fiscal impact on non-small businesses nor will a service be required of non-small businesses to implement this rule.

The rule implements GRAMA and does not affect how non-small businesses operate or conduct 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***)**:**

This rule is not expected to have a fiscal impact on revenues or expenditures for persons other than small businesses, non-small businesses, or state, or local government entities.

Individuals requesting access to records will be assessed a reasonable fee for direct or indirect costs of duplicating or compiling a record according to the USU Records Fee Schedule as permitted under Utah statute.

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

There are no compliance costs for affected persons. The changes simply clarify requirements and policy with no fiscal impact on other entities.

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 the 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 President of Utah State University, Elizabeth R. Cantwell, 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 63G-2-204	Section 63G-3-201	

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:	10/15/2024
9. This rule change MAY become effective on:	10/22/2024
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:	Mica McKinney, Vice President for Legal Affairs and General Counsel	**Date:**	08/16/2024

R813. Higher Education (Utah Board of), Utah State University.
R813-2. Disclosure of University Records.
R813-2-1. Purpose.

(1) Utah State University (USU or University) is committed to conducting the business of the University in an open and transparent manner.

(2) The purpose of this rule is to implement the Government Records Access and Management Act (GRAMA) and outline the retention, designation, and disclosure requirements for USU records. This rule applies to records received, created, or maintained by USU.

R813-2-2. Authority.

This rule is authorized by Sections 63G-2-204 and 63G-3-201.

R813-2-3. Record Designations.

(1) The University President, as the chief administrative officer, delegates to the USU Records Manager the authority to report record designations to the Utah State Archives. This delegation of authority will remain in effect until the University President rescinds such authority.

(2) The University Records Manager designates each particular record, record series, or information within a record as public, private, controlled, protected, or exempt from disclosure under GRAMA.

(3) Pursuant to the delegation of authority from the President, the USU Records Manager reports record designations to the Utah State Archives. See Section 63G-2-307.

R813-2-4. GRAMA Record Requests.

(1) Records that are governed by the Family Educational Rights and Privacy Act (FERPA) are not governed by GRAMA. They are accessed and disclosed pursuant to University Policy and applicable federal laws and regulations.

(2) In compliance with GRAMA, USU will provide access to public records that are not otherwise protected from disclosure and are requested pursuant to a properly submitted GRAMA request.

(a) A records request must be made in writing.

(i) To request access to USU's records, an individual should complete USU's GRAMA form, which is available online.

(ii) The completed form will be sent to the USU Records Manager.

(iii) A person who does not have an email address or is unwilling to accept electronic communications related to the person's request shall submit, by U.S. mail or hand delivery, the information described in this subsection to the USU Records Manager at 1465 Old Main Hill, Suite 101, Logan, UT 84322-146.

(b) Requests submitted to other departments, faculty, or staff within USU may cause USU's response to be delayed.

(3) USU will comply with the response time outlined within GRAMA.

(4) Consistent with GRAMA, USU will charge reasonable fees to cover the actual costs of responding to an individual's request.

(5) Generally, fees will be assessed for the direct and indirect costs of duplicating and compiling a record to respond to the request.

R813-2-5. Fees.

(1) USU will require payment of past and future estimated fees before beginning to process a request if the requester has not paid fees from previous requests.

(2) Charges are not made for reviewing or retrieving records.

(3) Fees will be assessed according to the USU Records Fee Schedule.

(4) USU may waive fees under certain circumstances as provided for under GRAMA.

(a) Requests for the waiver of fees must be made in writing to the USU Records Manager, utilizing the GRAMA request form.
(b) Waiving of fees is at the sole discretion of the USU Records Manager.

R813-2-6. Disclosures Not Made Pursuant to a GRAMA Request.
(1) GRAMA, FERPA, and other federal and state laws and regulations allow for USU to release otherwise protected records without notice to the individual who is the subject of the record if it is in the receipt of a court order or subpoena signed by a judge from a court of competent jurisdiction.
(2) FERPA educational records will be released pursuant to University Policy and applicable federal laws and regulations. Educational records that are not accessible and released through USU's Registrar's Office pursuant to University Policy will be released through the USU Records Manager following FERPA guidelines and regulations.

R813-2-7. GRAMA Record Response Appeals.
(1) Pursuant to GRAMA, an individual may appeal an access denial to USU records to the University President as the chief administrative officer or the President's designee under Subsection 63G-2-401(9). The President delegates to the Vice President of Finance and Administrative Services authority to issue and carry out decisions regarding GRAMA records and appeals and the authority to carry out the appeal process outlined within this rule. This designation of authority will remain in effect until the University President rescinds such authority.
(2) If the USU Records Manager denies access to a record, the requestor may appeal that determination:
(a) to the Vice President of Finance and Administrative Services;
(b) within 30 days of the determination; and
(c) by providing written notice of appeal according to Section 63G-2-401 and as outlined in the denial USU issued pursuant to Section 63G-2-205.
(3) A requestor may contest the accuracy or completeness of the records concerning the requestor.
(4) Appeals from decisions described in Subsection R813-2-7(3):
(a) are governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act; and
(b) shall be conducted informally rather than formally, per Section 63G-4-203.

KEY: higher education, GRAMA, records
Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 63G-2-204; 63G-3-201

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: New		
Rule or Section Number:	**R813-3**	**Filing ID: 56694**

Agency Information

1. Title catchline:	Higher Education (Utah Board of), Utah State University	
Building:	Old Main	
Street address:	1465 Old Main Hill	
City, state:	Logan, UT 84322-1465	
Contact persons:		
Name:	**Phone:**	**Email:**
Mica McKinney	435-797-1156	legal@usu.edu
Crystal Giordano	435-797-8305	policy@usu.edu
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R813-3. Trespass
3. Purpose of the new rule or reason for the change:
This rule implements Section 76-8-703 and Section 53B-20-107. This rule governs the physical exclusion of individuals from Utah State University campuses, property, buildings, events, and activities.
4. Summary of the new rule or change:

This rule defines who is subject to this rule, its exclusions, and the conditions under which a verbal or written trespass order will be issued or can be appealed.

It also defines the key stakeholders and their responsibilities in carrying out this rule, and potential disciplinary actions that may be taken.

Fiscal Information

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

A) State budget:

This rule is not expected to have a fiscal impact on state government revenues or expenditures. There is no anticipated cost or savings to the state budget as this rule will have no impact on how the Higher Education (Utah Board of) or the state operates or conducts business.

B) Local governments:

Enactment of this rule will not result in direct, measurable costs for local governments because this rule delegates responsibility to Utah State University as required by Section 76-8-703.

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

Enactment of this rule will not result in direct expenditures from tax or fee changes for small businesses since there are no required costs or services resulting from implementing this rule.

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

Enactment of this rule will not result in direct expenditures from tax or fee changes for non-small businesses since there are no required costs or services resulting from implementing this 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***)**:**

Enactment of this rule will not change the regulatory burden for persons other than small businesses, non-small businesses, and state, or local government entities. Section 53B-20-107 and 76-8-703 authorizes Utah State University to establish processes outlined in this rule and enforce compliance.

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

There are no compliance costs for affected persons. The burden of compliance falls on Utah State University.

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 the 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 President of Utah State University, Elizabeth R. Cantwell, 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 53B-20-107	Section 76-8-703	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Mica McKinney, Vice President for Legal Affairs and General Counsel	**Date:**	08/16/2024

R813. Higher Education (Utah Board of), Utah State University.
R813-3. Trespass.
R813-3-1. Purpose.
(1) This rule implements Section 76-8-703.
(2) This rule governs the physical exclusion of individuals from Utah State University campuses, property, buildings, events, and activities.

R813-3-2. Authority.
This rule is authorized by Sections 53B-20-107, 63G-3-201, and 76-8-703.

R813-3-3. Scope.
This rule applies to all individuals present on University Property, including employees, students, and any visitors.

R813-3-4. Definitions.
(1) "Chief" means the University Chief of Police.
(2) "Designee" means the individual who the Chief designates authority and responsibilities, which can be revoked at any time by the Chief.
(3) "Trespass Order" means an official directive, verbally or in written form, from the Chief or a Designee to an offending individual to leave and remain off University Property.
(4) "University" or "USU" means Utah State University.
(5) "USU PD" means the University Police Department.
(5) "University Property" means any University facility or property, physical or virtual, owned, operated, or controlled by the University, including without limitation University learning management systems, residential campuses, regional campuses, University centers, and farms.
(6) "Verbal Trespass Order" a Trespass Order that is issued verbally, and followed up with a Written Trespass Order, pursuant to Section R813-3-5.
(7) "Written Trespass Order" a Trespass Order that is written and issued pursuant to Section R813-3-5.
(8) "University Property" refers to any University facility or property, physical or virtual, owned, operated, or controlled by the University, including without limitation University learning management systems, residential campuses, regional campuses, University centers, and farms.

R813-3-5. Exclusion from University Property.

The University may exclude individuals from University Property by:

(1) issuing a Trespass Order, as set forth in Section R813-3-5;

(2) posting signs reasonably likely to come to the attention of a trespasser;

(3) fencing or otherwise enclosing University Property in a manner that is obviously designed to exclude a trespasser; or

(4) notifying an individual that they cannot come onto University Property via notice of a temporary or final suspension or expulsion.

R813-3-6. Trespass Orders.

(1) Pursuant to Utah law, the University President, as the chief administrative officer, may order individuals to leave University Property.

(a) To ensure the safety and security of the campus, the President delegates authority to the Chief of Police to issue and carry out Trespass Orders.

(b) Further, the President delegates the Chief of Police with authority to designate members of the Utah State University Police Department with authority to act for the Chief of Police and order individuals to leave University Property and to otherwise support the Chief of Police in enforcing this rule.

(c) This designation and authority will remain in effect until such authority is rescinded by the University President.

(2) The President and the Chief of Police or their Designee or Designees may verbally order an individual to leave the University Property if there is reasonable cause to believe an individual:

(a) intends to act to:

(i) cause injury to a person;

(ii) cause damage to property;

(iii) commit a crime;

(iv) interfere with the peaceful conduct of the activities of the University;

(v) violate any lawful university rule, policy, or regulation;

(vi) disrupt the University, its pupils, or the University's activities; or

(b) is reckless as to whether the person's actions will cause fear for the safety of another.

(3) When ordering an individual to leave University Property, the Chief of Police or the Chief's Designee or Designees will:

(a) identify themselves to the offending individual;

(b) request that the offending individual identify themselves;

(c) ascertain whether the offending individual is a member of the University community or the public;

(d) explain that the individual is being trespassed from University Property, meaning that the individual may not return until the date stated on the forthcoming Written Trespass Order; and

(e) explain the consequences for failing to adhere to the Trespass Order, including that the individual will be in violation of Utah law and may be charged with a Class B misdemeanor for the first offense and a Class A misdemeanor for a second offense.

(4) After issuing the Verbal Trespass Order, the Chief of Police or Designee or Designees will draft a Written Trespass Order. USU PD will serve the Written Trespass Order to the offending individual within two business days of the Verbal Trespass Order.

(5) Regardless of whether a Verbal Trespass Order has been issued to an offending individual, the Chief of Police or Designee or Designees will issue a Written Trespass Order. At minimum, the Written Trespass Order will include:

(a) the date on which the Verbal Trespass Order, if applicable, was issued;

(b) the date on which the Written Trespass Order is effective;

(c) the areas from which the individual is trespassed;

(d) the actions committed by the individual that are the basis for the Trespass Order;

(e) the date on which the Trespass Order will expire; and

(f) an explanation of the individual's right of appeal and the process for doing so.

(6) All Written Trespass Orders delivered by USU PD will be recorded through the USU PD reporting systems and will be copied to the Vice President for Student Affairs if the offending individual is a student, the University Provost, and the responsible Dean if the offending individual is faculty, and the responsible Vice President or Dean if the offending individual is an employee.

R813-3-7. Right to Challenge.

(1) Any individual who is the subject of a Trespass Order may petition the University to lift the Trespass Order by demonstrating:

(a) the Trespass Order was issued in conflict with university policy; or

(b) the offending conduct giving rise to the Trespass Order is not likely to be repeated or does not otherwise present a disruption of safety concern to the University.

(2) A written petition challenging a Trespass Order must be made in accordance with University Procedures and submitted to USU's Executive Director of Public Safety.

R813-3-8. Criminal Prosecution.

Individuals in violation of a Trespass Order under this rule may be subject to criminal prosecution in accordance with Section 76-8-703. Nothing in this rule limits the ability of the University to participate in the criminal prosecution of any individual in violation of applicable trespass laws.

KEY: higher education, trespass

Date of Last Change: 2024
Authorizing, and Implemented or Interpreted Law: 76-8-703; 53B-20-107

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R884-24P-28**	**Filing ID: 56784**

Agency Information

1. Title catchline:	Tax Commission, Property Tax	
Building:	Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state and zip:	Salt Lake City, UT 84134	
Contact persons:		
Name:	**Phone:**	**Email:**
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306

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

After internal research and discussion with the Property and Miscellaneous Tax Functional Area, the Tax Commission (Commission) has concluded that there is not sufficient support in the Utah Code to require the submission of the report on leased or rented heavy equipment required by this section.

Thus, the proposed amendment repeals this section.

4. Summary of the new rule or change:

The amendment repeals the requirement that a report on leased or rented heavy equipment be filed with the Commission.

This change has the effect of requiring this report to be filed directly with the county assessor in which the property is located.

This is consistent with the personal property report that must be filed by other industries within each county.

Fiscal Information

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

A) State budget:

This amendment is not expected to impact the state budget because there are no costs or savings associated with the filing of this report.

B) Local governments:

This amendment is not expected to impact local governments because there are no costs or savings associated with the filing of this report.

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

This amendment is not expected to impact small businesses because the requirement to file this report with the tax commission does not impact total property tax liability.

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

This amendment is not expected to impact non-small businesses because the requirement to file this report with the tax commission does not impact total property tax liability.

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

This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because the requirement to file this report with the tax commission does not impact total property tax liability.

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

There may be minor increased compliance costs for persons engaged in renting or leasing heavy equipment in multiple counties because they would need to file a personal property report in each county where their property is located.

However, this change is consistent with reporting requirements imposed on other industries that also operate in multiple counties.

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:

Commissioner of the Tax Commission, Rebecca L. Rockwell, 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 59-2-306

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Rebecca Rockwell, Commissioner	**Date:**	09/03/2024

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
[~~R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.~~
~~(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.~~
~~(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:~~
~~(a) a description of the leased or rented equipment;~~
~~(b) the year of manufacture and acquisition cost;~~
~~(c) a listing, by month, of the counties where the equipment has situs; and~~
~~(d) any other information required.~~
~~(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.~~
~~(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.~~
~~(b) Noncompliance will require accelerated reporting.~~]

KEY: taxation, personal property, property tax, appraisals
Date of Last Change: 2024[~~December 22, 2023~~]
Notice of Continuation: November 9, 2021
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R884-24P-33**	**Filing ID: 56782**

Agency Information

1. Title catchline:	Tax Commission, Property Tax	
Building:	Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state and zip:	Salt Lake City, UT 84134	
Contact persons:		
Name:	**Phone:**	**Email:**
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R884-24P-33. 2024 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107

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

This section must be amended annually to reflect updated valuation and depreciation data for the 2025 calendar year.

4. Summary of the new rule or change:

This proposed rule amendment modifies the percent good tables for the 2025 calendar year. One of the proposed revisions to the percent good tables is to repeal the percent good Class 24 table regarding leasehold improvements on exempt real property. After significant discussion with the counties and with the Property Tax Division, it has been reported that most leasehold improvements on exempt real property are treated as real property rather than as personal property. By repealing Class 24, these improvements will now be treated as real property, unless another class of personal property in the rule is applicable to the property.

Fiscal Information

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

A) State budget:

The amount of savings or cost to state government is not affected by this section. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts and local districts. No tax revenues generated by taxation of personal property will be retained by state government.

B) Local governments:

The amount of saving or cost to local governments is undetermined. Local governmental entities receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2024 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2024 are unknown.

The proposed personal property schedules in this amendment are raised, lowered or remain the same for 2024 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service.

It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this section.

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

In the aggregate, the amount of savings or cost to small businesses is undetermined. Affected businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

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

In the aggregate, the amount of savings or cost to non-small businesses is undetermined. Affected non-small businesses pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

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***)**:**

In the aggregate, the amount of savings or cost to persons other than small businesses, non-small businesses, and state or local government entities is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this section are raised, lowered or remain the same for 2024 based upon the type and age of the property.

Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2024 personal property mix compared to the previous year.

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

Local business owners and property tax practitioners will be required to be aware of new percent good figures. This is an annual occurrence; therefore, the ongoing compliance cost to complete this assessment process will not change.

The change in taxes charged for these persons depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

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:

Commissioner of the Tax Commission, Rebecca L. Rockwell, 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 59-2-107

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Rebecca Rockwell, Commissioner	**Date:**	09/03/2024

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-33. [~~2024~~]2025 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107.

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

(a) "Acquisition cost" means the same as that term is defined in Section 59-2-102.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Assessing authority" means:

(i) the State Tax Commission for property assessed under Title 59, Chapter 2, Part 2, Assessment of Property; and

(ii) the county assessor for property assessed under Title 59, Chapter 2, Part 3, County Assessment.

[~~(c)~~](d) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the [~~Tax Commission and assessors~~]assessing authority shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the [~~taxing~~]assessing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) Class 6 heavy and medium duty trucks;

(B) Class- 13 heavy equipment;

(C) Class- 17 vessels equal to or greater than 31 feet in length; and

(D) Class- 21 commercial trailers.

[~~(d)~~](e) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

[~~(e)~~](f) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation.

(i) The percent good factor [~~is~~]shall be applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules [~~are~~]shall be derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as [~~Penton~~]Price Digests.

(2) Each year [~~the Property Tax Division shall update and publish~~]percent good schedules for use in computing personal property valuation[~~.~~] shall be updated and recommended by the Property Tax Division for adoption by the Commission by rule in accordance with Section 59-2-107.

[~~(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.~~

~~(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.~~]

[~~(c)~~](a) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

[~~(d)~~](b) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) This rule does not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;
(x) a travel trailer; and
(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;
(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and
(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.
(4) Other taxable personal property that is not included in the listed classes includes:
(a) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.
(b) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.
(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.
(6) Taxable personal property, other than personal property subject to an age-based uniform fee under Sections 59-2-405.1 through 59-2-405.3, or a uniform statewide fee under Section 59-2-405, is classified by expected economic life as follows:
(a) Class 1 - Short Life Property.
(i) Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.
[~~(i)~~](ii) [~~Examples of property~~]Property in th[~~e~~]is class [~~include~~]includes:
(A) barricades or warning signs;
(B) library materials;
(C) patterns, jigs and dies;
(D) pots, pans, and utensils;
(E) canned computer software;
(F) hotel linen;
(G) wood and pallets;
(H) video tapes, compact discs, and DVDs; and
(I) uniforms.
[~~(ii)~~](iii) [~~With the exception of video tapes, compact discs, and DVDs~~]Except as provided in Subsections (6)(a)(iv) and (v), taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.
[~~(iii)~~](iv) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is [~~stated~~]available:
(A) retail price of the canned computer software;
(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of expected licensing fees paid pursuant to the agreement.
[~~(iv)~~](v) Video tapes, compact discs, and DVDs [~~are~~]shall be valued at $15 per tape or disc for the first year and $3 per tape or disc thereafter.

Table 1 Short Life Property	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~79%~~]76%
[~~2022~~]2023	[~~49%~~]47%
[~~2021~~]2022 and prior	12%

(b) Class 2 - Computer Integrated Machinery.
(i) Machinery shall be classified as computer integrated machinery if the following conditions are met:
(A) [~~The~~]except as provided in Subsection (6)(b)(iv), equipment is sold as a single unit.[~~—If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.~~]
(B) [~~The machine~~]the machinery cannot operate without the computer and the computer cannot perform functions outside the [~~machine~~]machinery.
(C) [~~The machine~~]the machinery can perform multiple functions and is controlled by a programmable central processing unit.
(D) [~~The~~]the total cost of the [~~machine~~]machinery and computer combined is depreciated as a unit for income tax purposes.
(E) [~~The~~]the capabilities of the [~~machine~~]machinery cannot be expanded by substituting a more complex computer for the original.
(ii) [~~Examples of property~~]Property in this class [~~include~~]includes:
(A) CNC mills;
(B) CNC lathes; or
(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.
(iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.
(iv) If the invoice for computer integrated machinery separately itemizes the computer from other machinery, the computer shall be valued as Class 12 property and the machinery shall be valued as Class 8 property.

Table 2 Computer Integrated Machinery	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~97%~~]96%
[~~2022~~]2023	[~~90%~~]89%
[~~2021~~]2022	[~~82%~~]79%
[~~2020~~]2021	[~~71%~~]68%
[~~2019~~]2020	[~~58%~~]56%
[~~2018~~]2019	[~~45%~~]43%
[~~2017~~]2018	[~~30%~~]29%
[~~2016~~]2017 and prior	[~~15%~~]14%

(c) Class 3 - Short Life Trade Fixtures.

(i) Property in this class [~~generally consists of electronic types of equipment and includes property~~]is subject to rapid functional and economic obsolescence or severe wear and tear.

[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) office machines;
(B) alarm systems;
(C) shopping carts;
(D) ATM machines;
(E) small equipment rentals;
(F) rent-to-own merchandise;
(G) telephone equipment and systems;
(H) music systems;
(I) vending machines;
(J) video game machines; and
(K) cash registers.

