

UTAH STATE BULLETIN

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Division of Administrative Rules, Salt Lake City 84114

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NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 1, 2008, 12:00 a.m., and January 15, 2008, 11:59 p.m. are included in this, the February 1, 2008, 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 (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~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 Rules being repealed are completely struck out.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 printed. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will 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 Division 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 March 3, 2008. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through May 31, 2008, the agency may notify the Division 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 Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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 63-46a-4; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

**Agriculture and Food, Regulatory
Services
R70-340
False or Misleading Food, Milk and
Dairy Product Labels, Labeling and
Advertisements**

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE No.: 30914
FILED: 01/15/2008, 13:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify what makes a food label, labeling or advertisement to be false or misleading in order to enforce Section 4-3-2, Subsection 4-3-14(5)(b)(vi), and Section 4-5-17.

SUMMARY OF THE RULE OR CHANGE: This rule defines false or misleading claims on labels and advertisements regarding food products. These practices are prohibited by statute. The rule defines the practices.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-3-2, Subsection 4-3-14(5)(vi), and Section 4-5-17

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There will be some impact on the Utah Department of Agriculture and Food's (UDAF) budget. It is expected to be less than \$10,000 annually, offset by fees. The aggregate cost should be \$0.
- ❖ **LOCAL GOVERNMENTS:** The rule places no responsibilities on local government. There should be no cost or savings to them.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The rule has the potential to increase revenue for food producers who currently do not use false or misleading labels or advertising. The scope of this is not determined but encompasses the vast majority of food producers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: UDAF will impose a fee to review and approve labels and advertising. The scope will be determined by the number of persons who actually decide to make claims on their food labels and advertising. The typical costs should be less than \$100 per label, labeling, or advertisement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses can be looked at from two perspectives. Currently, food businesses which do not use false or misleading labels and advertising are experiencing sales slumps due to consumers choosing products that may be considered falsely labeled and advertised. Many of these businesses may realize increased revenue because of this rule. The businesses who may currently utilize deceptive food

labels and advertising will see reduced revenues because they will have to compete on a level playing field with their competitors. Those businesses wishing to make a claim on their food labels and advertising will have to pay a fee for their material to be reviewed and approved. This is appropriate and will reduce the number of potentially illegal claims made in the marketplace. This is better for consumers and for equity in the marketplace. Leonard Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard W Clark, Don McClellan, or Kathleen Mathews at the above address, by phone at 801-538-7150, 801-538-7145, or 801-538-7103, by FAX at 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at RICHARDWCLARK@utah.gov, dmcclellan@utah.gov, or kmathews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/26/2008 at 1:00 PM, Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Leonard M. Blackham, Commissioner

**R70. Agriculture and Food, Regulatory Services.
R70-340. False or Misleading Food, Milk and Dairy Product
Labels, Labeling and Advertisements.**

R70-340-1. Authority.

This rule is promulgated under the authority of Sections 4-3-2, 4-3-14(5)(b)(vi) and 4-5-17, Utah Code.

R70-340-2. Definitions.

(1) "Advertisement" means a representation made to induce the purchase of a food, milk or dairy product. This term does not include a representation on a label or labeling.

(2) "Analytical test" means a test that follows the Official Methods of Analysis published by the Association of Official Analytical Chemists.

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

(4) "False advertisement" means an advertisement that:

(a) implies that a food, milk or dairy product differs in quality, safety, wholesomeness, or composition from a similar food, milk or dairy product if there is no difference between the products that can be verified by an analytical test;

(b) makes a compositional claim about a food, milk or dairy product that is not verified by an analytical test; or

(c) claims that a specific compound or substance is not present or added in a food, milk or dairy product when the compound or substance is:

(i) naturally present in the food, milk or dairy product, unless the claim is verified by an analytical test;

(ii) not naturally present in the food, milk or dairy product; or

(iii) prohibited from being present in the food, milk or dairy product by statute or rule.

(5) "False or misleading label or labeling" means a label or labeling that:

(a) implies that a food, milk or dairy product differs in quality, safety, wholesomeness, or composition from a similar food, milk or dairy product if there is no difference between the products that can be verified by an analytical test;

(b) makes a compositional claim about a food, milk or dairy product that is not verified by an analytical test; or

(c) claims that a specific compound or substance is not present or added in a food, milk or dairy product when the compound or substance is:

(i) naturally present in the food, milk or dairy product, unless the claim is verified by an analytical test;

(ii) not naturally present in the food, milk or dairy product; or

(iii) prohibited from being present in the food, milk or dairy product by statute or rule.

(6) "Label" means a written, printed, or graphic display on the container or package of a food, milk or dairy product.

(7) "Labeling" means a label and other written, printed or graphic display:

(a) on an article of food, milk or dairy product or its containers or wrappers; or

(b) accompanying the article of food, milk or dairy product.

R70-340-3. Unlawful Acts Specified.

(1) A person may not:

(a) manufacture, sell, deliver, hold, or offer for sale a food, milk or dairy product with a false or misleading label or labeling, or

(b) disseminate a false advertisement about a food, milk or dairy product.

(2) Notwithstanding Subsection 3(1), a label, labeling or advertisement that may otherwise be false or misleading may be used if the label, labeling or advertisement includes a statement that the label, labeling or advertisement does not suggest there is a difference between the quality, safety, wholesomeness, or composition of the food, milk or dairy product and another similar food, milk or dairy product offered for sale.

(a) The statement shall be contiguous to and as readable as the claim.

(3) A person who affixes a label or labeling or disseminates an advertisement shall:

(a) maintain a record of the analytical test used to verify a claim on a label, labeling or advertisement; and

(b) have the record available for an inspection by the department.

R70-340-4. Department to Review Labels, Labeling and Advertisements.

(1) A person shall submit a label, labeling or an advertisement that makes a claim regarding the quality, safety, wholesomeness, or

composition of a food, milk or dairy product to the department and receive the department's approval before:

(a) affixing the label or labeling to the food, milk or dairy product; or

(b) disseminating the advertisement.

(c) A person shall submit the results of an analytical test to verify a claim on a label, labeling or advertisement with the label or advertisement submitted under Subsection 4-1.

(2)(a) The department shall, within 30 days of receiving the label, labeling or advertisement, in writing approve or deny the label, labeling or advertisement.

(b) If the label, labeling or advertisement is not false or misleading and meets all other label, labeling and advertisement requirements, the department shall:

(i) approve the label, labeling or advertisement;

(ii) assign a unique serial number to the approved label, labeling or advertisement; and

(iii) maintain a copy of the approved label, labeling or advertisement, which may be inspected by the public.

(c) If the label, labeling or advertisement is false or misleading in any way, the department shall:

(i) deny approval of the label, labeling or advertisement; and

(ii) include in the written denial:

(A) the basis for the denial; and

(B) notice that the person may request the department to hold an administrative hearing, in compliance with Title 63, Chapter 46b, Administrative Procedures Act, on the denial.

(3) After a person receives approval of a label, labeling or advertisement under Subsection (2), the person may not alter the text, type size, or wording of the label, labeling or advertisement until after the department approves the alteration.

R70-340-5. Penalty.

Violations of any portion of this Rule may result in civil penalty of up to \$5,000.00 per occurrence, or criminal action, pursuant to Section 4-2-15. In addition, Dairy Permits may be suspended or revoked, citations of up to \$500.00 may be issued, and recalls may be initiated to recall all misbranded product(s).

KEY: food inspections, food labeling, milk labeling, dairy labeling
Date of Enactment or Last Substantive Amendment: March 10, 2008

Authorizing, and Implemented or Interpreted Law: 4-3-2; 4-3-14(5)(b)(vi); 4-5-17

◆ ————— ◆

Commerce, Occupational and Professional Licensing **R156-55a** Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 30892
FILED: 01/10/2008, 12:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division and the Construction Services Commission are proposing amendments to the rule with respect to continuing education requirements and standards. The existing language in Section R156-55a-303b outlines and clarifies the continuing education standards to implement Subsection 58-55-501(21) of the Construction Trades Licensing Act. The statute went into effect in 2005 and requires licensed contractors to obtain six hours of continuing education every two years. The proposed amendments are being made after it has been determined that the existing rule is inadequate to address continuing education with respect to licensed contractors.