[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 3 Short Life Trade Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~94%~~]90%
[~~2022~~]2023	[~~81%~~]79%
[~~2021~~]2022	[~~61%~~]59%
[~~2020~~]2021	[~~42%~~]41%
[~~2019~~]2020 and prior	[~~22%~~]21%

(d) Class 5 - Long Life Trade Fixtures.

(i) [~~Class 5 property~~]Property in this class is subject to functional obsolescence in the form of style changes.

[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) furniture;
(B) bars and sinks:
(C) booths, tables and chairs;
(D) beauty and barber shop fixtures;
(E) cabinets and shelves;
(F) displays, cases and racks;
(G) office furniture;
(H) theater seats;
(I) water slides;
(J) signs, mechanical and electrical; and
(K) LED component of a billboard.

[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 5 Long Life Trade Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~97%~~]96%

[~~2022~~]2023	[~~91%~~]90%
[~~2021~~]2022	[~~86%~~]83%
[~~2020~~]2021	[~~76%~~]74%
[~~2019~~]2020	[~~66%~~]64%
[~~2018~~]2019	[~~54%~~]52%
[~~2017~~]2018	[~~40%~~]39%
[~~2016~~]2017	[~~27%~~]26%
[~~2015~~]2016 and prior	[~~14%~~]13%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the cost new.

(iii)(A) Cost new of a vehicle[~~vehicles~~] in this class [~~is defined as follows:~~]shall be[~~(A)~~] the documented actual cost of the vehicle for new vehicles.[~~; or~~]

(B) If the documented actual cost of the vehicle for new vehicles is unavailable, the cost new shall be 75% of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The [~~2024~~]2025 percent good applies to [~~2024~~]2025 models purchased in [~~2023~~]2024.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

Table 6 Heavy and Medium Duty Trucks	
Model Year	Percent Good of Cost New
[~~2024~~]2025	98%
[~~2023~~]2024	[~~96%~~]97%
[~~2022~~]2023	[~~94%~~]95%
[~~2021~~]2022	[~~91%~~]93%
[~~2020~~]2021	[~~80%~~]87%
[~~2019~~]2020	[~~76%~~]82%
[~~2018~~]2019	[~~72%~~]76%
[~~2017~~]2018	[~~65%~~]71%
[~~2016~~]2017	[~~59%~~]65%
[~~2015~~]2016	[~~54%~~]60%
[~~2014~~]2015	[~~48%~~]54%
[~~2013~~]2014	[~~42%~~]49%
[~~2012~~]2013	[~~36%~~]43%
[~~2011~~]2012 and prior	[~~30%~~]38%

(f)(i) Class 7 - Medical and Dental Equipment.

(ii) Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available. [~~Examples of machinery~~]Machinery and equipment [~~include~~]in this class includes:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;
(L) printing equipment;
(M) bottling or cannery equipment; and
(N) packaging equipment.[~~; and~~]
[~~(O) pollution control equipment.~~]

(ii) Medical and dental equipment in this class is subject to a high degree of technological development by the health industry. [~~Examples of medical~~]Medical and dental equipment [~~include~~]in this class includes:
(A) medical and dental equipment and instruments;
(B) exam tables and chairs;
(C) microscopes; and
(D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

(iv) Notwithstanding Subsection (6)(g)(iii), the taxable value of pollution control equipment as defined in Section 59-2-301.9, shall be calculated pursuant to Section 59-2-301.9.

Table 8 Machinery and Equipment Including Medical and Dental Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~98%~~]97%
[~~2022~~]2023	[~~94%~~]93%
[~~2021~~]2022	[~~90%~~]89%
[~~2020~~]2021	[~~85%~~]82%
[~~2019~~]2020	[~~77%~~]74%
[~~2018~~]2019	[~~67%~~]65%
[~~2017~~]2018	[~~55%~~]54%
[~~2016~~]2017	[~~45%~~]43%
[~~2015~~]2016	[~~34%~~]33%
[~~2014~~]2015	[~~23%~~]22%
[~~2013~~]2014 and prior	[~~12%~~]11%

(h)(i) Class 9 - Off-Highway Vehicles.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects~~]an off-highway [~~vehicles~~]vehicle is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(i)(i) Class 10 - Railroad Cars.

(ii) [~~The Class 10 schedule was developed to value the property of railroad car companies. Functional~~]Property in this class is subject to heavy wear and tear, and functional and economic obsolescence [~~is recognized in the~~]resulting from developing technology [~~of~~]within the shipping industry.[~~ Heavy wear and tear is also a factor in valuing this class of property.~~]

(iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 10 Railroad Cars	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~98%~~]97%
[~~2022~~]2023	[~~96%~~]95%
[~~2021~~]2022	[~~94%~~]93%
[~~2020~~]2021	[~~91%~~]90%
[~~2019~~]2020	[~~88%~~]85%
[~~2018~~]2019	[~~81%~~]78%
[~~2017~~]2018	[~~71%~~]69%
[~~2016~~]2017	[~~63%~~]61%
[~~2015~~]2016	[~~54%~~]53%
[~~2014~~]2015	[~~46%~~]44%
[~~2013~~]2014	[~~38%~~]36%
[~~2012~~]2013	[~~29%~~]28%
[~~2011~~]2012	19%
[~~2010~~]2011 and prior	10%

(j)(i) Class 11 - Street Motorcycles.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects~~]a street [~~motorcycles~~]motorcycle is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(k) Class 12 - Computer Hardware.

(i) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad or cam systems; and

(F) copiers.

(ii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 12 Computer Hardware	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	62%
[~~2022~~]2023	46%
[~~2021~~]2022	21%
[~~2020~~]2021	9%
[~~2019~~]2020 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

(iii) [~~2024~~]For 2025 model equipment purchased in [~~2023~~]2024, the model equipment is valued at 100% of acquisition cost.

Table 13 Heavy Equipment	
Model Year	Percent Good of Acquisition Cost
[~~2023~~]2024	73%
[~~2022~~]2023	71%
[~~2021~~]2022	69%
[~~2020~~]2021	[~~67%~~]66%
[~~2019~~]2020	[~~65%~~]64%
[~~2018~~]2019	[~~63%~~]62%
[~~2017~~]2018	[~~61%~~]59%
[~~2016~~]2017	[~~59%~~]57%
[~~2015~~]2016	[~~57%~~]54%
[~~2014~~]2015	[~~55%~~]52%
[~~2013~~]2014	[~~53%~~]50%
[~~2012~~]2013	[~~51%~~]47%
[~~2011~~]2012	[~~49%~~]45%
[~~2010~~]2011 and prior	[~~47%~~]42%

(m)(i) Class 14 - Motor Homes.

(ii) [~~Because~~]As required by Section 59-2-405.3, [~~subjects~~]a motor [~~homes~~]home is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(n) Class 15 - Semiconductor Manufacturing Equipment.

(i) [~~Class 15~~]This class applies [~~only~~]to equipment:

(A) used in the production of semiconductor products; and

(B) [~~. Equipment used in the semiconductor manufacturing industry~~]that is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:
(A) crystal growing equipment;
(B) die assembly equipment;
(C) wire bonding equipment;
(D) encapsulation equipment;
(E) semiconductor test equipment;
(F) clean room equipment;
(G) chemical and gas systems related to semiconductor manufacturing;
(H) deionized water systems;
(I) electrical systems; and
(J) photo mask and wafer manufacturing dedicated to semiconductor production.
[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 15 Semiconductor Manufacturing Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	47%
[~~2022~~]2023	34%
[~~2021~~]2022	24%
[~~2020~~]2021	15%
[~~2019~~]2020 and prior	6%

(o) Class 16 -- Long Life Property.
(i) [~~Class 16 property~~]Property in this class has a long physical life with little obsolescence.
[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:
(A) billboards , excluding LED component;
(B) sign towers;
(C) radio towers;
(D) ski lift and tram towers;
(E) non-farm grain elevators;
(F) bulk storage tanks;
(G) underground fiber optic cable;
(H) solar panels and supporting equipment; and
(I) pipe laid in or affixed to land.
[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 16 Long Life Property	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~98%~~]97%
[~~2022~~]2023	[~~97%~~]96%
[~~2021~~]2022	[~~95%~~]94%
[~~2020~~]2021	[~~92%~~]91%
[~~2019~~]2020	[~~91%~~]90%
[~~2018~~]2019	[~~90%~~]89%
[~~2017~~]2018	[~~87%~~]85%
[~~2016~~]2017	[~~81%~~]80%
[~~2015~~]2016	[~~74%~~]73%
[~~2014~~]2015	[~~69%~~]67%
[~~2013~~]2014	59%
[~~2012~~]2013	[~~58%~~]56%
[~~2011~~]2012	54%
[~~2010~~]2011	47%
[~~2009~~]2010	40%
[~~2008~~]2009	[~~33%~~]31%
[~~2007~~]2008	[~~26%~~]25%
[~~2006~~]2007	18%
[~~2005~~]2006 and prior	9%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the cost new of the property.

(iv) The [~~Tax Commission and assessors~~]assessing authority shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The [~~2024~~]2025 percent good applies to [~~2024~~]2025 models purchased in [~~2023~~]2024.

(vi) Property in this class has a residual taxable value of $1,000.

Table 17 Vessels Equal to or Greater Than 31 Feet in Length	
Model Year	Percent Good of Acquisition Cost
[~~2024~~]2025	90%
[~~2023~~]2024	[~~83%~~]77%
[~~2022~~]2023	[~~80%~~]75%
[~~2021~~]2022	[~~78%~~]73%
[~~2020~~]2021	[~~76%~~]71%
[~~2019~~]2020	[~~73%~~]69%
[~~2018~~]2019	[~~71%~~]67%
[~~2017~~]2018	[~~68%~~]65%
[~~2016~~]2017	[~~66%~~]63%
[~~2015~~]2016	[~~64%~~]61%
[~~2014~~]2015	[~~61%~~]58%
[~~2013~~]2014	[~~59%~~]56%
[~~2012~~]2013	[~~57%~~]54%
[~~2011~~]2012	[~~54%~~]52%
[~~2010~~]2011	[~~52%~~]50%
[~~2009~~]2010	[~~49%~~]48%
[~~2008~~]2009	[~~47%~~]46%
[~~2007~~]2008	[~~45%~~]44%
[~~2006~~]2007	42%
[~~2005~~]2006	40%
[~~2004~~]2005	38%
[~~2003~~]2004 and prior	35%

(q)(i) Class 17a - Vessels Less Than 31 Feet in Length.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects vessels~~]a vessel less than 31 feet in length is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(r)(i) Class 18 - Travel Trailers and Class 18a -- Tent Trailers or Truck Campers.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects travel trailers and tent trailers or truck campers~~]a travel trailer, tent trailer, and truck camper is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment.

(i) [~~Class 20 property~~]Property in this class is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) oil and gas exploration equipment;
(B) distillation equipment;
(C) wellhead assemblies;
(D) holding and storage facilities;
(E) drill rigs;
(F) reinjection equipment;
(G) metering devices;
(H) cracking equipment;
(I) well-site generators, transformers, and power lines;
(J) equipment sheds;
(K) pumps;
(L) radio telemetry units; and
(M) support and control equipment.
[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 20 Petroleum and Natural Gas Exploration and Production Equipment	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~98%~~]97%
[~~2022~~]2023	[~~96%~~]95%
[~~2021~~]2022	[~~94%~~]93%
[~~2020~~]2021	[~~92%~~]91%
[~~2019~~]2020	[~~86%~~]85%
[~~2018~~]2019	[~~79%~~]78%
[~~2017~~]2018	[~~71%~~]69%
[~~2016~~]2017	[~~60%~~]58%
[~~2015~~]2016	[~~50%~~]49%
[~~2014~~]2015	[~~41%~~]40%
[~~2013~~]2014	[~~31%~~]30%
[~~2012~~]2013	21%
[~~2011~~]2012 and prior	11%

(t) Class 21 - Commercial Trailers.
(i) [~~Examples of property~~]Property in this class [~~include~~]includes:
(A) dry freight van trailers;
(B) refrigerated van trailers;
(C) flat bed trailers;
(D) dump trailers;
(E) livestock trailers; and
(F) tank trailers.
(ii)(A) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the cost new of the property.
(B) For state assessed vehicles, cost new shall include the value of attached equipment.
(iii) The [~~2024~~]2025 percent good applies to [~~2024~~]2025 models purchased in [~~2023~~]2024.
(iv) Commercial trailers have a residual taxable value of $1,000.

Table 21 Commercial Trailers	
Model Year	Percent Good of Acquisition Cost
[~~2024~~]2025	95%
[~~2023~~]2024	[~~80%~~]88%
[~~2022~~]2023	[~~77%~~]85%
[~~2021~~]2022	[~~74%~~]83%
[~~2020~~]2021	[~~71%~~]80%
[~~2019~~]2020	[~~67%~~]77%
[~~2018~~]2019	[~~64%~~]74%
[~~2017~~]2018	[~~63%~~]71%
[~~2016~~]2017	[~~62%~~]68%
[~~2015~~]2016	[~~61%~~]65%
[~~2014~~]2015	[~~56%~~]62%

[~~2013~~]2014	[~~53%~~]59%
[~~2012~~]2013	[~~50%~~]56%
[~~2011~~]2012	[~~46%~~]53%
[~~2010~~]2011	[~~43%~~]50%
[~~2009~~]2010	[~~40%~~]47%
[~~2008~~]2009 and prior	[~~36%~~]44%

(u)(i) Class 21a -- Other Non-Commercial Trailers.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects this class of trailers~~]a trailer in this class is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) [~~Class 22 vehicles fall within four subcategories:~~]Property in this class is the following:

(A) domestic passenger cars[~~,~~];

(B) foreign passenger cars[~~,~~];

(C) light trucks[~~,~~];

(D) [~~including~~]utility vehicles[~~,~~]; and

(E) vans.

(ii) [~~Because~~]As required by Section 59-2-405.1, [~~subjects Class 22 property~~]property in this class is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(w)(i) Class 22a - Small Motor Vehicles.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects~~]a small motor vehicle is subject[~~ vehicles~~] to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(x)(i) Class 23 - Aircraft Required to be Registered With the State.

(ii) [~~Because~~]As required by Section 59-2-404, [~~subjects~~]aircraft required to be registered with the state is subject to a statewide uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(y) Class 24 - Leasehold Improvements on Exempt Real Property. REPEALED

[~~(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission Section R884-24P-32. Leasehold improvements include:~~]

[~~(A) walls and partitions;~~]

[~~(B) plumbing and roughed-in fixtures;~~]

[~~(C) floor coverings other than carpet;~~]

[~~(D) store fronts;~~]

[~~(E) decoration;~~]

[~~(F) wiring;~~]

[~~(G) suspended or acoustical ceilings;~~]

[~~(H) heating and cooling systems; and~~]

[~~(I) iron or millwork trim.~~]

[~~(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.~~]

[~~(iii) The Class 3 schedule is used to value short life leasehold improvements.~~]

[~~Table 24~~] [~~Leasehold Improvements on Tax Exempt Real Property~~]	
[~~Year of Acquisition~~]	[~~Percent Good of Acquisition Cost~~]
[~~2023~~]	[~~94%~~]
[~~2022~~]	[~~88%~~]
[~~2021~~]	[~~82%~~]
[~~2020~~]	[~~77%~~]
[~~2019~~]	[~~71%~~]
[~~2018~~]	[~~65%~~]
[~~2017~~]	[~~59%~~]
[~~2016~~]	[~~54%~~]
[~~2015~~]	[~~48%~~]
[~~2014~~]	[~~42%~~]
[~~2013~~]	[~~36%~~]
[~~2012 and prior~~]	[~~30%~~]

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies.

(i) Property in this class is subject to heavy wear and tear, and rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry.[~~ Heavy wear and tear is also a factor in valuing this class of property.~~]

[~~(i)~~](ii) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges; and

(E) aircraft parts manufacturing test equipment.

[~~(ii)~~](iii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 25 Aircraft Parts Manufacturing Tools and Dies	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	[~~94%~~]91%
[~~2022~~]2023	[~~82%~~]79%
[~~2021~~]2022	[~~62%~~]60%
[~~2020~~]2021	[~~44%~~]42%
[~~2019~~]2020	23%
[~~2018~~]2019 and prior	4%

(aa)(i) Class 26 - Personal Watercraft.

(ii) [~~Because~~]As required by Section 59-2-405.2, [~~subjects~~]a personal watercraft is subject to an age-based uniform fee in lieu of property tax.[~~, a percent good schedule is not necessary.~~]

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures.

(i) [~~Examples of property~~]Property in this class [~~include~~]includes:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value [~~is~~]shall be calculated by applying the percent good factor against the acquisition cost of the property.

Table 27 Electrical Power Generating Equipment and Fixtures	
Year of Acquisition	Percent Good of Acquisition Cost
[~~2023~~]2024	97%
[~~2022~~]2023	95%
[~~2021~~]2022	92%
[~~2020~~]2021	90%
[~~2019~~]2020	87%
[~~2018~~]2019	84%
[~~2017~~]2018	82%
[~~2016~~]2017	79%
[~~2015~~]2016	77%
[~~2014~~]2015	74%
[~~2013~~]2014	71%
[~~2012~~]2013	69%
[~~2011~~]2012	66%
[~~2010~~]2011	64%
[~~2009~~]2010	61%
[~~2008~~]2009	58%
[~~2007~~]2008	56%
[~~2006~~]2007	53%
[~~2005~~]2006	51%
[~~2004~~]2005	48%
[~~2003~~]2004	45%
[~~2002~~]2003	43%
[~~2001~~]2002	40%
[~~2000~~]2001	38%
[~~1999~~]2000	35%
[~~1998~~]1999	32%

[~~1997~~]1998	30%
[~~1996~~]1997	27%
[~~1995~~]1996	25%
[~~1994~~]1995	22%
[~~1993~~]1994	19%
[~~1992~~]1993	17%
[~~1991~~]1992	14%
[~~1990~~]1991	12%
[~~1989~~]1990 and prior	9%

This rule shall be implemented and become binding on taxpayers beginning January 1, [~~2024~~]2025.

KEY: taxation, personal property, property tax, appraisals
Date of Last Change: 2024[~~December 22, 2023~~]
Notice of Continuation: November 9, 2021
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R884-24P-53**	**Filing ID: 56783**

Agency Information

1. Title catchline:	Tax Commission, Property Tax	
Building:	Tax Commission	
Street address:	210 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	210 N 1950 W	
City, state and zip:	Salt Lake City, UT 84134	
Contact persons:		
Name:	**Phone:**	**Email:**
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R884-24P-53. 2024 Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515
3. Purpose of the new rule or reason for the change:
Section 59-2-515 authorizes the State Tax Commission to make rules necessary to effectuate the Farmland Assessment Act. Section 59-2-514 creates the State Farmland Advisory Committee (Committee) and requires a person appointed by the Tax Commission (Commission) to serve as chair. This Committee reviews several classifications of land in agricultural use in the various areas of the state and recommends a range of values for each of the classifications based upon productive capabilities of the land when devoted to agricultural use. The recommendations are then submitted to the Commission for approval and publication in rule. This proposed rule represents the Committee's recommendations.

4. Summary of the new rule or change:

The amendment provides 2025 updates for a range of values for classifications of agricultural land throughout the state based upon productive capabilities of the land when devoted to agricultural use.

Fiscal Information

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

A) State budget:

The aggregate anticipated cost or savings to the state budget is undetermined. However, based on available information, the overall aggregate anticipated cost or savings to the state budget is expected to be minimal as a result of this amendment.

The Education Fund receives revenue based on increased or decreased real and personal property valuation, including property assessed under the Farmland Assessment Act (FAA). Property valuation changes have been recommended by class and by county. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

B) Local governments:

The aggregate anticipated cost or savings to local governments is undetermined. However, based on available information, the overall aggregate anticipated cost or savings to local governments is expected to be minimal.

Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA. Property valuation changes have been recommended by class and by county. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, county assessors' offices statewide will be required to input the new value indicators into their systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

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

The aggregate anticipated costs or savings to small businesses is undetermined. However, based on available information, the aggregate costs or savings to small businesses as a cohort is expected to be minimal.

Each individual small business with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of these costs or savings are subject to the specific small businesses' unique mix of property class and situs county. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year. Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

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

The aggregate anticipated costs or savings to non-small businesses is undetermined. However, based on available information, the aggregate costs or savings to non-small businesses as a cohort is expected to be minimal.

Each individual non-small business with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of costs or savings are subject to the specific non-small businesses' unique mix of property class and situs county. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year. Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

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 aggregate anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities ("persons") is undetermined. However, based on available information, the aggregate costs or savings to persons as a cohort is expected to be minimal.

Each person with property eligible for assessment under the FAA may see a change in value which may result in costs or savings. The extent of costs or savings are subject to the specific person's unique mix of property class and situs county. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA assessment in the coming year.

Additionally, any cost or savings estimate will be further altered by changes to local property tax rates.

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

County assessors' offices statewide will be required to input the new value indicators into their systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant compliance cost in time or money to the assessors' offices.

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:

Commissioner of the Tax Commission, Rebecca L. Rockwell, 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 59-2-515

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Rebecca Rockwell, Commissioner	**Date:**	09/03/2024

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-53. [~~2024~~]2025 Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) Property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed in TABLE 1, Irrigated I:

TABLE 1 Irrigated I	
County	Per Acre Value
Box Elder	[~~$722~~]$757
Cache	[~~$642~~]$686
Carbon	[~~$498~~]$533
Davis	[~~$793~~]$849
Emery	[~~$472~~]$505
Iron	[~~$756~~]$807
Kane	[~~$393~~]$421
Millard	[~~$750~~]$800
Salt Lake	[~~$656~~]$691
Utah	[~~$707~~]$749
Washington	[~~$615~~]$656
Weber	[~~$785~~]$841

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed in TABLE 2, Irrigated II:

TABLE 2 Irrigated II	
County	Per Acre Value
Beaver	[~~$533~~]$542
Box Elder	[~~$635~~]$666
Cache	[~~$548~~]$585
Carbon	[~~$395~~]$423
Davis	[~~$698~~]$747
Duchesne	[~~$461~~]$492
Emery	[~~$380~~]$406
Grand	[~~$365~~]$391
Iron	[~~$664~~]$709
Juab	[~~$418~~]$443
Kane	[~~$304~~]$325
Millard	[~~$658~~]$701

Salt Lake	[~~$563~~]$593
Sanpete	[~~$512~~]$548
Sevier	[~~$543~~]$580
Summit	[~~$433~~]$463
Tooele	[~~$419~~]$448
Utah	[~~$610~~]$647
Wasatch	[~~$459~~]$492
Washington	[~~$524~~]$559
Weber	[~~$688~~]$737

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed in TABLE 3, Irrigated III:

TABLE 3 Irrigated III	
County	Per Acre Value
Beaver	[~~$439~~]$446
Box Elder	[~~$498~~]$522
Cache	[~~$415~~]$443
Carbon	[~~$265~~]$284
Davis	[~~$562~~]$601
Duchesne	[~~$324~~]$346
Emery	[~~$238~~]$254
Garfield	[~~$199~~]$213
Grand	[~~$232~~]$248
Iron	[~~$526~~]$562
Juab	[~~$283~~]$300
Kane	[~~$168~~]$180
Millard	[~~$521~~]$555
Morgan	[~~$369~~]$395
Piute	[~~$315~~]$337
Rich	[~~$168~~]$180
Salt Lake	[~~$430~~]$453
San Juan	[~~$149~~]$152
Sanpete	[~~$377~~]$404
Sevier	[~~$403~~]$431
Summit	[~~$297~~]$318
Tooele	[~~$281~~]$301
Uintah	[~~$349~~]$372
Utah	[~~$470~~]$498
Wasatch	[~~$319~~]$342
Washington	[~~$385~~]$411
Wayne	[~~$310~~]$333
Weber	[~~$547~~]$586

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed in TABLE 4, Irrigated IV:

TABLE 4 Irrigated IV	
County	Per Acre Value
Beaver	[~~$363~~]$369
Box Elder	[~~$413~~]$433
Cache	[~~$322~~]$344
Carbon	[~~$169~~]$181
Daggett	[~~$179~~]$192
Davis	[~~$468~~]$501
Duchesne	[~~$227~~]$242
Emery	[~~$149~~]$159
Garfield	[~~$107~~]$114
Grand	[~~$141~~]$151
Iron	[~~$431~~]$460
Juab	[~~$187~~]$198
Kane	[~~$75~~]$80
Millard	[~~$423~~]$451
Morgan	[~~$274~~]$293
Piute	[~~$219~~]$234
Rich	[~~$77~~]$82
Salt Lake	[~~$332~~]$350
San Juan	[~~$67~~]$68
Sanpete	[~~$282~~]$302
Sevier	[~~$309~~]$330
Summit	[~~$203~~]$217
Tooele	[~~$192~~]$205
Uintah	[~~$259~~]$276
Utah	[~~$376~~]$399
Wasatch	[~~$226~~]$242
Washington	[~~$291~~]$310
Wayne	[~~$219~~]$235
Weber	[~~$447~~]$479

(b) Fruit orchards. The following counties shall assess fruit orchards based upon the per acre values listed in TABLE 5, Fruit Orchards:

TABLE 5 Fruit Orchards	
County	Per Acre Value
Beaver	[~~$291~~]$227
Box Elder	[~~$317~~]$247
Cache	[~~$291~~]$227
Carbon	[~~$291~~]$227
Davis	[~~$318~~]$248

Duchesne	[~~$291~~]$227
Emery	[~~$291~~]$227
Garfield	[~~$291~~]$227
Grand	[~~$291~~]$227
Iron	[~~$291~~]$227
Juab	[~~$291~~]$227
Kane	[~~$291~~]$227
Millard	[~~$291~~]$227
Morgan	[~~$291~~]$227
Piute	[~~$291~~]$227
Salt Lake	[~~$291~~]$227
San Juan	[~~$291~~]$227
Sanpete	[~~$291~~]$227
Sevier	[~~$291~~]$227
Summit	[~~$291~~]$227
Tooele	[~~$291~~]$227
Uintah	[~~$291~~]$227
Utah	[~~$321~~]$250
Wasatch	[~~$291~~]$227
Washington	[~~$346~~]$270
Wayne	[~~$291~~]$227
Weber	[~~$318~~]$248

(c) Meadow IV. The following counties shall assess Meadow IV property based upon per acre values listed in TABLE 6, Meadow IV:

TABLE 6 Meadow IV	
County	Per Acre Value
Beaver	[~~$225~~]$229
Box Elder	[~~$232~~]$243
Cache	[~~$246~~]$263
Carbon	[~~$125~~]$134
Daggett	[~~$147~~]$157
Davis	[~~$251~~]$269
Duchesne	[~~$159~~]$170
Emery	[~~$131~~]$140
Garfield	[~~$99~~]$106
Grand	[~~$127~~]$136
Iron	[~~$249~~]$266
Juab	[~~$144~~]$153
Kane	[~~$102~~]$109
Millard	[~~$184~~]$196
Morgan	[~~$189~~]$202
Piute	[~~$180~~]$193

Rich	[~~$100~~]$107
Salt Lake	[~~$210~~]$221
Sanpete	[~~$185~~]$198
Sevier	[~~$193~~]$206
Summit	[~~$190~~]$203
Tooele	[~~$174~~]$186
Uintah	[~~$196~~]$209
Utah	[~~$235~~]$249
Wasatch	[~~$198~~]$212
Washington	[~~$216~~]$230
Wayne	[~~$163~~]$175
Weber	[~~$293~~]$314

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:
(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed in TABLE 7, Dry III:

TABLE 7 Dry III	
County	Per Acre Value
Beaver	[~~$49~~]$50
Box Elder	[~~$84~~]$88
Cache	[~~$110~~]$117
Carbon	[~~$46~~]$49
Davis	[~~$48~~]$51
Duchesne	[~~$52~~]$56
Garfield	[~~$45~~]$48
Grand	[~~$46~~]$49
Iron	[~~$46~~]$49
Juab	[~~$49~~]$52
Kane	[~~$45~~]$48
Millard	[~~$44~~]$47
Morgan	[~~$63~~]$67
Rich	[~~$45~~]$48
Salt Lake	[~~$51~~]$54
San Juan	[~~$46~~]$47
Sanpete	[~~$52~~]$56
Summit	[~~$45~~]$48
Tooele	[~~$49~~]$52
Uintah	[~~$52~~]$55
Utah	[~~$48~~]$51
Wasatch	[~~$45~~]$48
Washington	[~~$45~~]$48
Weber	[~~$78~~]$84

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed in TABLE 8, Dry IV:

TABLE 8 Dry IV	
County	Per Acre Value
Beaver	$14
Box Elder	[~~$53~~]$56
Cache	[~~$76~~]$81
Carbon	[~~$14~~]$15
Davis	[~~$14~~]$15
Duchesne	[~~$18~~]$19
Garfield	[~~$14~~]$15
Grand	[~~$14~~]$15
Iron	[~~$14~~]$15
Juab	[~~$14~~]$15
Kane	[~~$14~~]$15
Millard	[~~$13~~]$14
Morgan	[~~$25~~]$27
Rich	[~~$14~~]$15
Salt Lake	[~~$16~~]$17
San Juan	$17
Sanpete	[~~$18~~]$19
Summit	[~~$14~~]$15
Tooele	[~~$14~~]$15
Uintah	[~~$18~~]$19
Utah	[~~$14~~]$15
Wasatch	[~~$14~~]$15
Washington	[~~$13~~]$14
Weber	[~~$42~~]$45

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:
(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed in TABLE 9, Graze I:

TABLE 9 Graze I	
County	Per Acre Value
Beaver	[~~$67~~]$68
Box Elder	[~~$67~~]$70
Cache	[~~$66~~]$70
Carbon	[~~$49~~]$52
Daggett	[~~$49~~]$52
Davis	[~~$57~~]$61
Duchesne	[~~$65~~]$69
Emery	[~~$66~~]$71
Garfield	[~~$73~~]$78
Grand	[~~$74~~]$79
Iron	[~~$71~~]$76
Juab	[~~$61~~]$65

Kane	[~~$71~~]$76
Millard	[~~$72~~]$77
Morgan	[~~$65~~]$70
Piute	[~~$85~~]$91
Rich	[~~$60~~]$64
Salt Lake	[~~$65~~]$68
San Juan	[~~$64~~]$65
Sanpete	[~~$59~~]$63
Sevier	[~~$62~~]$66
Summit	[~~$68~~]$73
Tooele	[~~$68~~]$73
Uintah	[~~$76~~]$81
Utah	[~~$61~~]$65
Wasatch	[~~$49~~]$52
Washington	[~~$61~~]$65
Wayne	[~~$83~~]$89
Weber	[~~$68~~]$73

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed in TABLE 10, Graze II:

TABLE 10 Graze II	
County	Per Acre Value
Beaver	$21
Box Elder	[~~$21~~]$22
Cache	[~~$21~~]$22
Carbon	[~~$14~~]$15
Daggett	[~~$13~~]$14
Davis	[~~$18~~]$19
Duchesne	[~~$18~~]$19
Emery	[~~$20~~]$21
Garfield	[~~$21~~]$22
Grand	[~~$21~~]$22
Iron	[~~$21~~]$22
Juab	[~~$17~~]$18
Kane	[~~$23~~]$25
Millard	[~~$23~~]$25
Morgan	[~~$21~~]$22
Piute	[~~$24~~]$26
Rich	[~~$19~~]$20
Salt Lake	[~~$18~~]$19
San Juan	$21
Sanpete	[~~$17~~]$18
Sevier	[~~$17~~]$18
Summit	[~~$19~~]$20

Tooele	[~~$19~~]$20
Uintah	[~~$26~~]$28
Utah	[~~$22~~]$23
Wasatch	[~~$15~~]$16
Washington	[~~$20~~]$21
Wayne	[~~$26~~]$28
Weber	[~~$19~~]$20

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values in TABLE 11, Graze III:

TABLE 11 Graze III	
County	Per Acre Value
Beaver	$16
Box Elder	[~~$15~~]$16
Cache	[~~$13~~]$14
Carbon	[~~$12~~]$13
Daggett	[~~$11~~]$12
Davis	[~~$12~~]$13
Duchesne	[~~$13~~]$14
Emery	[~~$13~~]$14
Garfield	[~~$14~~]$15
Grand	[~~$14~~]$15
Iron	[~~$14~~]$15
Juab	[~~$13~~]$14
Kane	[~~$14~~]$15
Millard	[~~$14~~]$15
Morgan	[~~$12~~]$13
Piute	[~~$16~~]$17
Rich	[~~$12~~]$13
Salt Lake	[~~$14~~]$15
San Juan	$13
Sanpete	[~~$$13~~]$14
Sevier	[~~$13~~]$14
Summit	[~~$13~~]$14
Tooele	[~~$13~~]$14
Uintah	[~~$18~~]$19
Utah	[~~$13~~]$14
Wasatch	[~~$12~~]$13
Washington	[~~$12~~]$13
Wayne	[~~$16~~]$17
Weber	[~~$13~~]$14

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed in TABLE 12, Graze IV:

TABLE 12

Graze IV	
County	Per Acre Value
Beaver	$5
Box Elder	$5
Cache	$5
Carbon	$5
Daggett	$5
Davis	$5
Duchesne	$6
Emery	$6
Garfield	$5
Grand	$5
Iron	$5
Juab	$5
Kane	$5
Millard	$6
Morgan	$6
Piute	$5
Rich	$5
Salt Lake	$5
San Juan	$5
Sanpete	$6
Sevier	$6
Summit	$5
Tooele	$5
Uintah	$6
Utah	$5
Wasatch	$5
Washington	$6
Wayne	$5
Weber	$6

(f) Nonproductive Land. The following counties shall assess property classified as Nonproductive Land based upon the per acre value listed in TABLE 13, Nonproductive Land:

TABLE 13 Nonproductive Land	
County	Per Acre Value
Beaver	$5
Box Elder	$5
Cache	$5
Carbon	$5
Daggett	$5
Davis	$5
Duchesne	$5

Emery	$5
Garfield	$5
Grand	$5
Iron	$5
Juab	$5
Kane	$5
Millard	$5
Morgan	$5
Piute	$5
Rich	$5
Salt Lake	$5
San Juan	$5
Sanpete	$5
Sevier	$5
Summit	$5
Tooele	$5
Uintah	$5
Utah	$5
Wasatch	$5
Washington	$5
Wayne	$5
Weber	$5

(3) This rule shall be implemented and become binding beginning January 1, [~~2024~~]2025.

KEY: taxation, personal property, property tax, appraisals
Date of Last Change: 2024[~~December 22, 2023~~]
Notice of Continuation: November 9, 2021
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R884-24P-66**	**Filing ID: 56785**

Agency Information

1. Title catchline:	Tax Commission, Property Tax
Building:	Tax Commission
Street address:	210 N 1950 W
City, state:	Salt Lake City, UT
Mailing address:	210 N 1950 W
City, state and zip:	Salt Lake City, UT 84134
Contact persons:	

Name:	Phone:	Email:
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-516, 59-2-1001, and 59-2-1004

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

The purpose of this filing is to clarify the timeframes and procedure for late filed property tax appeals.

4. Summary of the new rule or change:

The amendment addresses when a county board of equalization is required to accept an appeal filed after the deadline for filing a property tax appeal, which is generally September 15 of each year.

The proposed amendments generally require the county board of equalization to first decide whether to accept a late filed appeal by written decision, and this determination is appealable to the Yax Commission (Commission) .

In addition, the proposed rule amendment provides similar procedures and requirements for a county board of equalization to accept a late filed appeal under the Farmland Assessment Act (FAA). If the appeal is filed not more than 60 days after the deadline for filing the appeal, which is generally within 45 days after the denial of valuation under the FAA.

Finally, the proposed rule amendment modifies the circumstances under which a county board of equalization is required to accept a late filed appeal, and makes technical changes.

Fiscal Information

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

A) State budget:

This amendment is not expected to impact the state budget because it is only a procedural change that does not impose and measurable costs or savings.

B) Local governments:

This amendment is not expected to impact local governments because it is only a procedural change that does not impose and measurable costs or savings.

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

This amendment is not expected to impact small businesses because it is only a procedural change that does not impose and measurable costs or savings.

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

This amendment is not expected to impact non-small businesses because it is only a procedural change that does not impose and measurable costs or savings.

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

This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it is only a procedural change that does not impose and measurable costs or savings.

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

This amendment is not expected to impose compliance costs on affected persons because it is only a procedural change that does not impose and measurable costs or savings.

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:

Commissioner of the Tax Commission, Rebecca L. Rockwell, 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 59-2-515

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:	10/15/2024
9. This rule change MAY become effective on:	10/22/2024

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:	Rebecca Rockwell, Commissioner	**Date:**	09/03/2024

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-516, 59-2-1001, and 59-2-1004.

(1)[~~(a)~~] As used in this section:
(a) "Appeal period" means a time period that:
(i) begins on the date the valuation notice is mailed as required by Section 59-2-919.1; and
(ii) ends on the date a taxpayer is required to make an application to appeal the valuation or equalization of the taxpayer's real property in accordance with Subsection 59-2-1004(3).
(b)(i) "Factual error" means an error described in Subsection (1)(b)(ii):
[~~(i)~~](A) that is objectively verifiable without the exercise of discretion, opinion, or judgment;

[~~(ii)~~](B) that is demonstrated by clear and convincing evidence; and

[~~(iii)~~](C) the existence of which is recognized by the taxpayer and the county assessor.

[~~(b)~~](ii) Subject to Subsection (1)[~~(c)~~](b)(iii), "factual error" includes an error[~~ that is~~]:

[~~(i) ~~](A) that is a mistake in the description of the size, use, or ownership of a property;

[~~(ii) ~~](B) that is a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

[~~(iii) ~~](C) that is an error in the classification of a property that is eligible for a property tax exemption[~~, deferral, reduction, or abatement~~] under Section 59-2-103;

[~~(iv)~~](D) [~~valuation of a~~]in valuing property that is not in existence on the lien date; [~~and~~]or

[~~(v)~~](E) [~~a valuation of a property assessed~~]in assessing property more than once, or by the wrong assessing authority.

[~~(c)~~](iii) "Factual error" does not include:

[~~(i)~~](A) an alternative approach to value;

[~~(ii)~~](B) a change in a factor or variable used in an approach to value;

[~~(iii)~~](C) an adjustment to a valuation methodology; or

[~~(iv)~~](D) an assertion of an error in the classification of property as residential property eligible to receive a residential exemption if:

[~~(A)~~](I) an application for the residential exemption is required under Section 59-2-103.5; and

[~~(B)~~](II) the application described in Subsection (1)[~~(c)(iv)(A)~~](b)(iii)(D)(I) was not timely filed.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the county assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2) is not attached, the county [~~will~~]shall notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If [~~the~~]a taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6)(a) The county board of equalization may dismiss an appeal for lack of jurisdiction [~~when the taxpayer limits arguments to~~]if a taxpayer makes arguments that pertain only to issues that are not under the jurisdiction of the county board of equalization.

(b)(i) The county board of equalization may not dismiss an appeal for a party's failure to sign or return a stipulation.

(ii) A party's failure to sign or return a stipulation may not be considered by the board of equalization to be acceptance of the terms of the stipulation.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the county assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the county assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11)(a) A [~~ Decisions~~]decision by [~~the~~]a county board of equalization [~~are~~]is a final [~~orders~~]order on the merits.

(b) An appeal of a county board of equalization decision under this Subsection (11) to the commission is as provided in Sections 59-2-1006 and R861-1A-9.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the [~~time period prescribed by Subsection 59-2-1004(3)(a) if any of the following conditions apply:~~]last day of the appeal period if:

(a) [~~During the period prescribed by Subsection 59-2-1004(3)(a), ~~]the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner[~~,~~] during or within a reasonable time before the appeal period, and no co-owner of the property was capable of filing an appeal[~~,~~];

(b) [~~During the period prescribed by Subsection 59-2-1004(3)(a), ~~]the property owner or an immediate family member of the property owner died[~~,~~] during or within a reasonable time before the appeal period, and no co-owner of the property was capable of filing an appeal[~~,~~];

(c) [~~The~~]the county did not comply with the notification requirements of Section 59-2-919.1[~~,~~];

(d) [~~A~~]a factual error is discovered in the county records pertaining to the subject property[~~,~~]; or

(e) [~~The~~]the property owner was unable to file an appeal within the [~~time period prescribed by Subsection 59-2-1004(3)(a)~~]appeal period because of extraordinary and unanticipated circumstances that occurred [~~during the period prescribed by Subsection 59-2-1004(3)(a),~~]during or within a reasonable time before the appeal period and no co-owner of the property was capable of filing an appeal.

(13) A county board of equalization shall make a determination as to whether to accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the last day of the appeal period.

(b) A county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(c) An appeal of a county board of equalization decision under this Subsection (13) to the commission is as provided in Sections 59-2-1006 and R861-1A-9.

[~~(13)~~](14) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

[~~(14)~~](15) Subsection (12) applies only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) A county board of equalization shall accept a property owner's application to appeal a county assessor's determination or denial under Title 59, Chapter 2, Part 5, Farmland Assessment Act, that is filed no more than 60 days after the last day of the period described in Subsection 59-2-516(1) in accordance with the same procedures and requirements of Subsections (12) through (14) for a valuation or equalization appeal.

KEY: taxation, personal property, property tax, appraisals
Date of Last Change: 2024[~~December 22, 2023~~]
Notice of Continuation: November 9, 2021
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R907-69**	**Filing ID: 56753**

Agency Information

1. Title catchline:	Transportation, Administration	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	P.O. 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
Marlene Galindo	801-965-4026	Mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R907-69. Records Access

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

The Department of Transportation (Department) has determined that this rule is no longer necessary due to the advancements the Department has made in streamlining public records access. All information contained in this rule is readily available on the Department's website and its Government Records and Management Act (GRAMA) access portal, which are more easily accessible and user-friendly than the rule itself.

This proposal is also consistent with the Governor's Executive Order, 02/03/1986, which encourages agencies to eliminate obsolete, unclear, or unnecessarily complex rules.

Repealing this rule will simplify the regulatory landscape, reduce redundancy, and contribute to a more efficient government.

4. Summary of the new rule or change:

This rule filing appeals the entirety of Rule R907-69. The statutory authority for this rule, Subsection 63G-2-204(2)(d), does not require the Department to create this rule, and therefore, repeal is permissible.

Fiscal Information

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

A) State budget:

There is no cost or savings to the state budget because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the rule.

B) Local governments:

There is no cost or savings to local governments because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the rule.

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

There is no cost or savings to small businesses because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the rule.

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

There is no cost or savings to non-small businesses because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the 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 cost or savings to persons because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the 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 costs for affected persons because this repeals a rule pertaining to a public process that is sufficiently available to the public through Department resources outside of the 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 Transportation, Carlos M. Braceras, PE, 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 63G-2-204(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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	08/23/2024

R907. Transportation, Administration.