SUMMARY OF THE RULE OR CHANGE: Section R156-55a-303b with respect to continuing education standards has been rewritten. Changes provide the following: 1) requires prior approval of continuing education courses by the Construction Services Commission; 2) clarifies and defines core and professional continuing education hours; 3) provides what is required on a certificate of completion for a continuing education course; 4) allows monitoring of continuing education courses by the division; 5) increases time of maintaining proof of continuing education by the licensee from two to three years; 6) provides continuing education credit for licensees that lecture in an approved course; 7) establishes for new licensees a cut off date for continuing education requirements during a renewal cycle; and 8) allows the division to defer or waive continuing education for secondary and post secondary education instructors, serious illness or other circumstances that include governmental, educational, or ecclesiastical assignments.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-55-308(1), 58-55-102(35), and 58-55-501(21)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The division will incur minimal costs of approximately \$150 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the division's current budget. The division will utilize existing personnel for the auditing and enforcement of the continuing education requirement with respect to licensed contractors.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. Proposed amendments only apply to licensed contractors and applicants for licensure as a contractor if they become successfully licensed.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendments will require a continuing education provider to licensed contractors to obtain prior approval from the Construction Services Commission of a continuing education course. The course provider would be required to provide a course syllabus, a resume for the course instructor and other documentation and may be required to meet with the Commission if so requested. There may be some costs to the continuing education provider to obtain this approval. However, exact costs are unknown to the Division, but any costs incurred would be minimal. It should be noted that a

continuing education provider to licensed contractors may or may not be considered a "small business". The Division does not anticipate any increased costs or savings to licensed contractors as a result of the proposed amendments as the amendments do not increase the number of continuing education hours required. The proposed amendments are further clarifying what standards apply to the required continuing education for licensed contractors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments will require a continuing education provider to licensed contractors to obtain prior approval from the Construction Services Commission of a continuing education course. The course provider would be required to provide a course syllabus, a resume for the course instructor and other documentation and may be required to meet with the commission if so requested. There may be some costs to the continuing education provider to obtain this approval. However, exact costs are unknown to the division, but any costs incurred would be minimal. It should be noted that a continuing education provider to licensed contractors may or may not be considered a "small business". The division does not anticipate any increased costs or savings to licensed contractors as a result of the proposed amendments as the amendments do not increase the number of continuing education hours required. The proposed amendments are further clarifying what standards apply to the required continuing education for licensed contractors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing makes various amendments to the continuing education requirements for contractors. No fiscal impact to businesses is anticipated as a result of this rule filing beyond those discussed in the rule summary. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dennis Meservy or Dan S. Jones at the above address, by phone at 801-530-6375 or 801-530-6720, by FAX at 801-530-6511 or 801-530-6511, or by Internet E-mail at dmeservy@utah.gov or dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/27/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.**

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308a.

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the [following] continuing education requirements set forth in Section R156-55a-303b]:

- (a) ~~complete three hours of core continuing education; and~~
- (b) ~~an additional three hours of professional continuing education].~~

R156-55a-303b. Continuing Education - Standards.

(1) ~~Continuing education courses are not required to be submitted for approval by the Commission, but must meet the following criteria:~~

- (a) ~~content must be relevant to the practice of the construction trades and consistent with the laws and rules of this state;~~
- (b) ~~learning objectives must be reasonably and clearly stated;~~
- (c) ~~teaching methods must be clearly stated and appropriate;~~
- (d) ~~faculty must be qualified, both in experience and in teaching expertise;~~
- (e) ~~documentation of attendance must be provided; and~~
- (f) ~~all core education and professional education hours shall be clock hours.~~

(2) ~~The three hour core education requirement shall include one or more of the following course content areas:~~

- (a) ~~construction codes;~~
- (b) ~~construction laws and rules; and~~
- (c) ~~construction practices.~~

(3) ~~Credit for core education and professional education shall be recognized in accordance with the following. Hours shall be recognized for core education and professional education completed in blocks of time of not less than 50 minutes, in formally established classroom courses, seminars, lectures, conferences, training sessions or distance learning modules, which meet the criteria listed in Subsection (1) above and conducted by or under the sponsorship of:~~

- (a) ~~a recognized university or college;~~
- (b) ~~a state agency;~~
- (c) ~~a professional association, including:~~
 - (i) ~~the Associated Builders and Contractors Association;~~
 - (ii) ~~the Associated General Contractors Association;~~
 - (iii) ~~the Utah Home Builders Association;~~
 - (iv) ~~the Utah Mechanical Contractors Association; or~~
- (d) ~~other recognized education programs as approved by the Commission with the concurrence of the Director.~~

(4) ~~Professional education shall not include courses in office and business skills, physical well-being and personal development, and meetings held in conjunction with the general business of the licensee.~~

— (5) ~~The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.~~

— (6) ~~A licensee shall be responsible for maintaining competent records of completed core and other continuing education for a period of two years after the two year period to which the records pertain.]~~ (1) Required Hours. Pursuant to Subsection 58-55-501(21), each licensee shall complete a total of six hours of continuing education every two years. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Commission, in conjunction with the Division, may defer or waive the continuing education requirements of a licensee if:

- (i) a serious illness or other circumstances limit the licensee's ability to complete the continuing education requirements, such as governmental, educational or ecclesiastical assignments; or
- (ii) the licensee is a secondary or post secondary education construction instructor.

(e) The Division may grant a licensee an extension of time within which to comply with this rule as the Division considers appropriate.

(2) Prior Approval of Continuing Education Courses. A provider of continuing education shall submit a request to the Division for approval of the course.

(a) The provider shall not teach the course until the provider has received approval from the Division.

(b) The Commission, in concurrence with the Division Director, will determine whether the subject matter of a course is acceptable for continuing education credit.

(3) In determining whether to approve a course for core education or professional education, the Commission and the Division Director may consider whether the course meets the additional standards in this Subsection (3) as follows:

(a) Time. A continuing education course shall consist of 50 minute blocks of seminars, lectures, conferences, training sessions or distance learning modules. Each 50 minute block shall constitute one hour of continuing education.

(b) Provider. The course provider shall be one of the following:

- (i) a recognized accredited college or university;
- (ii) a state or federal agency;
- (iii) a professional association or organization involved in the construction trades; or
- (iv) any other provider providing a program related to the construction trades, if approved by the Commission with the concurrence of the Division Director.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The teaching methods shall be clearly stated and appropriate.

(f) Faculty. The faculty shall be qualified both in experience and in teaching expertise.

(g) Documentation. Certificate of completion meeting the requirements of Subsection (5) shall be provided by the provider to the attendees.

(4) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(5) Certificates of completion provided to the Division by the licensee shall include the following information:

- (a) the licensee's name, license number, and date of course;
- (b) the name of the course provider, course title, hours of credit and type of credit; and
- (c) the signatures of the course instructor and the licensee.

(6) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due.

(7) Licensees who lecture in an accredited continuing education course shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(8) The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.

(9) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

KEY: contractors, occupational licensing, licensing

Date of Enactment or Last Substantive Amendment:
~~November 26, 2007~~ 2008

Notice of Continuation: November 8, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1); 58-55-102(35); 58-55-501(21)

◆ ————— ◆

Commerce, Occupational and Professional Licensing **R156-61** Psychologist Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30915

FILED: 01/15/2008, 13:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division and the Psychologist Board are proposing amendments to the rule as a result of the governing statute, Title 58, Chapter 61, being amended during the 2007 Legislative Session in S.B. 134. The proposed amendments are: 1) update and clarify the definition of psychology training and experience; 2) add new definitions needed as a result of the statute changes; 3) add time frame requirements for taking examinations; and 4) update the continuing education requirements. (DAR NOTE: S.B. 134 (2007) is found at Chapter 387, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the term "rules" has been replaced with "rule". In Section R156-61-102, proposed amendments clarify language under "qualified faculty" and includes new definitions for "supervised psychology training", "program respecialization" and "predoctoral internship". In Section R156-61-302a, proposed amendments clarify the statutory amendments made as a result of S.B. 134 with respect to education and respecialization requirements. In Section R156-61-302b, proposed amendments clarify the statutory amendments made as a result of S.B. 134 with respect to experience requirements. In Section R156-61-302c, proposed amendments specify the time frame the division will hold applications in a pending status while waiting for applicants to take and pass required examinations. In Section R156-61-302e, proposed amendments clarify the statutory amendments made as a result of S.B. 134 with respect to psychology training supervision. In Section R156-61-302h, proposed amendments add continuing education requirements with respect ethics/law, internet/distance learning, and peer supervision. In Section R156-61-502, proposed amendments update language and make technical changes to address statutory amendments made in S.B. 134.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-61-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Updates the Association of State and Provincial Psychology Boards (ASPPB) Code of Conduct from the June 2001 edition to the 2005 edition

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the division's current budget. The division anticipates a decrease in applicants for a certified psychology resident license and therefore will have a decrease in the \$85 application fee for that classification. The division anticipates approximately 10 fewer applicants per year for an aggregate decrease of \$850.

❖ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments; therefore, no costs or savings are anticipated. The proposed amendments only apply to licensed psychologists, certified psychology residents, and applicants for licensure in either of those classifications.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendments will only apply to licensed psychologists, certified psychology residents, and applicants for licensure in either of those classifications. It should be noted that licensed psychologists may qualify as a "small business" if employed in a place of business with fewer than 50 employees. Certified psychology resident applicants will save the \$85 application fee and time within the licensure process. Applicants will be able to become licensed two years sooner than with the former statute and rule requirements. The division anticipates approximately 10 fewer certified psychology resident applicants per year for an aggregate savings of \$850.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments will only apply to licensed psychologists, certified psychology residents, and applicants for licensure in either of those classifications. Certified psychology resident applicants will save the \$85 application fee and time within the licensure process. Applicants will be able to become licensed two years sooner than with the former statute and rule requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements recent statutory amendments which allow applicants to obtain their experience requirement while obtaining their education (S.B. 134). The filing also clarifies existing standards, including those for continuing education and examinations. No fiscal impact to businesses is anticipated beyond those addressed in the rule filing and those already considered in the passage of S.B. 134. Francine A. Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY UT 84111-2316, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Noel Taxin at the above address, by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 2/06/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule[s].
R156-61-101. Title.**

Th[ese]is rule[s-are] is known as the "Psychologist Licensing Act Rule[s]."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or th[ese]is rule[s]:

(1) "Approved diagnostic and statistical manual for mental disorders" means the "Diagnostic and Statistical Manual of Mental Disorders", 4th edition Text Revision (DSM-IV-TR), published by the American Psychiatric Association, or the ICD-10-CM published by Medicode or the American Psychiatric Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

(4)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.

(b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.

(5)(a) "Program of respecialization", as used in Subsection R156-61-302a(2), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities must include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

([2]6) "Qualified faculty", as used in Subsection 58-1-307(b), means ~~that~~ a university faculty member, not including an adjunct faculty member, who provides [providing] pre-doctoral supervision of clinical or counseling experience[, that is experience] in a university setting [which is acquired prior to the pre-doctoral internship,] who;

(i) is licensed in Utah as a psychologist; and
 (ii) ~~[who] is training students in the context of a doctoral program leading to licensure. [license eligibility. Qualified faculty does not include adjunct faculty. The qualified faculty supervisor must be legally able to personally provide the services which he is supervising. The qualified faculty supervisor must meet all other requirements for supervision as described in Section R156-61-302e. This provision does not allow such qualified faculty supervisors to provide supervision of hours needed for license eligibility, such as internship and post-doctoral experience, unless the supervisor is otherwise qualified according to Section R156-61-302d. Supervisors in settings other than a university setting as described in this subsection must meet all requirements for supervisors as described in Sections R156-61-302d and R156-61-302e.]~~

(3) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(8)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. Authority - Purpose.

~~Th[ese] rule[s-are] is~~ adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 61.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(~~[61](f)~~), the Ethics Committee as an advisory peer committee to the Psychology Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-~~[204]205~~.

(3) The duties and responsibilities of the committee shall include assisting the division in its duties, functions, and responsibilities defined in Section 58-1-~~[203]202~~ as follows:

(a) upon the request of the division, review reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advise the division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the division provide expert advice to the division with respect to conduct of an investigation; and

(c) when appropriate serve as an expert witness in matters before the division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), a[A]n institution or program of higher education awarding a psychology degree that qualifies[, or a degree qualifying] an applicant for licensure as a psychologist[, to be recognized by the division in collaboration with the board under Subsection 58-61-304(1)(d),] shall be accredited by the CoA. [Committee on Accreditation of the American Psychological Association or meet the following criteria:]

(a) An applicant must graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA must meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree; ~~[or]~~

(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant; ~~[and]~~

(c) result from successful completion of a program conducted ~~[on]~~ or based on a college or university [formal] campus;

(d) result from a program which includes at least one year of residence at the educational institution;

(e) if located in the United States or Canada, be an institution having a doctoral psychology program meeting "Designation" criteria, as recognized by the Association of State and Provincial Psychology Boards/National Register Joint Designation Committee, at the time the applicant received the earned degree, or if located outside of the United States or Canada, meet the same criteria by which a program is recognized by the Association of State and Provincial Psychology Boards at the time the applicant received the earned degree;

(f) have an organized and clearly identified sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology and licensure, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;

(g) clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;

(h) grant earned degrees resulting from a program encompassing a minimum of three academic years of full time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;

(i) include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology;

(j) require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:

(i) scientific and professional ethics and standards;

(ii) research design and methodology;

(iii) statistics; and

(iv) psychometrics including test construction and measurement;

(k) require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:

(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;

(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;

(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and

(iv) individual differences such as human development, personality theory and abnormal psychology[-]; and

(l) require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(6), and shall meet requirements of Subsections R156-61-302a(2).

~~([2]4)~~ In accordance with Subsection 58-61-304(1)(d), an ~~A~~ applicant who has received a doctoral degree in psychology by completing the requirements of Subsections R156-61-302a(1)(a) through (2)(i), without completing the core courses required under Subsection R156-61-302a(2)(j), or the specialty course work required in Subsection (2)(l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (2)(j) and (2)(l) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

~~([3]5)~~ The date of completion of the doctoral degree shall be the graduation date listed on the official transcript~~[or the date on which all formal requirements for graduation were met as certified by the university registrar].~~

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) Psychology training of a minimum of 4,000 hours qualifying an applicant for licensure as a psychologist under Subsection 58-61-304(1)(e), and mental health therapy training under Subsection 58-61-304(1)(f), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years and not more than four years following the awarding of the doctoral degree~~;in not more than four years unless otherwise approved by the board and division; and]~~

(b) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

~~([b]c)~~ be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d[-];

(d) supervision by a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, may not be credited toward the 4000 hours of psychology doctoral clinical training.

(e) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(f) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

~~([3]5)~~ An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training ~~[completed outside the state]~~ is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1). ~~[The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to the requirements under this Subsection.]~~

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychology Law Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Law and Rule examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a division or board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will ~~not~~ only be allowed subsequent admission to the examination ~~until~~ after the applicant has appeared before the board, developed with the board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as [is-]determined by the division in collaboration with the board.

(6) ~~[The Utah Psychology Law Examination may be taken only after an applicant has taken the EPPP examination.]~~ In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Law and Rule examination must pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application will be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement must pass the Utah Law and Rule examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application will be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), [T]o be approved by the division in collaboration with the board as a supervisor of psychology or mental health therapy training [required under Subsections 58-61-304(1)(e) and (f)], an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) ~~[demonstrate]~~ have practiced as a licensed psychologist for not less than ~~[t]n~~ 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;

(2) ~~[be-]engage[ed]~~ in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) supervise not more than three supervisees unless otherwise approved by the Division in collaboration with the Board ~~[420 hours of supervised experience per week];~~

(4) ~~[be]~~ make themselves available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose [diagnosis of] patients, and other factors ~~[known to the supervisee and]~~ determined by the supervisor;

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;

(8) submit appropriate documentation to the division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;

(10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and

(11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to:

(1) upon request meet with the board for the purpose of evaluating the applicant's current ability to ~~[engage safely and competently in practice as a psychologist and]~~ safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or

~~—(4) pass~~] the EPPP Examination, ~~or both~~, if it is determined by the board ~~[that current taking and passing of the examination]~~ it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(~~§~~4) complete a minimum of 48 hours of professional education in subjects determined necessary by the board ~~[as necessary]~~ to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of qualified professional education directly related to the licensee's professional practice;~~—~~

(b) a certified psychology resident shall be required to complete not less than 24 hours of qualified professional education directly related to professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period year shall be decreased in a pro-rata amount equal to any part of that two year period year preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) ~~[u]~~Unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences~~[-]~~.

(b) ~~[a]~~A maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education professional education courses in the field of psychology, or supervision of an individual completing his experience requirement for licensure as a psychologist~~[-]~~.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

~~(e)~~d) ~~[a]~~A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist~~[-]~~.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer supervision, review and meetings that are documented noting the above requirements in Section (4).

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified professional education to demonstrate it meets the requirements under this section.~~—~~

~~(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.]~~

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, August 2002 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, ~~[June 2001]~~2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) ~~use of~~ using a professional client relationship to exploit a ~~person~~ client or other person for personal gain ~~that is known to have a personal relationship with a client for personal gain~~;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience; and

(21) supervising a residency program of an individual who is not certified as a psychology resident.

KEY: licensing, psychologists

Date of Enactment or Last Substantive Amendment: ~~January 4, 2005~~ 2008

Notice of Continuation: June 10, 2004

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101



Community and Culture, Indian Affairs

R230-1

Native American Grave Protection and Repatriation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30912
FILED: 01/15/2008, 10:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended subsequent to legislative statute change to Sections 9-8-309, 9-9-403, and 9-9-405 regarding private lands and ancient Native American human remains repatriation, done during the 2007 session, S.B. 204. (DAR NOTE: S.B. 204 (2007) is found at Chapter 231, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The process currently outlined in Rule R230-1 for the repatriation and care of ancient Native American human remains exceeds its authority as outlined in the Native American Grave Protection and Repatriation Act (NAGPRA) at Section 9-9-403. This amendment seeks to refine the repatriation process and remove burdens previously held by private landowners.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-8-309, 9-9-104, 9-9-403, and 9-9-405

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no additional cost to the state budget as a result of these amendments as the changes only clarify responsibilities of state agencies, not add to them.