[~~R907-69. Records Access.~~

~~R907-69-1. Purpose and Authority.~~

~~This rule provides information about where and to whom to direct requests for access to records of the Utah Department of Transportation (UDOT) under the Government Records Access and Management Act. This rule is authorized by Section 63G-2-204(2)(d).~~

~~R907-69-2. Requests for Access.~~

~~All requests for records shall be directed to:~~

~~WDBOH~~

~~+Li e| kdqg gholyhu|,~~

~~JUDFD Fruuljdwru~~
~~Xwdk Ghsduwphqw ri Wudqvsruwdwlrq~~
~~Fdoylq Udpsxuq Frpsoh{/ 5qg Iorru~~
~~7034 Vxwk 5,33 Zhvw~~
~~Vdow Odnh Flw|/ Xwdk ,744<~~

~~+Li e| pdlo,~~

~~JUDPD Frruglqdwru~~
~~Xwdk Chduwphqw ri Wudqvruwdwlrq~~
~~S1R1 Er{ 47,763~~
~~Vdow Odnh Flw|/ Xwdk ,74470,763~~

~~+Li e| hpdlo,~~

~~JUDPD Frruglqdwru~~
~~judpdCxwdk1jry~~

~~+Li e| id{,~~

~~JUDPD Frruglqdwru~~
~~,340<9807,6,~~

~~R907-69-3. Request Form.~~

~~A request for public information form is available on the UDOT website at: www.udot.gov/main/uconowner.gf?n=7060323128709256.~~

~~R907-69-4. Appeals.~~

~~Appeals regarding determinations of access to records shall be directed to:~~

~~WDBOH~~

~~+Li e| kdqg gholyhu|,~~

~~JUDPD Dsshdo~~
~~XGRW H{hfxwlyh Gluhfwru~~
~~Fdoylq Udpswrq Frpsoh{/ 4vw Iorru~~
~~7034 Vxwk 5,33 Zhvw~~
~~Vdow Odnh Flw|/ Xwdk ,744<~~

~~+Li e| pdlo,~~

~~JUDPD Dsshdo~~
~~XGRW H{hfxwlyh Gluhfwru~~
~~S1R1 Er{ 474598~~
~~Vdow Odnh Flw|/ Xwdk ,744704598~~

~~+Li e| hpdlo,~~

~~JUDPD Dsshdo~~
~~XGRW H{hfxwlyh Gluhfwru~~
~~XGRWH{hfGluCxwdk1jry~~

~~+Li e| Id{,~~

~~JUDPD Dsshdo~~
~~XGRW H{hfxwlyh Gluhfwru~~
~~,340<980766,~~

~~KEY: public records, government documents, records access, GRAMA~~
~~Date of Last Change: March 12, 2012~~
~~Notice of Continuation: December 19, 2019~~
~~Authorizing, and Implemented or Interpreted Law: 63G-2-204~~]

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R909-2**	**Filing ID: 56751**

Agency Information

1. Title catchline:	Transportation, Motor Carrier
Building:	Calvin Rampton
Street address:	4501 S 2700 W
City, state:	Taylorsville, UT 84129

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
Marlene Galindo	801-965-4026	Mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R909-2. Utah Size and Weight Rule

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

The purpose of Rule R909-2 is to outline procedures and requirements for the size and weight of motor carriers that use Utah's highway system.

Section R909-2-5 specifically deals with weight limits and obtaining an overweight permit when weight limits are exceeded. This section includes a weight exception for vehicle weight attributable to a natural gas tank and fueling system.

The Department of Transportation recently discovered that Section R909-2-5 needs to be updated, due to a change in federal law, to include a similar exception for vehicle weight attributable to an electric battery power system.

4. Summary of the new rule or change:

This rule updates the language in Section R909-2-5 to reflect the change in federal law, clarifies and modifies the language of the rule, updates the list of definitions, and harmonizes the rule 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:

There is no anticipated cost or savings to the state budget because this amendment adds a new exception to the Utah size and weight rule that applies to vehicles powered primarily by electric battery, but this rule does not apply to state-owned vehicles.

B) Local governments:

There is no anticipated cost or savings to local governments because this amendment adds a new exception to the Utah size and weight rule, and this new exception will not impact 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 because the new exception to the Utah size and weight rule is clerical in nature and will not impact small businesses in any substantial way.

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

There is no anticipated cost or savings to non-small businesses because the new exception to the Utah size and weight rule is clerical in nature and will not impact non-small businesses in any substantial way.

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

There is no anticipated cost or savings to persons because the new exception to the Utah size and weight rule is clerical in nature and will not impact other persons in any substantial way.

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 measurable costs for impacted entity to adhere to this amendment.

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 Transportation, Carlos M. Braceras, PE, 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 41-1a-231	Section 41-1a-1206	Section 72-1-201
Section 72-7-402	Section 72-7-404	Section 72-7-406
Section 72-7-407	Section 72-9-301	Section 72-9-502

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024

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:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	08/23/2024

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.

R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. Commercial motor vehicle operators and motor carriers engaged in the movement of over-dimensional and overweight vehicles and loads must comply with [~~permit conditions as specified in the Utah Size and Weight~~]this rule.[~~These conditions apply to all over-dimensional vehicles and loads.~~]

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" has the same meaning as defined in 23 CFR Part 658, and Section 72-7-402.

(2) "Articulated vehicle" means two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" means any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter will not be prohibited from transporting cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or loads measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier Safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" has the same meaning as defined in Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" means a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" means a truck tractor capable of carrying a load independent of a trailer. Units manufactured before December 1, 1982, are exempt as a truck trailers.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering, or retractable.

(16) "Flagger" means a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Freeway" means a divided highway facility with full control of access and two or more lanes for the exclusive use of through traffic in each direction. A freeway includes a highway that is part of the interstate system and SR-201 from I-80 to 7200 West.

(18) "Full trailer" means a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(19) "High-risk motor carrier" means a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC[:]s at or above the "all other" motor carrier threshold.

(20) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(21) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(22) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(23) "Interstate system" means any highway designated as interstate.

(24) "Laden" means carrying a load.

(25) "Longer combination vehicle" or "LCV" means a combination of trucks, truck tractors, semitrailers, and, trailers, [~~which~~]that exceed legal dimensions and operate on highways by permit for transporting divisible loads.

(26) "Longer combination vehicle authority" means authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(27) "Manufactured home" means a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation if connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(28) "Manufactured mobile home" means a transportable factory-built housing unit built before June 15, 1976, in accordance with a state mobile home code, which existed before the Federal Manufactured Housing and Safety Standards Act.

(29) "Motor carrier" has the same meaning as the phrase [~~is~~]defined in Section 72-9-102.

(30) "MVR" means motor vehicle record.

(31) "MUTCD" means Manual on Uniform Traffic Control Devices.

(32) "Multi-trip" means two or more daily trips or a minimum of ten weekly trips in the proximity of a port of entry.

(33) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(34) "Non-divisible" means any load or vehicle exceeding applicable length, width, height, or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(35) "Out-of-service" means a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(36) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(37) "Port[-] of[-] entry by[-]pass permit" means a permit that allows a motor carrier to by[-]pass a designated port of entry.

(38) "Quad axle group" means a group of four consecutive fixed axles.

(39) "Recreational vehicle" means a vehicle or vehicles that are driven solely as a family or personal conveyance for non-commercial purposes.

(40) "Retractable axle" means an axle that can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the preceding vehicle or vehicles.

(42) "Secondary highway" means routes not designated as interstate or freeways. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semitrailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or SME means a vehicle or vehicle exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic[~~,~~] and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or "STE" means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as concrete pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" means two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Tillerman or Steerman" means an individual who steers any axle of an articulated trailer.

(50) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and two trailers or semitrailers.

(51) "Trailer transporter towing unit" means a power unit that is not used to carry property if operating in a towaway trailer transporter combination.

(52) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(53) "Triple trailer" means a tractor and three trailers of approximately equal length.

(54) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(55) "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.

(56) "Trunnion axle" means an axle configuration with two individual axles mounted in a transverse plane, with four tires on each axle.

(57) "Trunnion axle group" means two or more consecutive trunnion axles that are attached to the vehicle by a weight-equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(58) "UCR" means Unified Carrier Registration.

(59) "Un-laden" means a vehicle is not carrying a load.

(60) "Variable load suspension axle" or "VLS" means an axle that can be adjusted mechanically to various weight-bearing capacities and can also be mechanically raised and lowered.

(61) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet;

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions.

TABLE 1
Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi[~~-T~~]trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stringer steered automobile transporter	80 feet or less	Stinger-steered automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less, excluding overhangs.
Saddle Mount	97 feet	This will allow a maximum of three saddle-mount vehicles, one power unit, and one full-mount.
Truck trailer	65 feet	Measured from bumper [-] to [-] bumper combination
Dromedary unit	65 feet	Truck tractor[~~,~~] unloaded box deck, and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates, US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet rear	Vehicle may not carry any load extending more than 3 feet beyond the front of the power unit or more rear than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and weight and medium-duty trailers	82 feet or less	Consisting of a trailer transporter towing unit and two[~~2~~] trailers or semitrailers with a total weight not to exceed 26,000 pounds; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or

		semitrailers, may have an overall length limitation of 82 feet or less on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) Except as otherwise provided in this section, operating a vehicle that exceeds the[~~The~~] maximum gross and axle weight limitations [~~are noted~~]described in Table 2 [~~and may not be operated at more than:~~]is prohibited.

TABLE 2 Maximum Gross and Axle Weight Limitations	
Axles	Weight
Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	Must comply with the bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations [~~listed~~]described in Table 2.

(3) The weight limitation described in Table 2 do[~~es~~] not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits,[~~- up to a maximum gross vehicle weight of 86,000 pounds, of less than -~~] described in Table 2 with the following limitations:

(a) 24,000 pounds on a single steering axle;

(b) 33,500 pounds on a single- drive axle;

(c) 62,000 pounds on a tandem axle;[~~- or~~]

(d) 52,000 pounds on a tandem rear drive steer axle[~~,~~]; and

(e) 82,000 pounds gross vehicle weight.

(5) A vehicle fueled primarily by natural gas [~~vehicle~~]or powered primarily by electric battery power may exceed any vehicle weight limit, up to a maximum gross vehicle weight of 82,000 pounds, by any amount that is equal to the difference between:

(a)(i) [~~T~~]the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle[~~,~~]; [~~and~~]or

(ii) the weight of the vehicle attributable to the electric battery power system; and

(b) the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine the maximum tire width:

(a) for non-permitted or legal vehicles, no tire may exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible Overweight Permit must not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches must have a weight limit not to exceed 5,500 pounds;

(d) tires less than 11 inches wide may not exceed 450 pounds per inch of tire width; and

(e) except as provided in Section R909-2-6, single axle loading may not exceed 20,000 pounds, and tandem axle loading must not exceed 34,000 pounds.

R909-2-7. Axle Provisions.

(1) No more than three fixed axles may be allowed in any truck and trailer combination.

(2) Vehicles with variable load axles are limited as follows:

(a) retractable or variable load suspension axles installed after January 1990 must be self-steering, provided however, variable load suspension axles that are within 60 inches of a drive axle or are within 60 inches of a trailer axle, need not be self-steering;

(b) non-divisible loads may be exempt from these restrictions upon written approval from the division;

(c) no axle in a group with a retractable or VLS axle may exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(d) controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve must be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained before operating within Utah.

(2) Each oversized or overweight permit must be carried in the vehicle or combination vehicles and may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversized or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception: Length limitations do not apply to combinations of vehicles operated at night by a public utility [~~when~~]if required for emergency repair of public service facilities or properties, or when operated with an oversized or overweight permit.

(5) Liability of permittee: The applicant or permittee, as a condition for obtaining an oversized permit, must assume responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee must agree to indemnify and hold harmless the department from claims resulting directly or indirectly from the operation and transportation of vehicles or a combination of vehicles operating under an oversized or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another up to two times per permit for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within a company;

(b) the customer has sold or purchased a vehicle;

(c) lease changes from one company to another by providing evidence of permit ownership; or

(d) the vehicle has become disabled.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension, and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension, or confiscation of the permit include:

(a) speeding or driving faster than the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted, and the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier may operate a longer combination vehicle LCV, a tractor-trailer combination more than 81 feet cargo carrying length, or a truck and two-trailer combination more than 92 feet measured bumper to bumper[~~,~~] when the following conditions exist:

(a) wind more than 45 mph;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier may operate an oversize vehicle or load more than 10 feet wide, 105 feet long, and 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height, Monday [~~thru~~]through Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) highways south of Perry Willard Interchange, I-15, Exit #357;

(b) highways in Weber, Davis, and Salt Lake Counties;
(c) highways in Utah County north of I-15, Exit #261;
(d) SR 68, North of milepost 16 in Utah County;
(e) I-80 East side of Salt Lake County mile[-]post 139 to mile[-]post 101 on the West side of Salt Lake County; and
(f) I-84 west of milepost 91.
(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.
(1) Travel is prohibited for loads more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height during the following holidays:
(a) Christmas Day;
(b) New Year's Day;
(c) Memorial Day;
(d) Independence Day;
(e) Labor Day; and
(f) Thanksgiving Day.
(2) Holiday restrictions begin at 2 p.m. the day before the holiday and extend to sunrise the day after the holiday.
(3) Monday holidays and Monday observed holiday restrictions begin at 2 p.m. through midnight on the Friday before the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.
(4) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.
(5) The division may prohibit the movement of oversized loads during days of anticipated high traffic volume such as those that occur during other holidays, weather conditions, or special events.

R909-2-14. Nighttime Restrictions.
(1) Except as provided in Section R909-2-15, loads exceeding the following dimensions are restricted to daylight hours:
(a) 14 feet 6 inches high;
(b) 12 feet wide;
(c) 105 feet in length; or
(d) an overhang of more than 10 feet.

R909-2-15. Nighttime Travel Provisions.
(1) The movement of oversize loads at night will be allowed under the following conditions:
(a) except as provided under Subsection (1)(b), loads may not exceed 12 feet wide on secondary highways, 14 feet wide on the interstate system, or 14 feet 6 inches high on highways;
(b) except as provided in Subsection (3), loads exceeding 12 feet wide, 105 feet overall length, or 10 feet front, or rear overhang are required to have one certified pilot escort on the interstate system and two certified pilot escorts on secondary highways;
(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and
(d) nighttime travel authorization does not supersede adverse weather conditions.
(2) The division may authorize exceptions to the nighttime travel provisions based on mitigating circumstances.
(3) Notwithstanding Subsection (1)(b), a tow truck towing vehicles with a total length of up to 120 feet or 10 feet wide may travel during hours of darkness and does not require a certified pilot escort.

R909-2-16. Oversize Divisible Load Provisions.
(1) An oversized permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:
(a) the height of the combination or load does not exceed 14 feet 6 inches;
(b) the width of the combination or load does not exceed 8 feet 6 inches;
(c) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4,000 pounds; and
(d) drawbars exceeding 15 feet in length must be marked with retro-reflective tape on half of the entire length of the drawbar on both the left and right sides of the drawbar.
(i) The drawbar must display an amber light visible from both the right and left sides of the drawbar located near the center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.
(1) Permitted vehicles must comply with the following conditions:
(a) [~~all~~]vehicles and loads must be reduced to the minimum practical dimensions;
(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:
(i) 14 feet 6 inches in height[~~,~~];
(ii) 14 feet 6 inches in width[~~,~~]; and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the dimensions identified in this section.

(3) Bulldozer blades, loader buckets, or similar equipment exceeding 16 feet in width must be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on [~~all~~]public highways may be allowed under the following terms and conditions:

(a) the permittee must notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) the permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) a permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 165 feet in length. Loads exceeding 10 feet wide, and 165 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads that exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways, and 14 feet in width on a freeway;

(b) 105 feet in length on secondary highways and 120 feet in length on a freeway;

(c) tow trucks that measure [~~in excess of~~]greater than 165 feet or more in length; and

(d) overhangs of more than 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads [~~which~~]that exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on a freeway;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

(3) In addition to freeway systems, routes also authorized to be recognized as a freeway system are SR-201 from I-80 to 7200 West.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads that exceed the following:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on highways; or

(c) loads more than 175 feet in length must have a minimum of two police escorts; and

(d) loads more than 200 feet in length will require a minimum of two police escorts.

(2) The division may authorize exemptions to this rule in coordination with the Utah Highway Patrol.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing, and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet must be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet must be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and must be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights must be operated on low beam, day or night, as an additional warning to traffic; and

(f) nighttime travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) [~~Oversize non-divisible load sign requirements.~~]Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height, and 105 feet in length must display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on the front bumper or on top of the vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear[-]most part of the vehicle or load as feasible, ensuring in cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed, or placed face down when the vehicle is not engaged in an oversized movement; and

(i) oversize load[~~s~~] signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on extremities when:

(a) a vehicle or load exceeds ten feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags must be completely clean and not torn, faded, or worn out and must be fastened to wave freely; and

(d) over-dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on the rearmost end of a towed vehicle;

(b) the sign must have a yellow background with 10-inch--high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(c) be 4 feet wide by 2 feet tall minimum.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy must not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles may not be less than 500 feet or more than 700 feet;

(d) distance between convoys must be a minimum of one mile;

(e) convoys must have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or nighttime travel may be obtained by contacting the division, and exceptions may be granted by the division on a case-by-case basis.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semi-annual, or annual permit.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles must apply and be approved to operate on designated routes on Utah's freeway system.

(2) Authorized motor carriers may operate LCVs with cargo or cargo carrying length as follows:

(a) a tractor and two-trailer or tractor and three-trailer combination more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCVs; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet of cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit exceeding legal length may be permitted up to 88 feet.

(6) LCVs and double trailers exceeding 81 feet of cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) the width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet 6 inches high; and

(c) Axles weighing more than 11,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide-base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on axles;
(b) super wide single tires that are 14 inches wide or greater;
(c) not to exceed 11,000 pounds per axle;
(d) the axle, groups of axles, and GVW do not exceed the bridge formula W = 500(LN/(N-1) + 12N+36); and
(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.
(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.
(4) A divisible load permit may not be used to transport a non-divisible load.
(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross, and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.
(1) Permitted vehicles must comply with the following conditions:
(a) vehicles and loads must be reduced to the minimum practical dimensions; and
(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.
(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).
(3) A permit for a non-divisible load may not be used to transport a divisible load.
(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semi-annual trip, or annual trip basis as described in Table 3:

TABLE 3 Single Trip, Semi-Annual, Annual, Permits allowed up to:	
Axles	Weight
Single axle	29,500 pounds
Tandem axle	50,000 pounds
Tridem axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual, or single trip_permits if they exceed legal weight limitations.
(a) The properly registered or permitted weight of the towed vehicle is not calculated in the tow truck towed vehicle's gross combined weight.
(b) Tow trucks must be properly registered and permitted for the weight of the tow truck and any additional weight placed upon it.
(c) If the towed weight is not properly registered or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.
(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the department.
(7) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.
(1) Loads exceeding 125,000 pounds gross, or axle weights in Section R909-2-24 may only purchase single trip permits.
(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.
(3) 9-_f[~~ee~~]oot-_wide axles are allowed 7.5% more weight than 8-_f[~~ee~~]oot-_wide axles.
(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.
(5) If using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8-foot-wide axle group.
(6) Tires must comply with the manufacturer's tire load rating as indicated on the tire side wall.
(7) STE operations must have an STE profile sheet if the axle limitations specified in Table 3, or the bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.
(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:
(a) trailer axles must be equipped with operational brakes; and

(b) axle and suspensions may not exceed the manufacturer's capacity rating.

(2) The open sides of a mobile manufactured home must be covered by a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing and must fully enclose the open sides of the units in transit.

(3) rear-mounted stop and turn signal lights must be a minimum of 6 inches in diameter with a type 35 red reflector lens.

(a) The lens must be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported will not require tail, brake, or signal lights mounted on the structures as a certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn, or stop.

(4) Two safety chains must be used, one [~~each~~]on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration must have a minimum wheelbase of 120 inches;

(b) cab-over-engine tow vehicles must have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle must be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide, and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card from an authorized qualified certification program as outlined in this section, and shall have it in their possession while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during the movement of oversized loads;

(f) a pilot escort driver may not perform as a tillerman or steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet the minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or online re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, and driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses for up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) If a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals will be handled by a steering committee created by the division.

(e) The steering committee will have the powers granted to the deputy director in Section R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in Rule R907-1.

(4) Pilot escort vehicle standards.

(a) Certification inspections are valid for up to one year.

(b) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95-inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs. and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(c) Equipment must not reduce visibility or mobility of pilot escort vehicle while in operation.

(d) Trailers may not be towed at any time while in pilot escort operations.

(e) Pilot escort vehicles must be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operators, and police escorts, if necessary.

(ii) If operating with police escorts a CB radio is required.

(f) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an "[-]OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch[~~-~~]-wide black letters, and solid means, if viewed from the front or rear at a 90-degree angle, no light transmits through the sign;

(c) the sign for the front pilot escort vehicle must be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle must display its sign, so it is readable by traffic overtaking from the rear and clearly legible.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division; the requirements are as follows:

(a) two AAMVA-approved amber flashing lights mounted with one on each side of the required sign, which must be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated during operation;

(b) an AAMVA-approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle, which must be unobstructed and visible for 360 degrees with warning lights illuminated during operation; and

(c) incandescent, strobe[~~,~~] or diode lights may be used provided they meet the criteria stated in Subsections R909-2-28(6)(a) and R909-2-28(6)(b).