❖ LOCAL GOVERNMENTS: There will be no additional cost to local governments as the rule amendments clarify the repatriation process ensuring local governments do not carry a burden of cost for the repatriation processing of human remains.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no additional cost to small businesses and persons other than businesses, notably private landowners, as these rule amendments ensure private landowners and small businesses do not bear the burden of costs associated with discovery, care, and repatriation processing of ancient Native American human remains.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments clarify agency responsibilities regarding ancient Native American human remains, but add no duties, therefore incurring no extra cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Following the legislative change for Sections 9-8-409, 9-9-403, and 9-9-405 in the 2007 session, the legislature appropriated funds for the increased responsibilities state agencies incurred to remove the burden of care and process for ancient Native American human remains. The amendments to Rule R230-1 provide clarification to the repatriation process and the specific responsibilities of each agency. As the amendments provide clarification only, there is no fiscal impact upon business. Palmer DePaulis, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMUNITY AND CULTURE
INDIAN AFFAIRS
Room 103
324 S STATE ST
SALT LAKE CITY UT 84111-5223, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Rebecca Nelson at the above address, by phone at 801-538-8767, by FAX at 801-538-8888, or by Internet E-mail at rebeccanelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Palmer DePaulis, Executive Director

R230. Community and Culture, Indian Affairs.

R230-1. Native American Grave Protection and Repatriation.

R230-1-1. General Policy Statement Regarding Native American Burials.

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "holy ground," never to be disturbed.

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands or non-federal lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.
7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.
8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.
9. "State land" as defined by 9-9-402.
10. "Nonfederal land" as defined by 9-9-402.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands or non-federal lands.

~~R230-1-6. Duties Upon Discovery of Remains.~~

~~1. Remains are to be treated at all times with dignity and respect. Any person who discovers a dead body shall not damage the body and shall not disinter or remove the body without proper authority. Any person who discovers a dead body shall report the discovery to a local law enforcement agency. A violation of these rules may constitute a criminal offense and may subject the offender to criminal sanctions under Section 76-9-704.~~

~~2. Any person or entity who discovers Native American remains must cease all activity which might disturb the remains and take reasonable steps to protect the discovered remains. Such steps may include, but are not limited to, restoring the site to its original condition or otherwise securing and protecting the site to prevent any possible desecration or destruction.~~

~~3. If it is unclear whether the remains are of Native American origin upon a cursory examination, the agency must take reasonable steps to determine the ethnicity of the remains:~~

~~a. The agency may further investigate the ethnicity by retaining the services of a qualified archeologist to conduct a physical examination of the remains.~~

~~b. If a physical examination of the remains is not sufficient to determine ethnicity, the agency may seek an excavation permit by the Division of State History pursuant to Section 9-8-305 in order to conduct limited excavation to search for associated funerary objects.~~

~~c. If no other method of investigation is sufficient to determine ethnicity, the agency may allow limited scientific testing on the remains, by the least intrusive and least destructive means possible to determine ethnicity.~~

~~4. Any person or entity who discovers Native American remains on state land must promptly notify the Division by telephone. As soon as is reasonably possible, but not later than five business days, written notification of the discovery must also be provided.~~

~~a. Written notification shall include a detailed description of what was found, the place where the remains were found, the conditions under which the person discovered the remains and any other facts that may help identify the remains.~~

~~b. Written notification shall be provided to:~~

- ~~i. the state agency having management authority over the land where the remains were discovered;~~
- ~~ii. the Division of Indian Affairs; and~~
- ~~iii. the Division of State History.~~

~~R230-1-7. Resumption of Activity.~~

~~1. The activity in which the remains were discovered or any further excavation may not resume until a plan for the preservation of the remains has been adopted by the Director, in consultation with the entity who discovered the remains, the agency, and a designated representative from the Division of State History.~~

~~a. Preference shall be given to a plan which provides for restoration of the site to its original condition and discontinuing all activity in the area to limit any further disturbance of the site.~~

~~b. If it is not feasible to discontinue the activity, excavation may continue pursuant to a permit issued under Section 9-8-305 and in accordance with a plan designed to minimize any further desecration of the remains.~~

~~2. The consultation shall take place as soon as reasonably possible after the Director and the agency have been notified of the discovery. The authority to determine the disposition and treatment of remains shall not be exercised in a manner that would unreasonably delay completion of a construction project or any other project.~~

—3. Activity may not resume until the Director has been given reasonable notice of when the planned excavation shall take place and the Director or his designee has the opportunity to be present at the excavation.

—a. The cost of the excavation shall be borne by the party requesting the excavation.

—b. If the remains are excavated and ownership has not yet been determined, the Division may take temporary possession of the remains pending a final determination of ownership.

R230-1-8. Notification of Possible Owners of the Remains.

—1. Once the Division has been notified of the discovery of Native American remains, the Director shall notify any known or possible lineal descendants.

—2. If no lineal descendants can be ascertained, the Division shall notify all Indian tribes and Navajo tribal chapters located in Utah and any other interested parties who have requested notification and have designated a contact person.

—3. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing a claim by posting the notice in a public place and/or by including it in tribal news media.

—4. Any interested party may request notification of the discovery of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-9. Claims of Ownership.

—1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their claim within sixty days from the date that notification is sent out by the Division.

R230-1-10. Determination of Ownership.

—1. When only one claimant has asserted a claim of ownership, the Committee shall request a written petition from the claimant, substantiating the claim. If the claimant makes a substantial showing of lineal descent or cultural affiliation with the remains, the Committee may grant ownership or control of the remains to that claimant.

—2. When two or more claims have been submitted, the determination of ownership shall be made in an informal proceeding which shall comply with Section 63-46b-0.5 et seq., the Utah Administrative Procedures Act.

R230-1-11. Dispute Resolution of Competing Claims.

—1. After the expiration of time for claims to be submitted, the Committee shall schedule a time to hear the matter and shall notify the claimants.

—2. The Committee shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence and comment on issues concerning their claim.

—a. Lineal descent or cultural affiliation may be established by genealogical records, archaeological records, oral or written history, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

—b. If the evidence presented at the hearing is not sufficient to resolve the disputed claims or enable the Committee to make a recommendation of ownership, upon a majority vote of the Committee, scientific testing may be permitted to determine ethnicity.

—3. The Committee shall attempt to facilitate a settlement of the dispute and shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains by a preponderance of the evidence.

R230-1-12. Adjudication of Disputed Claims.

—1. If competing claimants are unable to resolve their dispute at the informal hearing, the Committee shall issue findings relating to the identity of or the cultural affiliation of the remains and a decision of disposition.

—2. A copy of the Committee's findings and decision shall be mailed to each of the claimants along with a notice explaining the procedure for seeking an appeal of the Committee's decision in the District Court.

—3. If none of the claimants have filed an appeal in the District Court within 30 days, the Committee's decision shall be binding upon the parties.

R230-1-13. Disposition of Remains Once Ownership has been Determined.

—1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency.

—2. If the remains have already been excavated pursuant to R230-1-6, the owner may then take possession of the remains from the Division or the agency that has temporary possession of the remains.

R230-1-14. Disposition of Unclaimed Remains.

—1. When the plan that is adopted for preservation of the unclaimed remains directs that the activity be re-routed and the site be restored, the remains may be permanently left in place upon final approval by the agency and in agreement with the Division.

—2. When no claim of ownership has been made for discovered remains and the remains are excavated pursuant to R230-1-6, they shall be reinterred in the Indian Burial Repository.

R230-1-15. Scientific Investigation of Unclaimed Remains.

—1. No scientific investigation beyond that allowed in R230-1-6 shall be conducted on unclaimed remains except upon written permission granted by the Committee.]

R230-1-6. Ascertaining Lineal Descendants and Cultural Affiliation.

—1. Each agency shall compile an inventory of acquired ancient human remains and funerary objects, and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

—a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all interested parties.

—2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

—a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

R230-1-7. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains and a lineal descendent ascertained by the Agency, the Director shall notify any known or possible lineal descendants, Indian tribes in Utah, and all other interested parties within 30 days.

2. If no lineal descendants can be ascertained, and if the cultural affiliation of the remains has been determined by the Agency, the Director shall notify within 30 days all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person.

3. If no lineal descendent or cultural affiliation to any tribe can be ascertained, or the geographic location of discovery of the remains is unknown, the Director shall notify all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, of known information regarding the remains.

4. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing an intent to claim by posting the notice in a public place and/or by including it in tribal news media.

5. Any interested party may request notification of the discovery and repatriation process of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-8. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their intent to claim within forty-five days from the date that notification is sent out by the Division. Lineal descendants or Indian tribes will have sixty days from the Division's receipt of the Intent to Claim notice to provide substantiating documentation.

R230-1-9. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership with an intent to claim notice regarding a claim of lineal descent or cultural affiliation, the Director shall request a written petition from the claimant, substantiating the claim. The claimant will have 60 days from the Divisions receipt of the intent to claim notice, to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the claimant makes a substantial showing of lineal descent or cultural affiliation the Agency will make a determination of lineal descent or cultural affiliation and grant ownership of the remains to that claimant.

2. When two or more claimants have asserted claims of ownership with intent to claim notices for lineal descent or cultural affiliation, the Director shall request a written petition from the claimants, substantiating the claims. The claimants will have 60 days from the Division's receipt of the intent to claim notices to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the agency determines both claimants have made a substantial showing of lineal descent or cultural affiliation, the Director and Committee shall facilitate a resolution of the competing claims. If the facilitation of resolution between claimants does not result in resolution, determination of ownership shall be made by the Agency in consultation with the Director and Committee based upon a preponderance of the evidence in an informal proceeding which shall comply with Section 63-46b-0.5 et seq., the Utah Administrative Procedures Act.

R230-1-10. Procedure for the Resolution of Claims for Lineal Descent or Cultural Affiliation.

1. After the expiration of time for the substantiating documents of claims regarding lineal descent or cultural affiliation to be submitted has occurred, and the agency has determined all claims have made a substantial showing, the Director, in consultation with the Agency and Committee, shall schedule a time within 60 days to facilitate the resolution of the competing claims and shall notify the claimants of such date.

2. In an informal proceeding, the Director and Committee shall meet with competing claimants and facilitate the resolution between claimants if at all possible.

3. If the facilitation of resolution of the competing claims does not result in resolution, the Agency shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence, and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, oral tradition, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

4. The Agency shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains, by a preponderance of the evidence.

R230-1-11. Adjudication of Disputed Claims.

1. If any party is dissatisfied with the Agency's or Director's decision, the claimants may appeal the decision to the Committee. The Committee shall review the decision and issue findings relating to the identity of, the cultural affiliation of the remains, or an aboriginal land use determination, which shall be used in accordance with 9-9-403(6).

2. A copy of the Committee's findings and the Director's or Agency's decision shall be mailed to each of the claimants and interested parties who have designated a contact person along with a notice explaining the procedure for seeking an appeal of the Director's or Agency's decision in the District Court where the Agency that has temporary possession of the remains pending this process, is located.

3. If no party has filed an appeal in the District Court within 30 days, the Director's or Agency's decision shall be binding upon the parties.

R230-1-12. Disposition of Unidentified and Unclaimed Remains.

1. When lineal descent and cultural affiliation cannot be determined, and the Division has notified all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, and has received no intent to claim notices within 30 days, then the Director shall, upon recommendation of the agency and in consultation with the Committee, coordinate at least every six months, the placement of the ancient human remains in the Indian burial vault or other designated cemetery until such time as further information regarding the identity and owner of the remains can be obtained.

2. If the remains have not been excavated and have gone through the determination of ownership and control process and are unclaimed, the remains may be permanently left in place upon final approval by the agency and in consultation with the Director.

3. If the remains have been excavated and have gone through the determination of ownership process and are unclaimed, the remains shall be re-interred in the Indian Burial Repository or other designated cemeteries throughout the state.

R230-1-13. Re-interment of Ancient Human Remains.

1. Annually, or as needed, the Director shall present to the Committee an inventory of remains that have completed the process of repatriation and have been determined to be without a lineal descendant or cultural affiliation or unclaimed, that reside in the burial vault. The Director shall include a plan for interment regarding the final resting place of the remains in either the burial vault or designated cemetery, and with approval of the Committee, the Director shall coordinate the interment of the remains.

R230-1-14. Role and Responsibilities of Committee.

1. The Committee shall meet quarterly or as deemed necessary to monitor the identification process described in R230-1-10 conducted by the Agency for lineal descent or cultural affiliation claims per 9-9-405(3).

R230-1-15. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency or non-federal agency.

2. If the remains have already been excavated pursuant to R212-4, the owner or person or tribe in control of the remains may then take possession of the remains from the agency that has temporary possession of the remains.

R230-1-16. Scientific Investigation of Remains.

1. No scientific investigation beyond that allowed in 9-9-4 shall be conducted on remains except upon written permission granted by the Director in consultation with the Committee.

2. If the ownership of the remains has not been determined, and further information regarding the identity and owner of remains becomes available, the agency or other interested parties may petition the Committee to recommend removal of the remains from the Indian burial vault or designated cemetery for testing.

a. The agency will provide to the Committee and Director a report specifying the nature and duration of the testing and the Committee will determine per majority vote whether to grant the removal request.

R230-1-17. Savings Provision.

1. Nothing in these Rules shall prevent an Indian tribe from making a claim based upon aboriginal land which the authority to decide validity and sufficiency of claims shall rest with the Director.

KEY: Indian affairs, state lands, Native American remains

Date of Enactment or Last Substantive Amendment: ~~February 7, 1996~~ 2008

Notice of Continuation: January 31, 2006

Authorizing, and Implemented or Interpreted Law: 9-9-104; 9-9-403; 9-9-405



Environmental Quality, Solid and
Hazardous Waste
R315-15-1
Applicability, Prohibitions, and
Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30907

FILED: 01/15/2008, 09:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to define and clarify the term "financial responsibility" as used in the Standards for the Management of Used Oil, Rule R315-15.

SUMMARY OF THE RULE OR CHANGE: The term "financial responsibility" replaces the previously used term "reclamation surety" and means the mechanism by which a person who has a financial obligation satisfies that obligation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** No costs or savings are expected to the state budget because this rule revision does not create any new requirements.

❖ **LOCAL GOVERNMENTS:** No change in costs or savings are expected to local governments because this rule revision does not create any new requirements.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** No change in costs or savings to either small businesses or other persons is expected because this rule revision does not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No change or savings to is expected for affected persons because this rule revision does not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule revision does not create any new requirements. Therefore, no additional costs

or savings are expected. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-15. Standards for the Management of Used Oil.

R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials which are subject to regulation as used oil under Section R315-15. This section also identifies some materials that are not subject to regulation as used oil under Rule R315-15, and indicates whether these materials may be subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in Section R315-15-1.2, the requirements of Rule R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Section R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in Section R315-2-10 are subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50, rather than as used oil under Rule R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office,

located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in Section R315-2-9 and mixtures of used oil and hazardous waste that is listed in Section R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in Section R315-2-9 are subject to:

(i) Except as provided in Subsection R315-15-1(b)(2)(iii), regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50 rather than as used oil under Rule R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in Section R315-2-9; or

(ii) Except as specified in Subsection R315-15-1.1(b)(2)(iii), regulation as used oil under Rule R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Section R315-2-9.

(iii) Regulation as used oil under Rule R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under Subsection R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under Section R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under Rule R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to Rule R315-15, and

(ii) If applicable are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under Rule R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under Rule R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under Rule R315-15.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Section R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 as provided in Subsection R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under Rule R315-15.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to Rule R315-15.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities which have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of Rule R315-15. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of Rule R315-15. The used oil is subject to the requirements of Rule R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of Rule R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of Rule R315-15 provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the

requirements of Rule R315-15 only if the used oil meets the specification of Section R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of Rule R315-15. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of Rule R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Rule R315-15, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found in 40 CFR 761.20(e).

(j) Inspections. Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil for purpose of ascertaining the compliance with Rule R315-15. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

(k) Violations, Orders, and Hearings. If the Executive Secretary has reason to believe a person is in violation of any provision of Rule R315-15, procedural requirements for compliance or cessation shall follow Section 19-6-721.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under Rule R315-15 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that claim complies with Sections R315-15-7.3, R315-15-7.4, and Subsection R315-15-7.5(b), the used oil is no longer subject to Section R315-15-6.

TABLE 1
USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT
SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum

Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste, see Subsection R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Subsection R315-15-1.1(b)(1). Such used oil is subject to Section R315-14-7, which incorporates by reference 40 CFR 266 Subpart H, rather than Rule R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Board, a person may not place, discard, or otherwise dispose of used oil in the following manner:

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Rule R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Subsection 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Board; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under Rule R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water;

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in Subsection R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) Section R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Subsection 19-6-706(4)(a).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities if:

(1) To the extent reasonably possible all oil has been removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 DISPOSAL OF USED OIL FILTERS

A person may dispose of a nonterne plated used oil filter that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.

1.7 DEFINITIONS

(a) Definitions of terms used in Rule R315-15 are incorporated by reference in Section R315-1-1.

(b) The definition of the term "de minimis" as used in Rule R315-15 has the same meaning as in Subsection 19-6-706(4)(b).

(c) The definition of the term "financial responsibility" as used in Rule R315-15 means the mechanism by which a person who has a financial obligation satisfies that obligation.

KEY: hazardous waste, used oil^[2]

Date of Enactment or Last Substantive Amendment: ~~June 17, 1998~~2008

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-704

Environmental Quality, Solid and Hazardous Waste **R315-15-10** Liability/Financial Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30908

FILED: 01/15/2008, 09:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes is to clarify wording and make the rule consistent with other division programs.

SUMMARY OF THE RULE OR CHANGE: The changes specify that the liability coverage (i.e., insurance policy or financial mechanism) must be maintained and requires approval of the Executive Secretary. These changes establish the amount of liability insurance or other financial responsibility an applicant shall have to qualify for a used oil permit as specified in Subsection 19-6-704(1)(e). These changes also clarify the liability responsibility for used oil collection centers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The requirements that affect state agencies are not changed and the oversight and enforcement of the rule will not change. Currently, there are no state governmental entities that are operating a permitted used oil facility so there is no anticipated effect on the state budget.