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles must be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs, and for nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by Subsection R909-2-28(7)(c) or Subsection R909-2-28(7)(d);

(c) eight red-burning flares, glow sticks, or equivalent illumination devices approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger, and an emergency type shake, or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use if directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations[~~,~~] and class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible, or frangible material, only required if escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack, and lug wrench;

(m) a handheld two-way simplex radio or another compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles must not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles must be equipped with the following safety items:

(a) officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers must complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers will verify that pilot escorts [~~are in possession of~~]possess current pilot escort inspections, or they will complete an inspection before load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers must be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) A driver must possess a current certificate of insurance or endorsement that indicates that the driver, or the driver's employer, has in effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. The insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles must have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A coordination and planning meeting must be held before load movement. The drivers carrying or pulling the oversized loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public

utility company representatives must attend as required. When police escorts are present, a Utah Law Enforcement [~~Check List~~]Checklist and Reporting Criteria Form must be completed. This meeting must include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge, such as a department representative or a law enforcement officer;

(b) documentation for authorized routing and permit conditions is distributed to appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents must be provided to parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions before load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by Section R909-2-28, may control and direct traffic to stop, slow, or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and must:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor must be made on a form furnished by the division, and must include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of the entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of the "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student[~~'~~]s' personal information; and

(h) copies of course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service or Super load team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing oversize load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over-dimensional loads;

(d) oversize or overweight load movement, coordination, planning, and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures. [~~————~~]Testing materials must be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations must be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with the maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. The e[~~E~~]ntity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) If a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of students that have completed the course.

(8) Applicant Re-certification Procedures.

(a) The entity must provide means through[~~in~~] which an individual may be re-certified either by mail or the internet.

(b) The entity must submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination must not be a duplicate of the examination used during the initial certification process and should be constructed [~~as~~]to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests must be structured as outlined in Section R909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing, and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in Section R909-2-29.

(b) If an entity has [~~its~~]authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals will be handled by a steering committee created by the division.

(ii) The steering committee will have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity when the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions must maintain the following certification and re-certification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and re-certification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process when the division deems it necessary to ensure compliance with this rule.

(b) The loss, mutilation, or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by an affidavit stating the date these records were lost, mutilated, or destroyed, and the circumstances involving the loss, mutilation, or destruction.

(c) Records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity will be subject to inspection by the division during reasonable business hours. If the entity goes out of business, the permanent record must be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) Records, including computerized records, must be provided to the division if requested for an audit or review of the entity's records. Failure to provide records as requested by the division is a violation of this rule.

(f) Entities must maintain accurate, up-to-date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side if:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet other divisible load requirements in Section R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or their employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not more than 25 miles per hours, must always be equipped with a slow-moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance not less than 1,000 feet to the front and rear in normal sunlight, which must be displayed when any such vehicle is operated upon a highway.

R909-2-31. Snowplow Operations.

(1) Blades more than 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snowplows with up to 12 feet wide blades may operate without oversize permits, if they comply with:

(a) lights which provide adequate illumination if the blade is in either the up[~~,~~] or down position;

(b) signaling lights must not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversized permit, but they must meet the following requirements:

(a) floats must have sufficient proof of insurance;

(b) floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360-degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats more than 14 feet 6 inches in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with a single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet must purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(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.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) offroad motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway uses such as scrapers, loaders, off-~~-~~highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled must not generally exceed 20 miles;

(b) only daylight operations are authorized, and oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires must not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment must be routed by the division.

(4) Special mobile equipment or SME affidavit. Persons who operate or cause to operate an SME exempt from registration must submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and required fields filled in. Affidavits will be available at ports of entry. Affidavits must be turned into a port of entry.

(b) Special mobile equipment exempt from registration must carry a copy of the approved affidavit in the vehicle at all times.

(c) Vehicles that are not special mobile equipment must register with the Utah State Tax Commission before operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversized or overweight permit if exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment must be carried in the vehicle with the permit[~~,~~] if the axle limitations specified in Section R909-2-5 Table 2 or the actual bridge or gross are exceeded.

(b) Must meet the requirements of a non-divisible load as defined in Subsection R909-2-3(33).

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port[-]of[-]Entry By[~~-P~~]pass Permit Provisions.

(1) A temporary by[-]pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers must meet the multi-trip definition to receive and maintain by[-]pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis[~~,~~] if the motor carrier can demonstrate that denial of a by[-]pass permit will cause a hardship if the vehicle must be diverted to a port of entry.

(b) The basis for qualification to participate in the by[-]pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic score[~~s~~] equal to or greater than the intervention thresholds noted in Table 4 for General, HM, and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by[-]pass program.

(ii) A carrier is not eligible for a by[-]pass permit if the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4
High-risk Motor Carrier Criteria

Basic	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by[-]pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by[-]pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by[-]pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and must specify the time, date, unit-specific information, and destination.

(2) By[-]pass applications must be submitted to the division.

(a) By[-]pass privilege carriers must re-apply annually.

(b) Subcontractors operating under their [~~own~~]authority must apply for by[-]pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by[-]pass criterion is met to maintain privileges.

(d) By[-]pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by[-]pass decal, specific to each [~~individual~~]vehicle, and will receive a by[-]pass certificate that must be carried in the vehicle.

(4) By[-]pass privileges may be granted to carriers traversing multiple ports of entry within the same route.
(5) Authorized by[-]pass routes are allowed for the following Port of Entries:
(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;
(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and vehicles must clear the St. George Port of Entry;
(c) Perry Port of Entry may be bypassed and travel on Highway 89 between Brigham City and Ogden; and
(d) Monticello Port of Entry may be bypassed on US-191 with empty vehicles only.
(6) By[-]pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:
(a) compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;
(b) Federal Motor Carrier Safety Regulations;
(c) size and weight limitations;
(d) by[-]pass zone routes; and
(e) out-of-service criteria.
(7) If an application for a by[-]pass permit is denied the motor carrier may file an appeal.
(a) The appeal will be handled by the division hearing officer.
(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by[-]pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.
(1) During a Motor Carrier Advisory Board meeting, the board will review permit conditions and regulations as needed.
(2) Motor Carrier Advisory Board meetings provide a forum for interested parties to provide evidence to support or challenge regulation or permit condition modification.
(3) Interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

KEY: permits, safety regulations, size and weight, trucks
Date of Last Change: 2024[~~January 10, 2023~~]
Notice of Continuation: April 30, 2024
Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406; 72-9-303; 41-1a-102; 41-1a-231; 41-1a-1206; 72-7-402; 72-7-404; 72-7-407; 72-9-301; 72-9-502

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R909-19**	**Filing ID: 56755**

Agency Information

1. Title catchline:	Transportation, Motor Carrier	
Building:	Calvin Rampton	
Street address:	4501 S. 2700 W.	
City, state:	Taylorsville, Utah	
Mailing address:	P.O. Box 148455	
City, state and zip:	Salt Lake City, Utah 84114-8455	
Contact persons:		
Name:	**Phone:**	**Email:**
Leif Elder	801-580-8296	lelder@utah.gov
Marlene Galindo	801-965-4026	Mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification
3. Purpose of the new rule or reason for the change:

Section R909-19-15 was recently changed to require towing companies to store vehicles in the same county where the tow occurred. This has caused some inefficiencies and unfairness for towing companies and law enforcement in the context of law enforcement requests. In these instances, law enforcement using a tow rotation because the tow rotation often extends outside the boundaries of a single county. This has caused some inefficiencies and unfairness for law enforcement and tow truck motor carriers. These proposed changes would address the issue by allowing vehicles towed as a result of a police-generated tow to be stored anywhere within the tow rotation boundary where the tow originated.

4. Summary of the new rule or change:

This amendment updates the language in Section R909-19-15 to allow vehicles towed as a result of a police generated tow to be stored anywhere within the tow rotation boundary where the tow originated, and updates the language in Section R909-19-19 to allow towing storage fees to be automatically adjusted to account for inflation similar to other towing fees.

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 because this rule change is merely technical and clerical in nature, as it broadens a tow storage boundary and harmonizes the language of Section R909-19-19 with Section R909-19-15.

B) Local governments:

There is no anticipated cost or savings to local governments because this rule change is merely technical and clerical in nature, as it broadens a tow storage boundary and harmonizes the language of Section R909-19-19 with Section R909-19-15.

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

The change in Section R909-19-19 would require the Department of Transportation (Department) to annually adjust the maximum towing storage fees for inflation based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Currently, storage fees are as follows:
a) Light duty vehicle (non-hazardous): $40/day (inside) and $45/day (outside)
b) Larger duty vehicle (non-hazardous): $60/day (inside) and $85/day (outside)
c) Any vehicle with a hazardous placard: $115/day (inside) and $165/day (outside)

Over the past 12 months, the CPI-W has increased by 2.9%. Rounding the increase to the nearest whole number as provided in the rule, a 2.9% increase would increase current fees as follows:
a) Light duty vehicle (non-hazardous): $41/day (inside) and $46/day (outside)b)
b) Larger duty vehicle (non-hazardous): $62/day (inside) and $87/day (outside)
c) Any vehicle with a hazardous placard: $118/day (inside) and $170/day (outside)

Presumably, a tow company that chooses to keep its storage fees in line with the maximum set by the Department each year would also generate a small amount of additional revenue each year. Likewise, a small business that has a vehicle towed by a tow company that is maximizing storage fees would pay a small amount more in storage fees.

Because the Department does not have data on the amount of storage fees collected in a given year, it is unable to estimate the exact fiscal impact.

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

The same impacts that apply in the above box 5C would apply to non-small businesses.

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

A person that has a vehicle towed by a tow company that is maximizing storage fees would pay a small amount more in storage fees, but because the Department does not have data on the amount of storage fees collected in a given year, it is unable to estimate the exact fiscal impact.

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

Please refer to the fees outlined in box 5C.

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 Transportation, Carlos M. Braceras, PE, 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 72-9-601	Section 72-9-602	Section 72-9-604
Section 53-1-106	Section 41-6a-1405	

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	09/03/2024

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.
R909-19-1. Authority.

Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, and 41-6a-1405 authorize the Department to make this rule.

R909-19-2. Applicability.

Tow truck motor carriers and employees must comply with and observe administrative rules, including Rule R909-1, federal regulations, state and local traffic laws and guidelines as prescribed by law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service done at the vehicle, vessel, or outboard motor owner's or its legal operator's knowledge or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Drop Fee" means a fee a vehicle owner, authorized, operator, or authorized agent of a vehicle owner pays to a tow truck motor carrier to relinquish a vehicle.

(a) of which a tow truck motor carrier has taken possession to perform a non-consent tow; and

(b) the vehicle owner, authorized operator, or authorized agent of a vehicle owner is attempting to retrieve after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene.

(6) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination articulated motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit, and any load thereon.

(7) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(8) "Life-essential personal property" includes those items essential to sustain life or health, including prescription medication, medical equipment, essential clothing, such as shoes, coat, food and water, child safety seats, and government-issued photo identification.

(9) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or highway authority, as defined in Section 72-1-102.

(10) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(11) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday through Friday, except for designated state and federal holidays.

(12) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(13) "State impound yard" means a yard for the storage of a vehicle, vessel, or outboard motor that meets the requirements of rules made by the commission under Subsection 41-1a-1101(5).

(14) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily to tow or remove damaged, disabled, abandoned, seized, repossessed, or impounded vehicles from a highway or other place using a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(15) "Tow truck certification program" means a program to authorize and approve tow truck motor carriers, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(16) "Tow truck motor carrier" means a motor carrier as defined in Section 72-9-102.

(17) "Tow truck operator" means an individual who performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(18) "Tow truck service" means the functions and ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place using a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle classifications will be used when determining authorized fees. Information regarding the GVWR to determine the classification category of towed vehicles can be found on the identification plate on the vehicle driver-side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(19) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives, and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Complaints, Compliance Audits, Inspections, and Right of Entry.

The Department shall administer and, in cooperation with the Department of Public Safety, Utah Highway Patrol Division, as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, and equipment for inspection and examination. It must submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow truck motor carriers performing emergency moves shall maintain liability insurance coverage of at least $750,000 per occurrence. Tow truck motor carriers performing non-emergency moves shall maintain liability insurance coverage of at least $1,000,000 per occurrence.

(2) Tow truck motor carriers performing consent or non-consent tows are required to obtain an MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance must be maintained at the principal place of business and made available to the Department or Investigator upon request and before issuance of the tow truck motor carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates by reference or a Departmental order, is subject to:

(a) a civil penalty as authorized by Sections 72-9-701[~~,~~] and 72-9-703;

(b) suspension or revocation of a carrier, operator, or tow truck certification, suspension, or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603;

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission under Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) Non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or Title License Registration ("TLR") [~~(Title License Registration)~~]systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or outboard motor that was towed or for which a drop fee is paid.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/utah-bill-of-rights-regarding-towing/.

(a) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at https://app.udot.utah.gov/public/mcs/f?p=345:3::::3 or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Required Tow Truck Operator Certification.

(1) Effective July 1, 2004, tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(2) Information on qualified certification programs may be obtained at the UDOT Motor Carrier Division website at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/ or by contacting the Motor Carrier Division at (801) 965-4892.

(3) Tow truck motor carriers shall ensure that tow truck operators:

(a) are properly trained and certified to operate tow truck equipment;

(b) are licensed, as required under Sections 53-3-101[~~,~~] through 53-3-909 Uniform Driver License Act;

(c) are complying with the requirements under Sections 41-6a-1406 and 72-9-603;

(d) have cleared the criminal background check required in Subsections 72-9-602(2) and (3).[

~~(i) In addition, a~~] In addition, if a tow truck operator has not cleared the criminal background check required in Subsections 72-9-602(2) and (3), then the tow truck motor carrier must notify the Department of a tow truck operator who is not in compliance with Subsection 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(e) obtain and maintain a valid medical examiner's certificate under 49 CFR Sec 391.45.

R909-19-9. Required Tow Truck Vehicle Certification.

(1) Tow trucks shall receive and pass a tow truck certification inspection biannually.

(2) Tow trucks must be equipped with the required safety equipment. Safety Equipment List can be found at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/ or by calling 801-965-4892.

(3) Upon vehicle certification, an UDOT certification sticker will be issued and shall be affixed to the driver's side rear window.

(4) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

R909-19-10. Required Tow Truck Motor Carrier Certification.

Tow truck motor carriers shall be certified bi[-]annually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, Utah Administrative Code, and local laws when applicable.

R909-19-11. Certification Fees.

The Department may charge tow truck motor carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-12. Information Required on Towing Receipt.

(1) Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the paying customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, storage fees, and after-hours fees charged;

(e) name of company driver;

(f) unit number;

(g) the license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

(2) Any charges for a consent tow should be listed on a separate towing receipt.

R909-19-13. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve that vehicle before the tow truck motor carrier is in possession of the vehicle, no fee shall be charged to the vehicle owner.

(d)(i) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the tow truck motor carrier shall relinquish the vehicle to the owner, authorized operator, or authorized agent of the owner upon payment of a drop fee.

(ii) A tow truck motor carrier may not charge a drop fee that exceeds 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by Section R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement before initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include a contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-14. Police Generated Towing Fee Calculation.

(1) Tows dispatched during business hours: Tow time shall be calculated from dispatch time to completion of tow service.

(2) Tows dispatched after business hours: Tow time shall be calculated from dispatch time to completion of tow service and return to dispatch location. Time to return to the dispatch location may not exceed the allowed rotation response time.

(3) Time charged shall be to the nearest fifteen-minute increment.

(4) Charges may not extend to include the towing notice requirement period pursuant to Subsections 72-9-603(1)(a)(i) and 41-6a-1406(4)(a)(ii).

R909-19-15. Non-consent Towing Storage Fee.

(1) Daily storage fees for non-consent police generated tow service may not exceed:
(a) Outside storage: light duty $40, medium duty $60, heavy duty $60.
(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85.
(c) Outside hazardous materials: medium duty $115, heavy duty $115.
(d) Inside hazardous materials: medium duty $165, heavy duty $165.
(2) Daily storage fees for non-consent non-police generated tow service may not exceed:
(a) Outside storage: light duty $40, medium duty $60, heavy duty $60.
(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85.
(c) Outside hazardous materials: medium duty $115, heavy duty $115; and
(d) Inside hazardous materials: medium duty $165, heavy duty $165.
(3) A tow truck motor carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow.
(a) A tow truck motor carrier may charge a higher fee for inside storage per day per unit only if requested by the owners, or a law enforcement agency or highway authority.
(b) Vehicles used in the transportation of materials found to be hazardous in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate.
(c) To calculate storage rates, if the first six hours of storage for a vehicle include[~~s~~] more than one day, the authorized storage fee is only the charge for one day.
(d) Storage fees may only be charged if the place of storage is a state impound yard that meets the requirements of rules made by the commission under Subsection 41-1a-1101(5).
(e) [~~A~~]Except as provided in Subsection (3)(f), a tow truck motor carrier vehicle must store towed vehicles within the county where the tow occurred.
(f)(i) A tow truck motor carrier must store a vehicle that is towed as a result of a non-consent police generated tow within the boundaries of the police rotation where the tow occurred.
(ii) For purposes of Subsection (3)(f)(i), the boundary of a police rotation is the boundary established by the law enforcement agency that dispatched the tow truck motor carrier.

R909-19-16. Non-consent Fuel Surcharge Fee.
(1) A tow truck motor carrier may charge a fuel surcharge if the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches $3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 3% of the base tow rate. An additional 3% shall be allowed for each $0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.
(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the US Energy Information Administration's website at https://www.eia.gov/.
(b) The fuel surcharge may be charged on non-consent police [-]generated tow if the vehicle is being used in the function of a tow vehicle such as travel to and from the scene and during the operation of equipment for the recovery operation. Non-consent non-police tows may charge a one-time fee.
(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-17. Non-consent Administrative Fee.
A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/ per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lienholder, if applicable.

R909-19-18. Non-consent After-Hours Fee.
(1) A tow truck motor carrier may charge for the after-hours release of a vehicle, vessel, or outboard motor stored in response to:
(a) a peace officer dispatch call;
(b) a motor vehicle division call; and
(c) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal.
(2) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/ and the Utah Consumer Bill of Rights Regarding Towing published at https://site.utah.gov/connect/wp-content/uploads/sites/50/2021/12/Tow-Truck-Bill-of-Rights-Combined-2022-1.pdf.
(3) The After-hours fee shall be listed as a separate fee on the tow bill.

R909-[~~17~~]19-19. Tow Truck Service and Administrative Fee Adjustment.
(1)(a) The Motor Carrier Division will establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Section 72-9-603.
(b) The Towing Fee[~~s~~] Schedule is published on the Division's website at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/.

(2) The allowable maximum fee for tow truck service, [~~and~~]the maximum allowable administrative fee for reporting the removal, and the storage fees described in Section R909-19-15 shall be tied to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the US. The CPI-W is calculated by the US Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables each month on its website at https://www.bls.gov/cpi/tables/home.htm.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the Motor Carrier Division determines the allowable maximum fees pursuant to Subsection R909-19-[~~11~~]13(1) shall be adjusted effective January 1 of each calendar year[~~, the "Adjustment Date"~~].

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period before the October CPI-W figure reported by the BLS immediately preceding the January 1 adjustment date[~~Adjustment Date in question~~].

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged[~~, until the next Adjustment Date~~].

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-20. Public Consent Towing and Storage Rates.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services provided and are not regulated by the Department.

R909-19-21. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose its current non-consent fees and rates for towing and storage of a vehicle at locations at which vehicles are retrieved, or payment is accepted.

R909-19-22. Federal Motor Carrier Safety Requirements.

Tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-23. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-24. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a steering committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Department, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-25. Review of Rates, Fees, and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items each year.

(2)(a) Interested parties must notify the Department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-26. Ability to Petition for Review.

Any tow truck motor carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Rule R907-1, Administrative Procedures.

R909-19-27. Record Retention.

Tow truck motor carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-28. Life-Essential Property.

Property that is deemed as life-essential shall be given to the vehicle owner regardless of payment for services provided.

KEY: safety regulations, tow trucks, towing, certifications
Date of Last Change: [~~January 23, ~~]2024
Notice of Continuation: May 10, 2021
Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R914-4**	**Filing ID: 56739**

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
Marlene Galindo	801-965-4026	mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	801-965-4048	ledwards@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R914-4. Challenging Corrective Action Orders

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

The proposed changes to this rule clarify and modernize the language of the rule and aim to harmonize the rule with the Rulewriting Manual for Utah.

4. Summary of the new rule or change:

These changes:
1) provide a website for appeals to be submitted under Section R914-4-3;
2) re-write the provisions set forth in Section R914-4-4 for clarity and organization; and
3) clarify language in Sections R914-4-5 and R914-4-6.

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, as this rule is clerical in nature and will not affect how the state operates or conducts its business under this rule.

The website added to the rule in Section R914-4-3 merely directs the public to a place in which it may file its appeal and does not add any administrative costs to the Department of Transportation.

B) Local governments:

There is no anticipated cost or savings to the local governments, as this rule is clerical in nature and will not affect how local governments operate or conduct business under this rule.

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

There is no anticipated cost or savings to small businesses, as this rule is clerical in nature and will not affect how small businesses operate or conduct business under this 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, as this rule is clerical in nature and will not affect how non-small businesses operate or conduct business under this 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 persons, as this rule is clerical in nature and will not affect how persons operate or conduct business under this rule.

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

There are no compliance costs for affected persons because this rule change will not affect how persons operate or conduct business under 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 Transportation, Carlos M. Braceras, PE, 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 72-1-213.1

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Carlos M. Braceras, PE, Executive Director, UDOT	Date:	08/19/2024

R914. Transportation, Operations, Aeronautics.
R914-4. Challenging Aircraft Valuations[~~Corrective Action Orders~~].
R914-4-1. Purpose and Authority.

(1) The purpose of this administrative rule is to provide a procedure by which an owner of an aircraft may challenge the [~~D~~]department's calculation of the average wholesale value of [~~the~~]an aircraft and other actions.