❖ **LOCAL GOVERNMENTS:** There are currently no local governments that operate a permitted used oil facility so there is no anticipated effect on local government budget. Also, the proposed requirements do not change the costs of oversight or enforcement of the used oil rules by local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small businesses and other persons that operate a permitted used oil facility and that do not already have the required minimum limits for third party pollution liability insurance will have to increase their cover limits. For these small companies, they may experience an increase in insurance

premiums to meet the proposed minimum limits for third party pollution liability insurance required by the proposed changes.

The actual increase in insurance premiums depends on the financial stability and credit worthiness of the company and the increased costs could range from less than \$100 to over a \$1,000 annually.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The majority of the proposed changes clarify the existing used oil rule and incorporate language that makes the used oil program consistent with the other programs within the Division of Solid and Hazardous Waste. These changes should not pose an increase in compliance costs. However, the proposed new minimum levels for third party pollution liability insurance may require affected persons to increase their existing limits, and therefore experience an increase in insurance premiums to meet the proposed minimum limits. The actual increase in insurance premiums depends on the financial stability and credit worthiness of the company and the increased costs could range from less than \$100 to over a \$1,000 annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A person that owns or operates a used oil facility may experience an increase in insurance premiums to meet the proposed minimum limits for third party pollution liability insurance. The increase in insurance premium costs depends on the financial stability and credit worthiness of the business. Anticipated increases may range from less than \$100 to over a \$1,000 annually. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-15. Standards for the Management of Used Oil.

R315-15-10. ~~Liability~~ Financial Requirements.

(a) Used oil activities. An owner or operator of an ~~used oil collection,~~ off-specification burner, transportation, processing, re-refining, or transfer facility, or a group of such facilities, is financially responsible for: ~~shall demonstrate financial~~

~~responsibility for any liability resulting from accidental spill or mishandling of used oil, e.g., bodily injury, property damage, and damage to third parties arising from operations of the facility or group of facilities.]~~

~~(1) cleanup and closure costs.~~

~~(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability, and~~

~~(3) environmental pollution legal liability for bodily injury or property damage to third parties resulting from sudden or non-sudden used oil releases. The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Executive Secretary of its ability to meet these financial requirements. The owner or operator shall present with its permit application the information the Executive Secretary requires to demonstrate its general comprehensive liability coverage. The owner or operator shall use the financial mechanisms described in Section R315-15-12 to demonstrate its ability to meet the financial requirements of Subsection R315-15-10(a)(1) and (a)(3). In approving the financial mechanisms used to satisfy the financial requirements, the Executive Secretary will take into account existing financial mechanisms already in place by the facility if required by Sections R315-7-15, R315-8-8, and R311-201-6. Additionally, the Executive Secretary will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled[.] and existing secondary containment[.etc]. ~~[Evidence of F]~~ Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Executive Secretary as part of the permit[registration] application and approval process and shall be maintained until released by Executive Secretary. Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Executive Secretary.~~

~~(b) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Executive Secretary as provided for in this section. Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Executive Secretary. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:~~

~~(1) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs, and~~

~~(2) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(1), coverage shall be in the amount of \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, and \$3 million per occurrence for non-sudden releases, with an annual aggregate coverage of \$6 million, exclusive of legal defense costs.~~

(3) For operations covered under Subsection R315-15-10(b)(2), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of \$4 million per occurrence, with an annual aggregate coverage of \$8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Executive Secretary as provided for in this section. The minimum amount of the coverage for used oil transporters shall be \$1 million per occurrence for sudden releases, with an annual aggregate coverage of \$2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Executive Secretary.

(d) An owner or operator responsible for cleanup and closure under Section R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under Subsections R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Executive Secretary through the use of an acceptable financial assurance mechanism indicated under Section R315-15-12.

(e) Used Oil Collection Centers. An owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under Subsection R315-15-10(a) and (b) unless these requirements are waived by the Executive Secretary. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Executive Secretary shall release an owner or operator from its existing financial responsibility mechanism as described in Section R315-15-10 when:

(1) The Executive Secretary approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to Section R315-15-11; or

(3) The Executive Secretary determines that financial responsibility is no longer applicable under Rule R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of Section R315-15-10.

KEY: hazardous waste, used oil[*]

Date of Enactment or Last Substantive Amendment: ~~June 17, 1998~~2008

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-704

◆ ————— ◆

Environmental Quality, Solid and Hazardous Waste **R315-15-11** Closure

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30909

FILED: 01/15/2008, 10:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify terminology and provide consistency with other division programs.

SUMMARY OF THE RULE OR CHANGE: This amendment changes terminology to better identify the rule's purpose; clarifies permittee responsibilities regarding off-site migration of contaminants; and clarifies cleanup and closure initiation and power of Executive Secretary regarding use of financial assurance funds and determination of obligation completeness.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The requirements that affect state agencies are not changed and the oversight and enforcement of the rule will not change. Currently, there are no state governmental entities that are operating a permitted used oil facility so there is no anticipated effect on the state budget.

❖ **LOCAL GOVERNMENTS:** There are currently no local governments that operate a permitted used oil facility so there is no anticipated effect on local government budget. Also, the proposed requirements do not change the costs of oversight or enforcement of the used oil rules by local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Minimal one-time compliance costs are expected for affected persons to review the proposed rule clarifications. This is anticipated to be less than \$100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The majority of the proposed changes clarify the existing used oil rule and incorporate language that makes the used oil program consistent with the other programs within the Division of Solid and Hazardous Waste. These changes should not pose an

increase in compliance costs, except for a minimal one-time cost to review the proposed rule clarifications, anticipated to be less than \$100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated increased costs due to the proposed rule changes. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-15. Standards for the Management of Used Oil.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall ~~reclaim~~ remove all used oil and used oil residues from the site of ~~the~~ operation and return the site to a post~~[-]~~operational land use in a manner that:

- (a) Minimizes the need for further maintenance;
- (b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and
- (c) Complies with the closure requirements of ~~this s~~Section R315-15-11 or supplies evidence acceptable to the Executive Secretary demonstrating a closure mechanism meeting the requirements of Section R315-7-15~~[-or]~~ R315-8-8, or 311-201-6.
- (d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary. The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Executive Secretary that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or

migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Executive Secretary for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Executive Secretary.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Executive Secretary.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in Section 264.145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial ~~and/or~~ final cleanup and closure of the facility at any point during its active life. ~~[-The closure plan shall include, at least:]~~

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(1[i]) A description of how each used oil management unit at the facility will be closed.

(2[ii]) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be cleaned, closed, or both during the active life of the facility.

(3[iii]) An estimate of the maximum inventory of used oil to be stored on~~[-]~~site at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure~~[-and]~~ final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(4[iv]) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial ~~or~~ final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to

satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

([5]v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures ~~[and final closure]~~ shall satisfy the final cleanup and closure [standards] plan.

([6]vi) A cleanup and closure cost estimate and a mechanism for ~~[reclamation surety]~~ financial responsibility to cover the cost of cleanup and closure.

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of Subsection R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Executive Secretary, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under Section R315-15-10. Within 30 days of the Executive Secretary's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Executive Secretary:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy Sections R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE ~~[FOR]~~CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Executive Secretary of this fact:

(1) Within 90 days after the owner or operator receives~~[receiving]~~ the final volume of used oil~~[, the owner or operator of a used oil transfer, off specification burning, or processing/re-refining facility shall begin implementing the facility's approved closure plan.]; or~~

(2) The Executive Secretary revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Executive Secretary determines that the owner or operator has failed to comply with Rule R315-15, the Executive Secretary may, after 30 days, on written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of Section R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil ~~[transfer, off specification burning, or processing/re-refining]~~ facility shall submit to the Executive Secretary, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Executive Secretary shall make the determination of whether cleanup and closure has been completed according to the cleanup and closure plan and Rule R315-15.

KEY: hazardous waste, used oil~~[s]~~

Date of Enactment or Last Substantive Amendment: ~~[June 17, 1998]~~2008

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-704

Environmental Quality, Solid and Hazardous Waste **R315-15-12** Reclamation Surety

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30910

FILED: 01/15/2008, 10:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide clarity and consistency with other division programs regarding financial assurance.

SUMMARY OF THE RULE OR CHANGE: This amendment defines "financial assurance mechanism" to mean "reclamation surety" as used in the Used Oil Management Act to provide consistency with other division programs. It requires 120-day notification for termination of financial mechanism and when cleanup and closure cost estimates need to be recalculated. It provides details for incremental funding for trust funds. It changes terminology for surety bonds. It provides for establishment of a standby trust agreement with letters of credit. It clarifies insurance requirements. It clarifies responsibilities of the Executive Secretary and the process and requirements for facilities filing bankruptcy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The requirements that affect state agencies are not changed and the oversight and enforcement of the rule will not change. Currently, there are no state governmental entities that are operating a permitted used oil facility so there is no anticipated effect on the state budget.

❖ LOCAL GOVERNMENTS: There are currently no local governments that operate a permitted used oil facility so there is no anticipated effect on local government budget. Also, the proposed requirements do not change the costs of oversight or enforcement of the used oil rules by local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Minimal one-time compliance costs are expected for affected persons to review the proposed rule clarifications. This is anticipated to be less than \$100. No additional compliance costs for affected persons are expected unless a letter of credit is selected as the financial assurance mechanism, then a standby trust agreement will be required. This may entail increased annual administrative fees from the financial institution for establishing and maintaining the standby trust based on the amount of the financial assurance required and the length of time the trust must remain active. This increased cost may vary between financial institutions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional compliance costs for affected persons is expected unless a letter of credit is selected as the financial assurance mechanism, then a standby trust agreement will be required. This may entail increased annual administrative fees from the financial institution for establishing and maintaining the standby trust based on the amount of the financial assurance required and the length of time the trust must remain active. This increased cost may vary between financial institutions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A person that owns or operates a used oil facility may experience an increase in administrative fees from the financial institution if they choose a letter of credit with a standby trust agreement. There should be no other anticipated costs. Richard W. Sprott, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-15. Standards for the Management of Used Oil.

R315-15-12. ~~[Reclamation Surety]~~ Financial Assurance.

12.1 DEFINITIONS

For the purposes of Section R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Executive Secretary in accordance with Section R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with Section R315-15-13 from the Executive Secretary after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Sections 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under Section R315-15-13 shall establish a ~~[reclamation surety]~~ financial assurance mechanism as evidence of financial responsibility under Section R315-15-10 sufficient to assure ~~[reclamation]~~ cleanup and closure of the facility in conformity with Subsection [Sections R315-15-12.4 and] R315-15-11.1 with one or more of the ~~[reclamation surety]~~ financial assurance mechanisms of [Section] Subsection R315-15-12.3 prior to receiving a permit from the Executive Secretary.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Executive Secretary, above the storage or processing capacity identified in the permit application approved by the Executive Secretary, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the ~~[reclamation surety]~~ financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of ~~[reclamation surety]~~ financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of ~~[Sections]~~ Subsections R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a ~~[reclamation surety]~~ financial assurance mechanism ~~under this rule~~, but are subject to the ~~[reclamation]~~ cleanup and closure requirements of Sections R315-15-10 and R315-15-11 ~~[+]~~ unless they have received a waiver in writing from the Executive Secretary under Subsection R315-15-10(e).

12.3 ~~[RECLAMATION — SURETY]~~ FINANCIAL ASSURANCE MECHANISMS

(a) Any ~~[reclamation surety]~~ financial assurance mechanism ~~[in place]~~ used to show financial responsibility under Sections R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under ~~[state]~~ Utah and federal law;

(2) be approved by the Executive Secretary; ~~[and]~~

(3) ensure that funds will be available in a timely fashion ~~[when needed]~~ for:

~~(i) completing all [reclamation]cleanup and closure activities indicated in the closure plan of the permit approved by the [Board, in coordination with the Department.]Executive Secretary; and~~

~~(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and~~

~~(4) require a written notice sent by certified mail to the Executive Secretary 120 days prior to cancellation or termination of the financial mechanism.~~

~~(5) be updated each year to adjust for inflation, using either:~~

~~(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or~~

~~(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.~~

(b) The owner or operator of an existing or new used oil facility shall establish a ~~[reclamation surety]financial assurance mechanism for cleanup and closure~~ by one of the following mechanisms and shall submit a signed original or an original signed duplicate[copy] of the ~~[surety]financial assurance mechanism~~ to the Executive Secretary for approval as part of the permit application[-];

(1) Trust Fund~~[-for Reclamation]~~.

(i) The trustee shall be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate[copy] of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Executive Secretary.

(iii) For trust funds not fully funded at the time of permit approval by the Executive Secretary, incremental payments into the trust fund shall be made annually by the owner or operator to ~~[be]~~ fully [funded]fund the trust within five years of [permit approval by] the Executive ~~[Secretary.]Secretary's approval of the permit as follows:~~

~~(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and~~

~~(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and~~

~~(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund, and~~

~~(D) no latter than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Executive Secretary in writing that the trust fund has been fully funded according the current permitted cleanup and closure cost estimate.~~

(iv) For a new used oil facility, the ~~[initial]-~~payment into the trust fund shall be made before the initial receipt of used oil.

(v) For an existing used oil facility, the ~~[initial]-~~payment into the trust fund shall be made on or before April 1, 1994.

(vi) The owner or operator, or other person authorized to conduct ~~[reclamation]cleanup and closure~~ activities may request reimbursement from the trustee for ~~[reclamation activities]cleanup and closure~~ completed when approved in writing by the Executive Secretary.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the ~~[reclamation]cleanup and closure~~ expenditures are submitted to and approved by the ~~[Board, in coordination with the Department.]Executive Secretary~~ in writing prior to the trustee granting reimbursement.

~~(viii) The Executive Secretary may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in Section R315-15-12 under the following conditions:~~

~~(A) upon the insolvency of the permittee, or~~

~~(B) when a violation of Sections R315-15-10, 11 or 12 has been determined.~~

~~(ix) The trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.2.~~

(2) Surety Bond Guaranteeing Payment~~[-or Performance]~~.

(i) The bond shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the ~~[reclamation]cleanup and closure~~ cost estimate developed under Subsection R315-15-11.2~~[12.4(e)]~~.

(iv) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust ~~[fund]agreement at the time the bond is established.~~

(A) The standby trust ~~[fund]agreement~~ shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust ~~[fund]agreement~~ and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the ~~[Board, in coordination with the Department.]Executive Secretary.~~

~~(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Executive Secretary a written cancellation notice by certified mail.~~

~~(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Executive Secretary 120 days prior to termination.~~

~~(viii) Any change to the form or content of the surety bond shall be submitted to the Executive Secretary for approval and acceptance.~~

~~(ix) The surety bond shall follow the language provided by the Executive Secretary found in Subsection R315-15-17.3.~~

(3) ~~[Insurance].~~

~~(i) The insurance shall be effective as follows:~~
~~(A) For a new used oil facility before the initial receipt of used oil; or~~
~~(B) For an existing used oil facility on or before April 1, 1994.~~
~~(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.~~
~~(iii) The insurance policy shall guarantee that funds will be available to perform the reclamation activities approved by the Board, in coordination with the Department.~~
~~(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct the reclamation activities, as approved by the Board, in coordination with the Department, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the concurrence of the Board, in coordination with the Department.~~
~~(v) The insurance policy shall be issued for a face amount at least equal to the reclamation cost estimate developed under Subsection R315-15-12.4(e).~~
~~(vi) An owner or operator, or other authorized person may receive reimbursements for reclamation activities completed if:~~
~~(A) the value of the policy is sufficient to cover the reimbursement request; and~~
~~(B) justification and documentation of the reclamation expenditures are submitted to and approved by the Board, in coordination with the Department, prior to receiving reimbursement.~~
~~(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.~~
~~(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate reclamation surety meeting the requirements of this subsection within 60 days of cancellation of the policy.~~
~~(4) Letter of Credit [for Reclamation.]~~
~~(i) The letter of credit shall be effective as follows:~~
~~(A) For a new used oil facility, before the initial receipt of used oil; or~~
~~(B) For an existing used oil facility, on or before April 1, 1994.~~
~~(ii) [An owner or operator of a used oil facility subject to the reclamation surety requirements of Section R315-15-12 may obtain an irrevocable standby letter of credit for reclamation of the used oil facility and shall submit a copy to the Executive Secretary.~~
~~(iii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.~~
~~(iv) The letter of credit shall be issued in an amount at least equal to the [reclamation] cleanup and closure cost estimate developed under Subsection R315-15-11.2[12.4(e)].~~
~~(v) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.~~
~~(A) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the surety bond shall follow the language incorporated by reference in Subsection R315-15-17.14.~~

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.
(vi) The letter of credit shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.4.
(4) Insurance.
(i) The insurance shall be effective as follows:
(A) For a new used oil facility before the initial receipt of used oil; or
(B) For an existing used oil facility on or before April 1, 1994.
(C) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.
(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.
(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Executive Secretary.
(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Executive Secretary, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Executive Secretary.
(A) The Insurer shall establish a standby trust agreement for only the benefit of the Executive Secretary when the Executive Secretary notifies the Insurer that the Executive Secretary is making a claim, as provided for in Rule R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.
(B) The Insurer shall place the face value of the applicable coverage in the trust within thirty (30) days of establishing the standby trust agreement.
(C) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Executive Secretary incorporated by reference in Subsection R315-15-17.14.
(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.
(vi) An owner or operator, or other authorized person may receive reimbursements for cleanup and closure activities completed if:
(A) the value of the policy is sufficient to cover the reimbursement request; and
(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Executive Secretary, prior to receiving reimbursement.
(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.
(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial

assurance mechanism meeting the requirements for financial responsibility under Section R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or reserve for which coverage is otherwise demonstrated as specified in Section R315-15-12.