(2) [~~Utah Code Subs~~]Section 72-10-110[~~(2)(d)(ii)~~] requires the [~~D~~]department to make this rule. The [~~D~~]department also has general rulemaking authority granted by [~~Subs~~]Section 72-1-201[~~(1)(h)~~].

R914-4-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Transportation;

(2) "Director" means the Director of Utah Department of Transportation, Division of Aeronautics;

(3) "Division" means the Utah Department of Transportation Division of Aeronautics.

(4) "Presiding Officer" means the Director of Operations for the [~~D~~]department or a person designated by the Director of Operations to conduct an appeal proceeding and issue a decision on [~~a review~~]the appeal.

[~~(5) "Review" means an appeal of agency action to challenge a corrective action order issued by the Division.~~]

R914-4-3. Initiating an Appeal.

(1) [~~Persons wanting to~~]To file an appeal with the [~~D~~]division, an individual or entity shall:

(a) [~~must either~~]email [~~their Request for Agency Action~~]a request for an appeal to the [~~D~~]division at: aircraftregistration@utah.gov[~~,~~]; or

(b) deliver [~~it by postal or personal delivery~~]or mail a request for an appeal to:

Utah Department of Transportation[~~,~~]

Division of Aeronautics

135 North 2400 West[~~,~~]

Salt Lake City, Utah 84116.

(2) [~~Appeals may be delivered or sent by electronic mail; and~~]Requests must be received by the [~~D~~]division before 5[~~:00~~] P.M. of the 30th day after the date of the Letter of Notification for Aircraft Registration.

(3) Appeals must be filed using the form [~~ADF-38 ~~]provided by the [~~D~~]division at: https://udot.utah.gov/connect/about-us/operations/aeronautics/aircraft-registration/.

(4) The [~~D~~]division will adjudicate all appeals as expeditiously as reasonably possible.

R914-4-4. Appeal Proceedings.

[~~(1) All appeal proceedings will be informal.~~

~~(2) All appeal proceedings will be conducted by the presiding officer.~~

~~(3) The presiding officer may hold a hearing if the presiding officer determines a hearing is necessary or if the person making the appeal asks for a hearing with the appeal; however, a hearing is not required.~~

~~(4) If the presiding officer determines to hold a hearing, it will be conducted according to the requirements of Utah Code Section 63G-4-203.~~

~~(5) After an appeal is filed, the presiding officer will determine whether the appeal is timely filed and complies fully with the requirements of this rule R914-4.~~

~~(6) If the presiding officer determines that the appeal is not timely filed or that the appeal does not fully comply with this rule, the presiding officer will dismiss the appeal without holding a hearing.~~

~~(7) If the presiding officer determines that the appeal is timely filed and complies fully with this rule, the presiding officer will:~~

~~(a) Dismiss the appeal without holding a hearing if the presiding officer determines that the appeal alleges facts that, if true, do not provide an adequate basis for the appeal;~~

~~(b) uphold the appeal without holding a hearing if the presiding officer determines that the undisputed facts of the appeal indicate that the appeal should be upheld; or~~

~~(c) hold a hearing on the appeal if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the appeal should be upheld.~~

~~(8)(a) If a hearing is held on an appeal, the presiding officer may:~~

~~(i) subpoena witnesses and compel their attendance at the presiding hearing;~~

~~(ii) subpoena documents for production at the presiding hearing;~~

~~(iii) obtain additional factual information; and~~

~~(iv) obtain testimony from experts, the person filing the review, representatives of the Department or other state agencies or, others to assist the presiding officer to decide on the review.~~

~~(b) The Rules of Evidence do not apply to an appeal hearing.~~

~~(c) A presiding officer will:~~

~~(i) record each hearing held on an appeal under this rule;~~

~~(ii) regardless of whether a hearing on an appeal is held under this rule, preserve all records and other evidence relied upon in reaching the presiding officer's written decision until the decision, and any appeal of the decision, becomes final; and~~

~~(d) A presiding officer's holding a hearing, considering an appeal, or issuing a written decision under this section does not affect a person's right to later question or challenge the presiding officer's jurisdiction to hold the hearing, consider the review, or issue the decision.~~

~~(9)(a) The deliberations of a presiding officer may be held in private.~~

~~(b) If the presiding officer is a public body, as defined in Section 52-4-103, the presiding officer will comply with Section 52-4-205 in closing a meeting for its deliberations.~~

~~(10)(a) A presiding officer must, within a reasonable time, issue a written decision regarding any appeal, unless the appeal is settled by mutual agreement.~~

~~(b) The decision will:~~

~~(i) state the reasons for the action taken; and~~

~~(ii) inform the appellant of the right to judicial or administrative appeal as provided in this rule;~~

~~(c) A person who issues a decision under Subsection R914-4-4(6) will mail, email, or otherwise immediately furnish a copy of the decision to the appellant.~~

~~(11) A decision described in this rule is effective until stayed or reversed on review.~~

~~(12) If the presiding officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protester may proceed as if an adverse decision had been received.~~

~~(13) A determination under this rule by the presiding officer regarding an issue of fact may not be overturned on a request for reconsideration unless the presiding officer's decision is arbitrary and capricious or clearly erroneous.~~](1)(a) After receiving an appeal, the presiding officer will determine whether the appeal request complies with the requirements of this rule.

(b) If the presiding officer determines that the appeal does not comply with this rule, the presiding officer shall issue an appeal decision dismissing the appeal without holding a hearing.

(c) If the presiding officer determines that the appeal complies with this rule, the presiding officer shall do one of the following:

(i) if the presiding officer determines that the appeal alleges facts that, if true, do not provide an adequate basis for the appeal, issue an appeal decision denying the appeal without holding a hearing;

(ii) if the presiding officer determines that the undisputed facts of the appeal indicate that the appeal should be upheld, issue an appeal decision upholding the appeal without holding a hearing; or

(iii) if there is a genuine issue of material fact or law that needs to be resolved to determine whether the appeal should be upheld, conduct an appeal proceeding as an informal adjudicative proceeding in accordance with Section 63G-4-203.

(2) If an appeal proceeding is held on an appeal, the presiding officer may:

(a) subpoena witnesses and compel their attendance at the appeal proceeding;

(b) subpoena documents for production at the appeal proceeding;

(c) obtain additional factual information; and

(d) obtain testimony from any individual or entity necessary to assist the presiding officer in deciding on the appeal.

(3) The Rules of Evidence do not apply to an appeal proceeding.

(4) A presiding officer shall record an appeal proceeding held pursuant to this rule.

(5)(a) The deliberations of a presiding officer may be held in private.

(b) If the presiding officer is a public body, as defined in Section 52-4-103, the presiding officer will comply with Section 52-4-205 if the public body decides to close a meeting for deliberations.

(6) Regardless of whether an appeal proceeding is held under this rule, a presiding officer shall:

(a) issue an appeal decision in writing within a reasonable time;

(b) mail, email, or otherwise furnish a copy of the appeal decision to the individual or entity requesting the appeal; and

(c) preserve any record and other evidence relied upon in reaching the presiding officer's decision until the decision, and any appeal of the decision becomes final.

(7) The presiding officer shall ensure that any appeal decision issued pursuant to this rule:

(a) states the reasons for the action taken; and

(b) includes a statement providing notice of the right to file a request for reconsideration as described under Section R914-4-5 and to seek judicial review as described in Section R914-4-6.

(8) A decision described in this rule is effective until stayed or reversed through a request for reconsideration as described under Section R914-4-5 or through judicial review as described in Section R914-4-6.

(9) If the presiding officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the appeal request was filed, or within a longer period as may be agreed upon by the parties, the individual or entity that made the appeal request may proceed as if an adverse appeal decision was issued.

[~~(14)~~](10) An individual is not precluded from acting [~~and may not be disqualified or required to be recused from acting,~~]as a presiding officer because the individual also acted in another capacity during the valuation process.

(11) Holding an appeal proceeding, considering an appeal, or issuing a written decision under this rule does not affect an individual's

or entity's right to later question or challenge the presiding officer's jurisdiction to hold the hearing, consider the appeal, or issue the decision.

R914-4-5. Request for Reconsideration.

(1) Within 20 days after the date a presiding officer issues a decision regarding any appeal, an [~~appealing party~~]individual or entity may file a written request for reconsideration with the [~~D~~]division.

(2)(a) A written request for reconsideration must state the specific reasons reconsideration is being requested.

(b) A determination under this rule by the presiding officer regarding an issue of fact may not be overturned on a request for reconsideration unless the presiding officer's decision is clearly arbitrary, capricious, or erroneous.

(3) Filing a request for reconsideration is not a prerequisite for seeking judicial appeal of a presiding officer's order.

(4) [~~The~~]A request for reconsideration must be filed with the [~~D~~]division following the [~~same~~]procedure set forth in [~~subsection~~]Section R914-4-3[~~, on Initiating an Appeal~~].

(5)(a) The [~~D~~]director[~~, or a person designated for that purpose,~~] or the director's designee will issue a written order granting or denying the request for reconsideration.

(b) If the [~~D~~]director or the [~~person designated for that purpose~~]director's designee does not issue an order within 20 days after the filing of the request for reconsideration, the request for reconsideration will be considered to be denied.

(c) [~~If the Director, or a person designated for that purpose, issues a written order denying the request; or if 20 days passes after the filing of the request without an order granting or denying the request being issued~~]If a request for reconsideration is denied as provided in Subsection (5)(a) or (b), the [~~appellant's~~]individual's or entity's administrative remedies will be considered exhausted.

(d) If the request for reconsideration is granted, the director or the director's designee shall conduct the proceedings in accordance with the procedures described in Section R914-4-4.

R914-4-6. Judicial Review.

[~~Appellants~~]An individual or entity must seek judicial review in accordance with the requirements of [~~Utah Code~~]Title 63G, Chapter 4, Part 4, Judicial Review.

KEY: aeronautics, corrective action orders, reviews
Date of Last Change: 2024[~~July 23, 2019~~]
Authorizing, and Implemented or Interpreted Law: 72-10-110(2)(d)(ii); 72-1-201(1)(h)

NOTICE OF SUBSTA NTIVE CHANGE		
TYPE OF FILING: Repeal		
Rule or Section Number:	**R926-12**	**Filing ID: 56752**

Agency Information

1. Title catchline:	Transportation, Program Development	
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
Marlene Galindo	801-965-4026	Mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:
R926-12. Share the Road Bicycle Support Restricted Account

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

Rule R926-12 describes the requirements for an organization to apply to the Department of Transportation (Department) to receive money from the Share the Road Bicycle Support Restricted Account. The statute authorizing this rule has been appealed and the rule is no longer needed.

4. Summary of the new rule or change:

The Department is repealing this rule because it is no longer needed for the following reasons: the Tax Commission is no longer issuing share the road license plates; the restricted account will not receive any more contributions; all previous contributions to the restricted account have been distributed as provided in the rule; and the restricted account has been closed.

Fiscal Information

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

A) State budget:

There is no cost or savings to the state budget because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

B) Local governments:

There is no cost or savings to local governments because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

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

There is no cost or savings to small businesses because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

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

There is no cost or savings to non-small businesses because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

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 cost or savings to persons because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

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 costs for affected persons because this repeal is the result of the rule's authorizing statute being repealed, and there are no longer any funds in the Share the Road Bicycle Support Restricted Account.

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 Transportation, Carlos M. Braceras, PE, 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 72-2-127

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: 10/15/2024

9. This rule change MAY become effective on: 10/22/2024

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:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	08/23/2024

R926. Transportation, Program Development.

[~~R926-12. Share the Road Bicycle Support Restricted Account.~~

~~R926-12-1. Purpose.~~

~~This rule describes the requirements for an organization to apply to the Department to receive money from the Share the Road Bicycle Support Restricted Account.~~

~~R926-12-2. Authority.~~

~~This rule is enacted under the authority granted to the Department by Section 72-2-127.~~

~~R926-12-3. Definitions.~~

~~As used in Rule R926-12:~~

~~(1) "Department" means the Utah Department of Transportation.~~

~~(2) "Share the Road Bicycle Support Restricted Account" means the account created in Section 72-2-127.~~

~~(3) "Qualified applicant" means a charitable organization described in Section 72-2-127.~~

~~R926-12-4. Proposals.~~

~~(1) A qualified applicant may apply to the Department for funding from the Share the Road Bicycle Support Restricted Account.~~

~~(2) An applicant shall provide to the Department as part of an application:~~

~~(a) contact information for the applicant;~~

~~(b) proof that the applicant is tax exempt under Section 501(c)(3), Internal Revenue Code;~~

~~(c) proof that the applicant promotes safe bicycle operation, safe motor vehicle operation and healthy lifestyles as a primary part of the applicant's mission;~~

~~(d) a statement of the purpose for which the application is submitted, including an explanation of how the applicant would use the funding; and~~

~~(e) an explanation of the internal management controls and financial controls of the applicant that would ensure that any funds received would be used only for authorized purposes.~~

~~(3) A qualified applicant that receives funding from the Share the Road Bicycle Support Restricted Account may only spend the funding for a purpose described in Section 72-2-127.~~

~~R926-12-5. Selection of Recipients.~~

~~The Department shall select recipients based on available funds, eligibility of the applicant, and verification of effective and efficient use of funds to promote safe bicycle operation, safe motor vehicle operation around bicycles, and healthy lifestyles.~~

~~R926-12-6. Distribution of Funds.~~

~~(1) In January and July of each year, the Department will:~~
~~(a) review applications for funding from the Share the Road Bicycle Support Restricted Account;~~
~~(b) provide notice to each applicant regarding the status of the applicant's application; and~~
~~(c) provide a distribution of funds to approved applicants.~~

~~KEY: share the road, bicycle support, restricted, account~~
~~Date of Last Change: April 11, 2023~~
~~Notice of Continuation: February 14, 2023~~
~~Authorizing, and Implemented or Interpreted Law: 72-2-127~~]

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: Amendment		
Rule or Section Number:	**R926-14**	**Filing ID: 56754**

Agency Information

1. Title catchline:	Transportation, Administration	
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
Marlene Galindo	801-965-4026	Mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes

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

Rule R926-14 establishes procedures to administer the Utah Scenic Byway Program.

A review of this rule was triggered by the passage of S.B. 28 in the 2024 General Session, which requires the Legislature to approve a state scenic byway designation and requires the State Scenic Byway Committee to notify the Legislature when the committee supports a state scenic byway designation.

4. Summary of the new rule or change:

The proposed amendments coordinate the rule with S.B 28 (2024), clarify and modernize the language of the rule, update state agency names, and harmonize the rule 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:

There is no anticipated cost or savings to the state budget because this amendment reflects a change in the administrative process for how a Scenic Byway is designated, and there is no financial aspect associated with this change in the administrative process.

B) Local governments:

There is no anticipated cost or savings to local governments because this amendment reflects a change in the administrative process for how the Legislature designates a Scenic Byway, and this process does not affect the administration of local governments.

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

There is no anticipated cost or savings to small businesses because this amendment reflects a change in the administrative process for how the Legislature designates a Scenic Byway, and this process does not affect small businesses in any measurable way.

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

There is no anticipated cost or savings to non-small businesses because this amendment reflects a change in the administrative process for how the Legislature designates a Scenic Byway, and this process does not affect non-small businesses.

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

There is no anticipated cost or savings to persons because the changes in the rule are clerical in nature and will not impact persons' budgets in any substantial way.

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 or savings to affected persons; this change only reflects a change in how the Legislature carries out an administrative task.

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 Transportation, Carlos M. Braceras, PE, 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:		
Title 52, Chapter 4	Title 63G, Chapter 3	Title 72, Chapter 4

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	08/23/2024

R926. Transportation, Program Development.
R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.
R926-14-1. Purpose.

The purpose of this rule is to establish the following:

(1) administration of the Utah Scenic Byway program;

(2) the criteria that a highway shall possess to be considered for designation as a state scenic byway;

(3) the process for nominating a highway to be designated as a state scenic byway;

(4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;

(5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and

(6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of a corridor[~~,~~] and related notifications.

R926-14-2. Authority.

[~~The provisions of t~~]This rule [~~are~~]is authorized by the following grants of rulemaking authority and[~~ provisions of Utah Code~~]: the Open and Public Meetings Act, Title 52, Chapter 4; the Utah Administrative Rulemaking Act, Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-14-3. Definitions.

Terms used in this rule are defined in the Designation of Highways Act, Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All-American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in the Designation of Highways Act, Title 74, Chapter 4, and does not refer to any local scenic byway committee herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means [~~removing~~]the removal of a current state scenic byway designation as recommended by the committee and approved by the Legislature[~~from an entire existing scenic byway~~].

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means [~~selection of~~]a roadway [~~by the committee~~]the committee has recommended, and the Legislature has approved as a state scenic byway or [~~selection of~~]an existing state scenic byway the Legislature has approved and[~~by~~] the U.S. Secretary of Transportation has selected as [~~one of America's Byways~~]a national scenic byway or All-American Road.

(8) "Federal policies" means those regulations[~~rules~~] outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.

(10) "GOEO[~~D~~]" means the Utah Governor's Office of Economic Opportunity[~~Development~~].

(11) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(12) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(13) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(14) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(15) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(16) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(17) "State Scenic Byway" means a Utah roadway corridor that has been[~~duly~~] designated by the committee with approval from the Legislature for its intrinsic qualities.

(18) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in the Designation of Highways Act, Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the state[~~State of Utah~~]. This business shall include[~~, but not be limited to~~]:

(a) designating, de-designating, hearing appeals of segmentation denials of state scenic byways, and consideration of segmentation under a [~~R~~]request for [~~A~~]agency [~~A~~]action;

(b) recommending considerations for state scenic byway and National and All-American Road recognition to the Legislature;

(c) recommending applications to the NSBP;

(d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

(e) other business as may be needed to administer the scenic byway program.

(3)(a) The committee shall meet to conduct business necessary to administer the state scenic byway program.

[~~(a)~~](b) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by the Open and Public Meetings Act, Title 52, Chapter 4, the committee may hold electronic meetings[~~individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection~~].

[~~(b)~~](c)(i) [~~All~~]Any additional meetings called by the chair, including committee meetings to consider factors associated with a [~~R~~]request for [~~A~~]agency [~~A~~]action to segment property adjacent to a scenic byway, may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by the Open and Public Meetings Act, Title 52, Chapter 4.

[~~(i)~~](ii) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection[~~ (depending on the technology used)~~], but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

[~~(ii)~~](iii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for [~~all~~]participants and the technology used is generally publicly available.

[~~(iii)~~](iv) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

[~~(iv)~~](v) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during an electronic meeting[~~a web conference~~] may be taken continuously via a chat window, then read by the moderator during the time set aside for public input[~~, with committee responding~~]. For electronic meetings[~~In a teleconference~~], public participants may be requested to hold their comments until a designated period is opened by the chair.

R926-14-5. Criteria Required of a Highway to Be Considered for Designation as a State Scenic Byway.

(1) A road being considered for state scenic byway designation must meet [~~all of~~]the following criteria:

(a) the nominated road must possess at least two of the six intrinsic qualities described in Section 72-4-303[~~unusual, exceptional, or distinctive intrinsic qualities, as defined~~];

(b) the nominated road may be either a planned or existing route and in the case of a planned route, legal public access, safety standards and all-weather pavement must be guaranteed at completion of construction;

(c) roadway safety on the nominated road must be evaluated against and guided by American Association of State Highway and Transportation Officials [~~(AASHTO)~~]safety standards for federal aid primary or secondary roads;

(d) the nominated road must have strong local support for byway designation and the proponents must demonstrate this support and coordination;

(e) the nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles;

(f) the nominated road need not lead to or provide connection to other road networks; it may be dead-ended, or provide only a single outlet for traffic;

(g) the nominated road need not be open during the winter months, but seasonal road closures must be clearly posted, shown on applicable maps, and specified in any promotional literature; and

(h) the nominated road may include portions of the Interstate Highway System, but only if the Interstate component is a small part of the mileage of the overall nominated scenic byway and is included primarily for continuity of travel.

(2) [~~It is the intent of these~~]These criteria are meant to be restrictive in nature [~~so as~~]to limit the number of designated state scenic byways [~~in order~~]to maintain the quality and integrity of the scenic byway system.

R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local legislative body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the [~~responsible organization~~]requesting entity has held public hearings in accordance with Section R926-14-10 and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting to determine whether to forward the proposal to the Legislature for further consideration. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the state scenic byway within the limits of their community have the statutory right, as prescribed in the Designation of Highways Act, Title 72, Chapter 4, to opt out of any new byway designation through official segmentation action of their local legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6)(a) Upon approval by the committee and the Legislature of a state scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department, and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

[~~(a)~~](b) The committee will make a request to these agencies that they modify reference of the scenic byway[~~segment~~], to reflect the change in scenic byway status, on maps and in materials and website applications identifying state scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule R926-13 to include the description of the state scenic byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new state scenic byway in online maps, brochures, or other publications of the NSBP. The department will add the state scenic byway to the official highway map at its next printing.

R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.

(1) In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

[~~(1)~~](2) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

[~~(2)~~](3)(a) Local scenic byway committees [~~desiring national designation are~~]shall prepare the necessary nomination applications required by the National Scenic Byways Program[~~, to prepare nomination applications, adhering to the criteria outlined in applicable federal policies~~].

[~~(a)~~](b) [~~A corridor management plan for the byway will be required by the~~]Local scenic byway committees shall also prepare the required corridor management plan as [~~NSBP to be prepared before a nomination application will be considered. The required information and criteria to be included in the corridor management plan are~~]outlined in [~~the~~]federal policies.

[~~(b)~~](c) [~~The~~]When the NSBP [~~will issue~~]issues a call for applications, [~~at which time the~~]a local scenic byway committee may submit a nomination application [~~as long as~~]if the state scenic byway has been approved for consideration in accordance with the requirements of the Designation of Highways Act, Title 72, Chapter 4.

[~~(3)~~](4) Local scenic byway committees [~~are to~~]shall confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review [~~prior to~~]before submitting to the NSBP.

[~~(4)~~](5) The committee will refer[~~ all~~] considerations for National or All-American Road[~~ America's Byways~~] designations to the Legislature for approval, along with the recommendation of the committee. As required in the Designation of Highways Act, Title 72, Chapter 4, Legislative approval must be obtained before any application for nomination may be submitted to the NSBP.

[~~(5)~~](6)(a) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department, and other interested agencies of the new designation and of any differences in alignment or limits as related to existing state scenic byway designations.

[~~(a)~~](b) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in [~~scenic byway~~]status[~~,~~] on maps and in materials and website applications identifying scenic byways.

[~~(6)~~](7) On receiving notification of a change in [~~byway~~]status to National Scenic Byway or All-American Road, the department shall amend Rule R926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System [~~(NHS)~~]are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an [~~NHS~~]National Highway System route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and [~~NHS~~]National Highway System status, since de-designation or segmentation would not affect the ongoing applicability of [~~NHS~~]National Highway System regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) Segmentation of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in the Designation of Highways Act, Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7)(a) Alternately, segmentation of specific parcels of property adjacent to a scenic byway may be requested by the property owner by submitting a written [~~R~~]request for [~~A~~]agency [~~A~~]action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2.

[~~(a)~~](b) The [~~R~~]request for [~~A~~]agency [~~A~~]action shall contain the information required by Subsection 63G-4-201(3)(a), and shall include a statement why the owner considers the property to be non-scenic as defined in Section 72-4-301.

[~~(b)~~](c) The written [~~R~~]request for [~~A~~]agency [~~A~~]action shall be mailed to the Office of Tourism, Film and Global Branding within [~~the~~]GOE[O][~~D~~], with a copy of the request mailed to the Program Development Group within the Utah Department of Transportation to the attention of Program Development.

[~~(c)~~](d)(i) Segmentation of property under a [~~R~~]request for [~~A~~]agency [~~A~~]action shall take effect 60 days after receipt of the written request by the Office of Tourism within GOE[O][~~D~~], unless the committee demonstrates to an administrative law judge within 60 days, with subsequent action by the administrative law judge, that the property fails to meet the definition of ["]non-scenic["] area as defined in Section 72-4-301[~~;~~].

[~~(i)~~](ii) Pursuant to Subs[~~S~~]ection 72-4-303(3)(d), ["]receipt["] of the request for [~~A~~]agency [~~A~~]action shall be the date on which the mailed copy of the request is received by GOE[O][~~D~~]'s Office of Tourism.

[~~(ii)~~](iii) Requests for Agency Action shall be mailed to:[

~~————~~] GOE[O][~~D~~] OFFICE OF TOURISM Attention:

[~~Attention: ~~]Scenic Byway Committee

300 North State Street

Council Hall / Capitol Hill

Salt Lake City Utah 84114

[~~(iii)~~](iv) A copy of the [~~R~~]request for [~~A~~]agency [~~A~~]action shall be mailed to:

Program Development Group of the[

~~————~~] Utah Department of Transportation

~~————~~ 4501 South 2700 West

P[~~.~~]O[~~.~~] Box 143600

[~~———— 4501 South 2700 West~~]

Salt Lake City Utah 84114

[~~(d)~~](e) A request for agency action involving segmentation is classified as an informal adjudicative proceeding.

(8) Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include[~~, but are not limited to~~]:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of the byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(9) Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include[~~, but are not limited to~~] those identified in [~~R926-14-8(7)~~]Subsections (8)(a) through [~~(e)~~](d).

(10) Parcels on existing byways may not be segmented out of a byway solely for[~~the purpose of~~] evading state and federal regulations pertaining to byway designation[~~,~~] but must also be considered non-scenic or otherwise meet the criteria listed in [~~Paragraph (7)~~]Subsection (8). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in the Designation of Highways Act, Title 72, Chapter 4.

(11) State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

(12) Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

(13) The local legislative body shall provide the committee with the following information at the next committee meeting:

(a) the date [~~of segmentation, being the day~~]the local legislative body acted[~~took action~~] on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from [~~the~~]any relevant public meetings[~~meeting(s)~~]; and

(d) a copy of the signed resolution from the local legislative body.

(14)(a) [~~After~~]If the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(b) When considering appeals related to segmentations, the committee shall follow Title 72, Chapter 4, Part 3, Utah State Scenic Byway Program.

(15)(a) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation.

(b) The committee will then forward the result of the vote to the requesting local legislative body or appealing party.

(c) If the committee approves a de-designation, the committee shall forward the de-designation request to the Legislature for further consideration in accordance with Section 72-4-303.

(16)(a) Upon approval of a segmentation by a local legislative body, the local legislative body shall notify the committee and the local byway coordinator of the action taken.

(b) Upon receiving notification under Subsection (16)(a), approval of a segmentation by the committee, or approval of a de-designation by the Legislature, the committee shall notify the Utah Office of Tourism, the department, the NSBP, if applicable, and other interested stakeholders and request that the change be reflected in the scenic byway status, on relevant maps, and in relevant materials and website applications identifying scenic byways.[~~ For segmentation denial appeals heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.~~

~~(16) Upon approval or disapproval of a de-designation or segmentation request or decision on appeal, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.~~

~~(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.~~

~~(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.~~

~~(c) In the case of a local legislative action on a segmentation request, the local legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local legislative body, the date of approval by the local legislative body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.~~

~~(17) Appeals to the committee concerning local legislative actions are handled as provided in Title 72, Chapter 4.~~]

(18)(a) Upon receiving notification of segmentation or de-designation, the department shall amend Rule R926-13 to update the description of the byway to reflect the approved changes.

(b) The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP.

(c) The department will [~~also~~]show substantive changes on the official highway map at its next printing.

(19) For purposes of byway program eligibility and subjection to byway regulations, the official date of de-designation or segmentation is:

(a) for de-designation, the effective date of the concurrent resolution that approves the de-designation in accordance with Section 72-4-303;

(b) for a segmentation considered by the committee or a local legislative body, the date the committee or the local legislative body approves the segmentation; or

(c) for a segmentation proposed by a property owner through a request for agency action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2, the date described in Subsection (7)(d)(i).

R926-14-9. Local Government Consent.

Consent of affected local governments along the byway corridor is required by the Designation of Highways Act, Title 72, Chapter 4 for any change in scenic byway status.

R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.

(1) [~~Whenever changes to the scenic byway status of a corridor or of a segment thereof are considered, one or more public hearings must be held~~]Before action is taken on a change in status of a corridor, the entity requesting the change must hold a public hearing, as provided in this section, for[~~the purpose of~~] receiving [~~the public's views~~]public comments on the change in status and to respond to questions and concerns[~~expressed before action is taken~~].

(2)(a) If a change in status is being considered due to[~~Upon the receipt of~~] a [~~R~~]request for [~~A~~]agency [~~A~~]action from a property owner to segment property adjacent to a scenic byway, the [~~Chair of the~~]committee shall hold the public hearing required by this section[~~shall call a meeting for the committee to consider factors associated with the request, including consideration of information listed in paragraph (4)~~].

(b) Except for changes requested by a property owner as described under Subsection (2)(a), the entity requesting the change in status is responsible for holding the public hearing required by this section.

(c) The requesting entity is:

(i) the entity submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) the local legislative body considering a segmentation request.

(3)(a) Requesting entities shall ensure the venue used to hold public hearings described in Subsection (1) are located as close as practicable to the area affected by the proposed status change.

(b)(i) Depending on the length of the corridor, the committee may require the requesting entity to hold multiple public hearings in a variety of locations.

(ii) The committee chair shall review and approve the number and locations of public hearings to ensure people throughout the length of the corridor have the opportunity to provide public comment on the proposed status change.

(c) The requesting entity shall inform the committee and the local scenic byway committee of the date and time of each public hearing the requesting entity schedules.

[~~(3) For all other changes to scenic byway status:~~

~~(a) The organization initiating the request for change in status is responsible for arrangement, notification, and execution of the hearing(s). The responsible organization may be:~~

~~(i) an organization (local scenic byway committee, community, county or association of governments) submitting an application or request to the committee;~~

~~(ii) the committee, in the case of a process initiated by the committee itself; or~~

~~(iii) a local legislative body considering a segmentation request.~~

~~(b) The hearing(s) shall be held in the area affected by the proposed status changes.~~

~~(c) Multiple hearings in varied locations may be appropriate, based on the length of the corridor or the affected area within the corridor. The committee chair will review and approve the number and locations of hearings as proposed by the nominating organization to ensure collection of a broad base of public comments throughout the length of the corridor where the scenic byway status changes are proposed.~~

~~(d) The responsible organization shall invite the state committee and the local scenic byway committee to attend the public hearing(s).~~]

(4) [~~The required public hearing(s)~~]A public hearing required by this section:

(a) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body[~~.~~]; and

(b) is subject to the notice and other relevant requirements of Title 52, Chapter 4, Open and Public Meetings Act.

[~~(5) Notification of all public hearings shall be made as required by the laws governing the responsible organization.~~]

[~~(6)~~](5) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

(a) the impact on outdoor advertising;

(b) the potential impact of traffic volumes;

(c) the potential impact of land use along the byway;

(d) the potential impact on grant eligibility; and

(e) the potential impact on the local tourist industry.

[~~(7)~~](6) The [~~responsible organization~~]requesting entity shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

R926-14-11. Requirements for Consideration of Adjudicative Proceedings Associated with a Segmentation Request Submitted by a Property Owner Under a Request for Agency Action.

(1) If the committee determines at a public hearing that property associated with a property owner's request for agency action to segment property does not meet the definition of non-scenic as defined in Section 72-4-301, the [~~C~~]chair of the committee shall notify the property owner that its [~~R~~]request for [~~A~~]agency [~~A~~]action is denied pending administrative hearing.

(2) The [~~C~~]chair of the committee shall notify the property owner in writing of:

(a) [~~T~~]the committee's denial of the [~~R~~]request for [~~A~~]agency [~~A~~]action;

(b) the [~~C~~]committee's intent to have the matter considered by an administrative law judge; and

(c) a list of available administrative law judges, if known.

(3) No more than 10 days after the written notice is sent advising the property owner of the committee's denial of the request for agency action and intent to have the matter considered by an administrative law judge, the property owner shall notify the committee in writing of their agreement on selection of the administrative law judge named by the committee[~~,~~] or advise the committee of an alternate judge agreed upon by the committee.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in [~~Utah Code~~]Section 63G-4-203.

KEY: transportation, scenic byways, highways
Date of Last Change: 2024[~~August 23, 2016~~]
Notice of Continuation: May 26, 2020
Authorizing, and Implemented or Interpreted Law: 52-4-207; 63G-3-201; 72-4-301; 72-4-301.5; 72-4-302; 72-4-303; 72-4-304

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends October 15, 2024.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them ([~~example~~]). A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through January 13, 2025, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF SUBSTANTIVE CHANGE		
TYPE OF FILING: CPR (Change in Proposed Rule)		
Rule or Section Number:	**R70-101**	**Filing ID: 56603**

Agency Information

1. Title catchline:	Agriculture and Food, Regulatory Services	
Building:	Taylorsville State Office Buildings, South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 16500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	Ambermbrown@Utah.gov
Kelly Pehrson	801-982-2200	Kwpehrson@Utah.gov
Travis Waller	801-982-2200	Twaller@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule or section catchline:

R70-101. Bedding, Upholstered Furniture, and Quilted Clothing

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

The Department of Agriculture and Food (Department) is amending this rule in response to public comments received during the comment period for the repeal and reenactment filed on 06/24/2024.

4. Summary of the new rule or change:

This CPR clarifies definitions for “law label” and “textile label,” clarifies digital labeling requirements for online sales of quilted clothing, bedding, and upholstered furniture, streamlines language related to secondhand or used articles, and updates language in Section R70-101-20 to specify who may or may not be in violation.

Additionally, the CPR extends the compliance deadline for digital label requirements to 05/15/2025.

(EDITOR'S NOTE: The original proposed repeal and reenact upon which this change in proposed rule (CPR) was based was published in the July 15, 2024, issue of the Utah State Bulletin, on page 29. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed repeal and reenactment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

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

A) State budget:

The CPR changes only clarify existing program requirements, resulting in no fiscal impact on the state budget.

B) Local governments:

The CPR changes only clarify existing program requirements, resulting in no fiscal impact on a local governments budget.

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

The CPR changes only clarify existing program requirements, resulting in no fiscal impact on a small businesses budget.

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

The CPR changes only clarify existing program requirements, resulting in no fiscal impact on a non-small businesses budget.

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 CPR changes only clarify existing program requirements, resulting in no fiscal impact on a person’s budget.

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

The CPR changes only clarify existing program requirements, resulting in no impact to 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 Commissioner of the Department of Agriculture and Food, Craig Buttars, 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 4-10-103

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:	10/15/2024

9. This rule change MAY become effective on:	10/22/2024
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 Buttars, Commissioner	**Date:**	08/30/2024

R70. Agriculture and Food, Regulatory Services.
R70-101. Bedding, Upholstered Furniture, and Quilted Clothing.
R70-101-1. Authority and Purpose.

Pursuant to Section 4-10-103, this rule establishes the standards, practices, and procedures for the manufacture, repair, sale, and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. Definitions.

This rule defines the following terms in addition to the terms in Section 4-10-102:

(1) "Clean" means free from stains, dirt, trash, filth, pulp, sludge, oil, grease, fat, skin, epidermis, excreta, vermin, insects, insect eggs, insect carcasses, contamination, hazardous materials, or residual or objectionable substances or odors.

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

(3) "Digital Law Label "or "Digital Textile Label" -means an electronic copy of the applicable law label or textile label that mirrors the label attached to the article.

(4) "Law Label" -means a [~~tag~~]label attached to new bedding or upholstered furniture that provides specific information about the product to the consumer and meets the requirements of this rule.

(5) "Made to Order" or "MTO" means a manufacturing process of upholstered furniture in which the production of an item begins after a consumer or retailer places an order and includes articles with consumer options that could impact the final law label.

(6) "Made to Stock" or "MTS" means a traditional production method used to produce articles either before or after the consumer places the order that the retailer may stock as inventory or display through an online retailer until the consumer purchases them and includes articles produced with consumer options that do not impact the final law or textile label.

(7) "Manufacture" means the making, processing, or preparing of new or secondhand bedding, upholstered furniture, quilted clothing, or filling material.

(8) "Manufacturer" means a person who makes or has employees make any bedding, upholstered furniture, quilted clothing, filling material, or any part.

(9) "Non-resident" means a person permitted under this rule who does not have premises in Utah.

(10) "Online Retailer" means a person or a company that sells articles to a consumer via the Internet or another electronic network.

(11) "Online sales" means the process of selling articles through the Internet, where customers can browse products, make purchases, and complete transactions using digital platforms or an online marketplace.

(12) "Person" means an individual, partnership, association, firm, auctioneer, trust, limited liability company, or corporation.

(13) "Premises" means a place that sells bedding, upholstered furniture, quilted clothing, or filling material, or offers for sale, exposes for sale, stores, renovates, or manufactures, and includes the delivery vehicle used to transport articles.

(14) "Supply dealer" means a person who manufactures, processes, or sells at wholesale any felt, batting, pads, or other fillings, loose in a bag, in a bale or a container, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

(15) "Second Hand Law Tag" or " Tag" means a tag attached to a product or filling material that has previously been used.

(16) "Sterilization Permit Number" means the number a state may issue to identify the sterilizing facility, person, or company and certifies that the filling material is safe for consumer use.

(17) "Sterilize" means a process used to make wool, feathers, down, shoddy, or hair free from bacteria or any other living microorganism.

(18) "Sterilizer" means a person who sterilizes wool, feathers, down, shoddy, or hair.

(19) "Textile Label" means a [~~tag~~]label attached to a new quilted clothing product that provides information required in 16 CFR Parts 300, 301, 303, and this rule.

(20) "Uniform Registry Number" or "URN" means the number issued by a state to be used on the law label of bedding, upholstered furniture, or filling material to identify the manufacturing facility, person, or company.

R70-101-3. Application of Rule.

This rule shall apply to any person engaged in the business of manufacturing, retailing, online retailing, wholesaling, processing, repairing, sterilizing, and selling items of bedding, upholstered furniture, quilted clothing, and filling material, regardless of their point of origin.

R70-101-4. Permit Requirements for Manufacturers, Repairers, and Wholesalers.

(1) A person who advertises, solicits, or contracts to manufacture or repair bedding, upholstered furniture, or filling material shall secure a permit from the department before offering to sell the product in Utah.

(2) A person who advertises, solicits, or contracts to manufacture quilted clothing shall secure a permit from the department before the person offers articles for sale in Utah.

(3) A person seeking a permit shall provide the following to the department:

(a) a completed permit form; and

(b) a sample of the law label that will be used.

(4) The department may exempt a wholesaler dealer of bedding, upholstered furniture, or a manufacturer of quilted clothing from providing a sample law label or sample textile label, respectably.

(5)(a) The department shall assess an annual permit fee.

(b) The applicant shall pay the fee before January 1, or the department shall include a late fee with the permit fee.

(6) Each person who conducts business under multiple state-issued URNs or permits shall obtain a permit for each number used on articles for sale in Utah.

(7) A person's license or permit shall be current with the state that issues the URN for the number to be valid in Utah.

R70-101-5. Sterilization Permit Requirements for Sterilizers.

(1) A person who advertises, solicits, or contracts as a sterilizer shall secure a sterilization permit from the department before offering to sell sterilized products in Utah.

(2) A person applying for a sterilization permit shall provide the department with a sterilization permit application completed by a department authorized third party inspector.

(3)(a) The department shall assess an annual sterilization permit fee.

(b) Each applicant shall pay the fee before January 1, or the department shall charge a late fee with the sterilization permit fee.

(4)(a) Each sterilization permittee's facility shall be inspected every three years.

(b) A permittee shall submit a copy of the inspection report to the department with the renewal form for that year.

R70-101-6. Revocation of Permit.

(1) The department shall have the authority to suspend or revoke a permit for any violation of this rule.

(2) A suspension or revocation shall be in accordance with Section 4-1-106.

R70-101-7. Sanitation Requirements.

(1) A permittee or retailer shall keep the premises, delivery equipment, machinery, and any appliances, articles, and devices free from refuse, dirt, contamination, or insects.

(2) A permittee -may not use in the making, repairing, or renovating of bedding, upholstered furniture, or quilted clothing any filling material that:

(a) contains any insect, vermin, or filth;

(b) is not clean; or

(c) contains burlap or other material used for baling.

(3) A permittee or retailer shall store bedding, quilted clothing, and filling material four inches off the floor on the premises.

(4) A permittee or retailer shall store new and used articles separately.

R70-101-8. Sterilization Requirements for New Fill Material.

(1) A sterilizer shall clean and sterilize any wool, feathers, down, shoddy, and hair before using it as a new filling material.

(2) The department allows the following methods for sterilization.

(a)(i) Pressure Steam.

(ii) Expose the material to treatment by steam at 15 PSI (.104 mPA) for 30 minutes or 20 PSI (.0138 mPA) for 20 minutes.

(iii) The gauge for registering steam pressure shall be visible from the outside of the room or chamber.

(b)(i) Streaming Steam.

(ii) Two applications of streaming steam maintained for one hour each, applied at intervals using not less than six nor more than 24 hours.

(iii) When streaming steam is employed, the valved outlets shall be provided near the bottom and the top of the room or chamber.

(c)(i) Heat.

(ii) A temperature of 235 degrees F held for two hours within a closed container.

(3) Upon request, the department may approve other methods of sterilization.

R70-101-9. Manufacturing, Wholesale, Sterilizers, and Supply Dealer Textile Labeling Requirements for Quilted Clothing.

(1) The department incorporates by reference the March 8, 2024, version of 16 CFR Parts 300, 301, and 303.

(2) Articles of plumage-filled clothing shall meet the following textile label requirements.

(a)(i) Any label stating that an article of clothing contains down, Goose Down, or Duck Down shall also state the minimum percentage of down, Goose Down, or Duck Down contained in the article.

(ii) The down label is a general label and shall include in parentheses the minimum percentage of down in the product, which shall be 75% or greater.

(b)(i) "Down and Waterfowl Feathers" text may designate any plumage product containing between 50% minimum and 74% down and plumules.

(ii) The sewn in label and hang tags shall state both percentages.

(c)(i) "Waterfowl Feathers and Down" may designate any plumage product containing between 5% minimum and 49% down and plumules.

(ii) The sewn in label and hang tags shall state both percentages.

(d) "Waterfowl Feathers" may designate any plumage product containing less than 5% down and plumules.

(e) The department may not permit the use of quill feathers unless disclosed on the textile label.

(f) The textile label shall separately list each component, in order of predominance, any other plumage products that do not meet the requirements for any of the listed categories from Subsection R70-101-9(2).

(3) The textile label shall list the sterilization permit number as "PER. NO. ".

(4) A textile label shall contain [~~T~~]the same form of identification [~~used on a textile label shall be the same~~]as [~~those~~]supplied to the department with the permit application.

(5) The textile label shall be easily accessible to the consumer for examination.

R70-101-10. Filling Material.

(1) A permittee shall use the terms or definitions of a filling material approved by the International Association of Bedding Law Officials except as otherwise required by this rule.

(2) Pursuant to Subsection 4-10-107(6)(a), a manufacturing facility may use the term "recycled" for items containing down or feather if the facility:

(a)(i) is Global Recycled Standard (GRS) or Recycled Claim Standard (RCS) certified, and provides:

(ii) proof of GRS or RCS certification to the department on the permit form; and

(iii) a copy of the certificate or the certification number on the invoice to the retailer for each lot or batch of filling material;

(b) certifies under another industry accepted standard consistent with the International Organization for Standardization ISO 17065 and provides documentation to the department.

(3) Upon request, a manufacturing facility shall provide a copy of the certificate or the certification numbers for each batch or lot to the department.

(4) Plumage material shall follow the standards that the "USA-2000 Labeling Standards- Down and Feather Products" outlines and this rule incorporates by reference.

(5) Any other filling material shall be clean.

(6) The tag or label must state "Imperfect, irregular foam" which means any foam product that shows a major imperfection or that falls below the foam manufacturer's usual standards or specifications as "imperfect" or "irregular" along with the generic name of the foam.

(7) The tag or label must state "Imperfect, irregular fibers" which means any fiber that has an imperfection or that falls below the fiber manufacturer's usual standards or specifications as "imperfect" or "irregular" along with the generic name of the fiber.

(8) The qualifying statement may not use the terms "Prime," "Super," "Northern," and similar terms unless the fill can prove to be of superior quality and meet the terms of the qualifying statement.

R70-101-11. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

(1) The law label or textile label shall describe the filling material using the following:

(a) true generic name;

(b) grade;

(c) description terms; or

(d) definition of the filling material approved by the department.

(2)(a) When a mixture uses more than one kind of filling material, the label shall list the percentage by weight in order of predominance, per Subsection 4-10-107(2).

(b) Federal fiber tolerance standards are applicable, except as pertains to a plumage product.

(c) In accordance with Section R70-101-10, describe any blends used in the filling material.

(d)(i) Quilted clothing articles may use different filling materials for different parts of the article.

(ii) The textile label shall name the areas of the article followed by the name of the filling material used in that specific area.

R70-101-12. Law Label Requirements for Bedding and Upholstered Furniture.

(1)(a) Any article of bedding or upholstered furniture shall have a law label that uses the format adopted by the International Association of Bedding and Furniture Law Officials (IABFLO), as listed in the Manual of Labeling Laws of the International Sleep Products Association, 2024 edition, which this rule incorporates by reference.

(2) The law label for a newly manufactured product, including an article that is MTS or MTO, shall meet the following requirements:

(a) white on each side of the law label;
(b) made of material that cannot be easily torn;
(c) printed in black ink;
(d) printed in English;
(e) printed clearly and legibly; and
(f) firmly attached to the article.
(3) Required information shall be printed on one side of the law label with the opposite side remaining blank.
(4) Each law label shall include the following, in order:
(a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the law label in capital letters no less than 1/8 inches in height;
(b) the phrase "ALL NEW MATERIAL" in bold, capital letters no less than 1/8 inch in height, followed by the phrase "CONSISTING OF", no case or height requirements, followed by the filling contents in bold capital letters no less than 1/8 inch in height;
(c) the words "CONTENTS STERILIZED" in bold capital letters no less than 1/8 inch in height;
(d)(i) The [-]URN[-] of [-]the final assembler of the article;
(ii) The department only allows one URN on the attached law label although a digital law label may display multiple URNs;
(e) the sterilization permit number of the sterilization facility that obtained the material, in bold capital letters no less than 1/8 inch in height;
(f) the phrase, "Certification is made by the manufacturer that the materials in this article are described in accordance with law"; and
(g) the name and complete address of the manufacturer, importer, or distributor of the article.
(5)(a) The law label shall be easily accessible to the consumer for examination.
(b) A product for sale in a box or in other packaging that makes a law label inaccessible shall reproduce a legible facsimile of the law label on the outer container or covering.
(6) A person may not place any other mark, label, printed matter, illustration, sticker, or device placed on the law label.
(7) The form of identification used on a law label shall be the same as those supplied to the department in a permit application.

R70-101-13. Online Sales Requirements.
The following requirements apply beginning on [~~April~~]May 15, 2025.
(1) Online retailers of quilted clothing shall [~~post~~]display information that satisfies the requirements of Section R70-101-9 for each article, so it is easily accessible for the consumer to examine before purchase.
(a) Quilted clothing articles may have the digital textile label, or equivalent information, displayed or hyperlinked, on each article landing page in:
(i) the product description, or its equivalent;
(ii) the product specifications, or its equivalent;
(iii) an image gallery or carousel; or
(iv) another specific location approved by the department.
(b) The department may approve displaying multiple textile labels on one document.
(2) If an online retailer of quilted clothing elects not to display a digital textile label in accordance with Subsection R70-101-13(1), they shall provide a hyperlink to the following information in a format determined by the online retailer for each article:
(a) applicable filling material as required in Section R70-101-9;
(b) the form of identification that is used on a textile label shall be the same identification[~~as~~] supplied to the department in a permit application; and
(c) any applicable sterilization permit number.
(3) Online retailers of bedding and upholstered furniture shall display information that satisfies the requirements of Section R70-101-12 for each article, so it is easily accessible for the consumer to examine before purchase.
(a) Bedding and upholstered furniture articles may have the digital law label, or equivalent information, displayed or hyperlinked, on each article landing page in:
(i) the product description, or its equivalent;
(ii) the product specifications, or its equivalent;
(iii) an image gallery or carousel; or
(iv) another specific location approved by the department.
(b) The department may approve displaying multiple law labels on one document.
(4) If an online retailer of bedding or upholstered furniture elects not to display a digital law label [~~or equivalent~~]in accordance with Subsection R70-101-13([~~2~~]3), they shall provide a hyperlink to the following information in a format determined by the online retailer for each article:
(a) applicable filling material as required in Subsection 4-10-107(2) and Sections R70-101-10 and [~~Section~~]R70-101-11;
(b) any applicable URN; and
(c) any applicable sterilization permit number.
(5) MTO articles ordered in a brick and mortar location are exempt from digital law label requirements under this section.

R70-101-14. Second Hand [~~Law Label, Textile Labels, Tags, and~~]Tagging Requirements.

(1) A tag for a second hand article shall be:

(a) a minimum of two inches by three inches;

(b) yellow on both sides of the tag;

(c) made of material that cannot be easily torn;

(d) printed in English;

(e) printed in black ink;

(f) printed clearly and legibly; and

(g) comply with Subsection 4-10-110(2)(b).

(2) The required information shall be printed on one side of the tag, with the opposite side remaining blank.

(3) A second hand tag shall contain the following information, in order:

(a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the label in capital letters, no less than 1/8 inch in height;

(b) the phrase, "THIS ARTICLE CONTAINS SECOND HAND MATERIAL CONSISTING OF CONTENTS UNKNOWN". The words "SECONDHAND MATERIAL" and "CONTENTS UNKNOWN" shall be in capital letters, size not less than 1/8 inches in height;

(c) the phrase, "Certification is made that the materials in this article are described in accordance with law"; and

(d) the store name and complete corporate address.

(4) A ~~-~~tag shall be easily accessible to the consumer for examination.

(5) A tag [~~shall~~]may not contain marks, labels, printed matter, illustrations, stickers, or any other device.

R70-101-15. Tagging Requirements for Repaired, Reupholstered, and Renovated Products.

(1) A tag for a repaired, reupholstered, or [-]renovated product shall:

(a) be a minimum of two inches by three inches;

(b) be yellow on both sides of the tag;

(c) be made of material that cannot be easily torn;

(d) have the required information printed on one side of the tag with the opposite side remaining blank;

(e) be printed in English;

(f) be printed in black ink;

(g) be printed clearly and legibly; and

(h) be firmly attached to the article.

(2) A tag for a repaired, reupholstered, or renovated product shall contain the following information, in order:

(a) the phrase, "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the label in capital letters, no less than 1/8 inch in height;

(b) the phrase, "THIS ARTICLE IS NOT FOR SALE OWNER'S MATERIAL" in bold in capital letters, no less than 1/8 inch in height;

(c) the phrase, "CERTIFICATION IS MADE THAT THIS ARTICLE CONTAINS THE SAME MATERIAL IT DID WHEN RECEIVED FROM THE OWNER AND THAT ADDED MATERIALS ARE DESCRIBED IN THE ACCORDANCE~~-~~ WITH LAW, AND CONSIST OF THE FOLLOWING:" followed by a description of the filling material;

(d) a description of the work that was done on the product;

(e) the URN number;

(f) the name and address of the renovator or repairer; and

(g) the date of pick-up, owner's name, and address.

R70-101-16. Used Mattresses.

(1) A retailer selling a customer returned, refurbished, or used mattress shall follow the second hand [~~law~~]tag requirements listed in Section R70-101-14.

(2) In addition, a retailer shall also display a tag on the mattress stating "USED" in bold capital letters.

(3) The USED tag shall~~-~~:

(a) be a minimum of three inches by six inches;

(b) be yellow on both sides of the tag;

(c) use a font that is~~-~~ a minimum of one inch in height;

(d) be printed in black ink; and

(e) be [-]printed in English.

(4) The tag with the required information shall be printed on one side of the tag, with the opposite side remaining blank.

(5) The USED tag shall be clearly visible to the consumer.

(6) A retailer selling used bedding, including used mattresses shall comply with Subsection 4-10-110(2).

R70-101-17. Variance.

(1) The department may issue a variance on law or textile label and tag requirements.

(2)(a) A permittee may request a variance to the department in writing.
(b) The variance shall contain the following information:
(i) the product associated with the variance request;
(ii) where the variance will be used;
(iii) an explanation of the need for a variance;
(iv) a description of the application of the variance in practice; and
(v) an example of the substitute law or textile label or tag that will be used instead of the required label or tag.
(3) The department shall give approval of a variance in writing.
(4) A variance shall be subject to a period of review.

R70-101-18. Making or Selling Material or Parts.

A permittee may not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail, or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing without appropriately tagging the material.

R70-101-19. Retailer Responsibilities.

(1) A retailer, including online retailers, shall ensure the following:
(a) any article of bedding, upholstered furniture, quilted clothing, or filling material sold by the retailer is labeled and tagged correctly;
(b) the label complies with state law and the department's rules governing false and misleading advertisements;
(c) the manufacturer from whom a retailer purchases a product has a valid permit with the department;
(d) the importer from whom a retailer purchases a product has a valid permit with the department; and
(e) the law label or textile label is easily accessible to the consumer for examination before purchase.
(2) Upon request of the department, a retailer shall provide the identity of the manufacturer or wholesaler of an article of bedding, upholstered furniture, quilted clothing, or filling material sold.
(3) A retailer may apply for a permit in lieu of a manufacturer or wholesaler if the department has not permitted the manufacturer or wholesaler.
(4) A retailer shall ensure that bedding or filling material using the term "recycled" meets the requirement listed in Subsection R70-101-10(2)

R70-101-20. Violations.

(1) Each improperly labeled or tagged article of bedding, upholstered furniture, quilted clothing, or filling material made or sold shall be a separate violation of this rule.
(2) No permittee or retailer shall be in violation if that permittee or retailer received, from the manufacturer or supplier of an article, a guarantee in good faith that the article is not contrary to this rule in the form prescribed by the Textile Fiber Products Identification Act,15 U.S.C. 70, Wool Products Labeling Act, 15 U.S.C. 68, and related Federal Trade Commission rules.
(3) A permittee or retailer may not remove, or cause to be removed, any tag, or device placed upon any article of bedding, upholstered furniture, quilted clothing, or filling material by an inspector.
(4) A permittee or retailer may not remove condemned articles that the department has ordered held on an inspection notice.
(5) A permittee or retailer may not interfere with, obstruct, or hinder the performance of the department inspector's duties.
(6) The department may withhold from sale any article of bedding, upholstered furniture, quilted clothing, or filling material that a manufacturer or wholesaler produces or wholesales with a permit until the manufacturer or wholesaler obtains the required permit.
(7) No permittee may use the term "recycled" for bedding or filling material unless the product meets the requirements of Subsection R70-101-10(2).

R70-101-21. Products Not Intended for Use Subject to This Rule.

The Commissioner may exclude from this rule a textile fiber product:
(1) that has an insignificant or inconsequential textile fiber content; or
(2) if the disclosure of the textile fiber content is not necessary for the protection of the consumer.

KEY: inspections, labeling, quality control, registration
Date of Last Change: 2024
Notice of Continuation: March 12, 2020
Authorizing, and Implemented or Interpreted Law: 4-10-103

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at 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-YE-AR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R68-3**	**Filing ID: 54519**
Effective Date:	**08/21/2024**	

Agency Information

1. Title catchline:	Agriculture and Food, Plant Industry	
Building:	Taylorsville State Office Buildings, South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state	Taylorsville, UT	
Mailing address:	PO Box 16500	
City, state, and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	Ambermbrown@Utah.gov
Kelly Pehrson	801-982-2200	Kwpehrson@Utah.gov
Rob Hougaard	801-982-2305	Rhougaard@Utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R68-3. Utah Fertilizer Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Department of Agriculture and Food (Department) created this rule to administer and enforce Title 4, Chapter 13, Utah Fertilizer Act. Per Section 4-13-110, this rule provides information about adopting the official terms, tables, definitions, and statements adopted by the Association of American Plant Food Control Officials. This rule also provides the process for registering and labeling products, defines ingredient deficiencies, and outlines unlawful acts that may violate the act.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department has not received any public comments regarding this rule within the last five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has determined that Rule R68-3 is necessary as it provides essential regulatory oversight of the fertilizer and soil amendment industry. This rule protects consumers by requiring accurate product labeling and registration, ensuring that they receive products that meet the guaranteed nutrient content and composition standards. It safeguards the environment by defining unlawful acts, including the distribution of adulterated or mislabeled products and requiring proper storage to prevent the release of harmful substances. It supports the agricultural industry by promoting the sale of effective and safe fertilizer and soil amendment products, which are crucial for optimal crop yields and soil health. It aligns with federal regulations, incorporating by reference the Investigational Allowance Tables from the Association of American Plant Food Control Officials (AAPFCO) and adhering to standards set by the Environmental Protection Agency (EPA) for biosolids and hazardous waste-derived fertilizers. Therefore this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Craig Buttars, Commissioner	**Date:**	08/21/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R616-4**	**Filing ID: 51514**
Effective Date:	**08/20/2024**	

Agency Information

1. Title catchline:	Labor Commission; Boiler, Elevator and Coal Mine Safety	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S, 3rd Floor	
City, state	Salt Lake City, UT	
Mailing address:	PO Box 164400	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact persons:		
Name:	**Phone:**	**Email:**
Rick Sturm	801-530-6874	rsturm@utah.gov
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R616-4.. Coal Mine Safety
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 40, Chapter 2, Coal Mine Safety, gives the Division of Boiler, Elevator and Coal Mine Safety (Division) rulemaking authority. In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Labor Commission has made this rule.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule was established for the purpose of improving coal mine safety, preventing coal mine accidents, and improving coal mine accident response consistent with the Coal mine Safety Act. To date, the Division has not received any negative response to this rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Jaceson R. Maughan, Commissioner	**Date:**	08/20/2024

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	**R907-1**	**Filing ID: 55101**
Effective Date:	**08/29/2024**	

Agency Information

1. Title catchline:	Transportation, Administration	
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
Marlene Galindo	801-965-4026	mgalindo1@utah.gov
James Godin	801-573-7181	jamesjgodin@agutah.gov
Lori Edwards	385-341-3414	loriedwards@agutah.gov
Please address questions regarding information on this notice to the persons listed above.		

General Information

2. Rule catchline:
R907-1. Agency Actions, Administrative Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is enacted under Subsection 72-1-201(h), which generally grants the Department of Transportation (Department) to make rules for the administration of the Department, state transportation systems, and programs. This rule is also enacted under Subsections 63G-3-201(2), 63G-4-102(6), and 63G-4-203(1), which authorizes agencies to make rules governing adjudicative proceedings. Finally, this rule is enacted under Section 57-12-9 which grants the Department authority to make rules relating to financial assistance claims under the Utah Relocation Assistance Act, Title 57, Chapter 12, or 42 U.S.C Sections 4601-4655.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments received during and since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has reviewed this rule and determines that it is still necessary because it still serves its purpose under its statutory authority. Therefore this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Braceras, PE, Executive Director, UDOT	**Date:**	08/27/2024

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food
Animal Industry
No. 56605 (Repeal and Reenact) R58-18: Elk Farming
Published: 07/15/2024
Effective: 08/23/2024

No. 56607 (Repeal and Reenact) R58-20: Elk Ranches
Published: 07/15/2024
Effective: 08/23/2024

Conservation Commission
No. 56549 (Amendment) R64-4: Agricultural Water Optimization Program
Published: 07/01/2024
Effective: 08/12/2024

Environmental Quality
Waste Management and Radiation Control, Radiation
No. 56553 (Amendment) R313-15: Reports of Transactions Involving Nationally Tracked Sources
Published: 07/01/2024
Effective: 09/16/2024

No. 56554 (Amendment) R313-22: Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices That Contain Radioactive Material
Published: 07/01/2024
Effective: 09/16/2024

No. 56555 (Amendment) R313-32: Clarifications or Exceptions
Published: 07/01/2024
Effective: 09/16/2024

No. 56556 (Amendment) R313-37: Clarifications or Exceptions
Published: 07/01/2024
Effective: 09/16/2024

Water Quality
No. 56312 (New Rule) R317-16: Great Salt Lake Mineral Extraction Facility Operator Certification Approval
Published: 02/15/2024
Effective: 08/28/2024

No. 56312 (Change in Proposed Rule) R317-16: Great Salt Lake Mineral Extraction Facility Operator Certification Approval
Published: 05/15/2024
Effective: 08/28/2024

Government Operations
Debt Collection
No. 56661 (New Rule) R21-4: Debtor's Request for Credit for Restitution Payments
Published: 08/01/2024
Effective: 09/10/2024

Finance
No. 56550 (Repeal and Reenact) R25-7: Travel-Related Reimbursements for State Travelers
Published: 07/01/2024
Effective: 09/03/2024

Health and Human Services
Population Health, Environmental Health
No. 56273 (New Rule) R392-304: Artificial Swimming Lagoons
Published: 02/01/2024
Effective: 09/08/2024

No. 56273 (Change in Proposed Rule) R392-304: Artificial Swimming Lagoons
Published: 06/01/2024
Effective: 09/08/2024

Insurance
Administration
No. 56654 (Amendment) R590-142: Continuing Education Rule
Published: 08/01/2024
Effective: 09/10/2024

No. 56655 (Amendment) R590-186: Initial and Renewal Agency License
Published: 08/01/2024
Effective: 09/10/2024

No. 56656 (Amendment) R590-238: Captive Insurance Companies
Published: 08/01/2024
Effective: 09/10/2024

No. 56657 (Amendment) R590-273: Continuing Care Provider Rule
Published: 08/01/2024
Effective: 09/10/2024

No. 56658 (Amendment) R590-282: Licensing
Published: 08/01/2024
Effective: 09/10/2024

Title and Escrow Commission
No. 56659 (Amendment) R592-9: Assessment for Title Insurance Recovery, Education, and Research Fund
Published: 08/01/2024
Effective: 09/10/2024

No. 56660 (Amendment) R592-10: Assessment for the Title Licensee Enforcement Restricted Account
Published: 08/01/2024
Effective: 09/10/2024

Labor Commission
Occupational Safety and Health
No. 56604 (Amendment) R614-1: Inspections, Citations, and Proposed Penalties
Published: 07/15/2024
Effective: 08/21/2024

Natural Resources
Oil, Gas and Mining; Oil and Gas
No. 56606 (New Rule) R649-12: Certification of Pollution Control Facility or Freestanding Pollution Control Property
Published: 07/15/2024
Effective: 08/28/2024

Wildlife Resources
No. 56602 (Amendment) R657-4: Possession and Release of Pen-reared Gamebirds
Published: 07/15/2024
Effective: 08/21/2024

No. 56596 (Amendment) R657-5: Taking Big Game
Published: 07/15/2024
Effective: 08/21/2024

No. 56597 (Amendment) R657-13: Taking Fish and Crayfish
Published: 07/15/2024
Effective: 08/21/2024

No. 56598 (Amendment) R657-14: Commercial Harvesting of Protected Aquatic Wildlife
Published: 07/15/2024
Effective: 08/21/2024

No. 56609 (Amendment) R657-37: Cooperative Wildlife Management Units for Big Game or Turkey
Published: 07/15/2024
Effective: 08/21/2024

No. 56599 (Amendment) R657-38: Dedicated Hunter Program
Published: 07/15/2024
Effective: 08/21/2024

No. 56610 (Amendment) R657-41: Conservation and Sportsman Permits
Published: 07/15/2024
Effective: 08/21/2024

No. 56600 (Amendment) R657-42: Fees, Exchanges, Surrenders, Refunds, and Reallocation of Wildlife Documents
Published: 07/15/2024
Effective: 08/21/2024

No. 56595 (Amendment) R657-43: Landowner Permits
Published: 07/15/2024
Effective: 08/21/2024

No. 56601 (Amendment) R657-44: Big Game Depredation
Published: 07/15/2024
Effective: 08/21/2024

Pardons (Board of)
Administration
No. 56407 (Amendment) R671-201: Original Hearing Schedule and Notice
Published: 05/15/2024
Effective: 08/14/2024

No. 56408 (Amendment) R671-312A: Commutation Procedures Applicable to Persons Sentence to Death On or Before April 26, 1992
Published: 05/15/2024
Effective: 08/14/2024

No. 56409 (Amendment) R671-312B: Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992
Published: 05/15/2024
Effective: 08/14/2024

End of the Notices of Rule Effective Dates Section