(xii) Whenever requested by the Executive Secretary, the Insurer agrees to furnish to the Executive Secretary a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xv) All policy provisions related to Rule R315-15 shall be construed pursuant to the laws of the State of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Executive Secretary before said endorsement(s) become effective.

(xvii) Neither the Insurer or Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Executive Secretary at the time the Executive Secretary first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of Subsection R315-15-12.3(b)(1), except for item Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in Subsection R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(5) [The owner or operator of an existing or new used oil facility may establish reclamation surety by other mechanisms as approved by the Executive Secretary.

~~—(6)—~~The owner or operator of an existing or new used oil facility may establish [reclamation surety]a financial assurance mechanism by a combination of the above mechanisms as approved by the Executive Secretary.

(c) [In approving the reclamation surety, the Executive Secretary will take into account existing financial mechanisms the used oil facility may already have in place under Sections R315-7-15 or R315-8-8.]The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under Rule R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in Subsection R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under Rule R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in Subsection R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(3) The owner or operator using insurance to demonstrate compliance with Subsection R315-15-10(b) or (c) shall use one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsections R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.10.

(d) [The owner or operator of a used oil transfer, processing or rerefining facility may terminate or cancel an active reclamation surety mechanism under the following conditions:

—(1) if the owner or operator establishes alternate reclamation surety as approved by the Executive Secretary; or

—(2) if the owner or operator is released from the reclamation surety requirements by the Executive Secretary.]Adjustments by the Executive Secretary. If the Executive Secretary determines that the levels of financial responsibility required by Subsection R315-15-10(b) or (c), as applicable are not consistent with the degree and

duration of risk associated with used oil operations or facilities, the Executive Secretary may adjust the level of financial responsibility required under Subsection R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Executive Secretary's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Executive Secretary determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Executive Secretary may require that an owner or operator of the used oil facility or operation comply with Subsection R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Executive Secretary when requested in writing, any information which the Executive Secretary requests to determine whether cause exists for an adjustment to the financial responsibility under Subsection R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Executive Secretary revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in Subsection R315-15-10(d) has changed, it may submit a written request to the Executive Secretary to modify its permit to reflect the changed responsibility.

(f) The Executive Secretary may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to Section R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Executive Secretary to modify its permit to change its financial assurance mechanism or mechanisms as described in Section R315-15-12.

(h) The Executive Secretary may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Executive Secretary.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Executive Secretary by certified mail within 10 days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

- (i) bankruptcy of the trustee or issuing institution; or
- (ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or
- (iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 [RECLAMATION SURETY] ANNUAL UPDATE [AND] OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The [reclamation—surety] financial responsibility information required by Subsections R315-15-10, 11, and 12 and submitted to the Executive Secretary with the initial permit application for a [new] used oil facility or [by April 1, 1994 for an existing used oil facility] operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The [reclamation surety shall be updated each year to adjust for inflation or facility modification that would affect the amount of the reclamation surety required. The updated reclamation surety information shall be submitted to the Executive Secretary by March 1 of each year beginning March 1, 1995.] following annual updated financial responsibility information for the previous calendar year shall be submitted to the Executive Secretary by March 1 of each year for each permitted facility or operation:

[(e)](1) The [reclamation] cleanup and closure cost estimate shall be based on a third party performing [reclamation] cleanup and closure of the facility to a post-operational land use in accordance with [Section] Subsection R315-15-11.1 [and at a minimum shall contain the following elements:

- (1) the estimated cost of removing from the facility the permitted maximum used oil storage capacity of the facility;
- (2) the estimated cost of removing from the facility and decontaminating all used oil residues in containers, tanks, containment systems, soils, structures, and equipment; and
- (3) a written description and an itemized estimated cost of the proposed methods for removing used oil and used oil residues from the facility and decontaminating used oil residues at the facility].

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

- (i) policy number or other mechanism control number,
- (ii) effective date of policy or other mechanism, and
- (iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

- (i) policy number,
- (ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and
- (iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and Sections R315-15-10, 11, and 12, shall be provided upon request by the Executive Secretary.

KEY: hazardous waste, used oil[≠]

Date of Enactment or Last Substantive Amendment: [June 17, 1998] 2008

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-704



**Environmental Quality, Solid and
Hazardous Waste
R315-15-17
Wording of Financial Assurance
Mechanisms**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30911

FILED: 01/15/2008, 10:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to standardize wording for each different type of financial mechanism and make the financial instruments more consistent across all division programs, where applicable. This will also help to minimize delays in permit approval review by creating standardized financial mechanism language, thus not requiring review by the Attorney General's office in order to address potential legal issues.

SUMMARY OF THE RULE OR CHANGE: This rule presents standard wording forms for each acceptable financial assurance mechanism found in Section R315-15-12. The forms are incorporated by reference and are available at the Division of Solid and Hazardous Waste, 288 N 1460 W, Salt Lake City, UT, during normal business hours and on the division's web site at <http://www.hazardouswaste.utah.gov>.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Used Oil Program Financial Assurance Mechanism Forms published by the Executive Secretary of the Utah Solid and Hazardous Waste Control Board. Draft forms published January 10, 2008

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** No additional costs or savings to the state budget are expected because this rule revision is only proposing standardized language for financial assurance mechanisms. There are currently no permitted used oil facilities owned or operated by the state.
- ❖ **LOCAL GOVERNMENTS:** No additional costs or savings to local budgets is expected because this rule revision is only proposing standardized language for financial assurance mechanisms. There are currently no permitted used oil facilities owned or operated by any local government.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** No additional costs or savings to small businesses and other persons is expected because this rule revision is only proposing standardized language for financial assurance mechanisms.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional compliance costs for affected persons is expected because

this rule revision is only proposing standardized language for financial assurance mechanisms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated increased costs due to the proposed rule changes. Richard W. Spratt, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jim Smith at the above address, by phone at 801-538-7061, by FAX at 801-538-6715, or by Internet E-mail at jwsmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Dennis Downs, Director

**R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-17. Wording of Financial Assurance Mechanisms.**

17.1 APPLICABILITY

Section R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in Section R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at 288 North 1460 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, <http://www.hazardouswaste.utah.gov/>.

17.1.2 The Division requires that the forms described in this rule shall be used for all filings. Actual copies may be used or facilities may adapt them to their word processing system. If adapted, the content, size, font, and format must be similar.

17.1.3 The Executive Secretary may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Executive Secretary.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form published January 10, 2008 by the Executive Secretary.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form published January 10, 2008 by the Executive Secretary.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form published January 10, 2008 by the Executive Secretary.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form published January 10, 2008 by the Executive Secretary.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form published January 10, 2008 by the Executive Secretary.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form published January 10, 2008 by the Executive Secretary.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTIONLIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.14 STANDBY TRUST AGREEMENT, OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

KEY: hazardous waste, used oil[≠]

Date of Enactment or Last Substantive Amendment: [June 17, 1998]2008

Notice of Continuation: October 4, 2007

Authorizing, and Implemented or Interpreted Law: 19-6-704



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-510

Intermediate Care Facility for Individuals with Mental Retardation Transition Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30917

FILED: 01/15/2008, 16:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is necessary to change the title of the "Community Based Services Waiver for Individuals with Mental Retardation and Other Related Conditions" to the "Community Based Services Waiver for Individuals with Intellectual Disabilities and Other Related Conditions." This amendment also allows eligible spouses, when both reside in a Utah Intermediate Care Facility for the Mentally Retarded (ICF/MR) transition program, the opportunity to participate together in the ICF/MR.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the title for the ICF/MR of the waiver for the transition program, and allows eligible spouses residing in an ICF/MR to participate in the ICF/MR waiver transition program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3, 26-1-5, and 62A-5-102; 42 CFR 440.225; and Section 1915(c) of the Social Security Act

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The budget impact is uncertain because the number of eligible spouses who would qualify is rare. In the ten years that this program or a similar program has been in effect, only one spouse has qualified at a \$20,428.67 annual cost. The costs would be covered under general Medicaid appropriations.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund or receive ICF/MR services.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no budget impact to other persons and small businesses because recipients will continue to receive service and providers will continue to receive payment. There is no budget impact to small business as open beds will immediately be filled by Medicaid recipients on the waiting list. It is estimated that less than one eligible spouse per year may qualify.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because a person will transfer ICF/MR Medicaid coverage to the transition waiver.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No negative fiscal impact on business is expected, but will be finally evaluated after public comment. David N. Sundwall, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-510. Intermediate Care Facility for Individuals with Mental Retardation Transition Program.

R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Individuals with Mental Retardation (ICF/MR) Transition Program. Program participation is voluntary and allows an individual to transition out of an ICF/MR into the Community Supports Waiver for Individuals with ~~Mental Retardation~~ Intellectual Disabilities and Other Related Conditions Home and Community-Based Services (HCBS) Waiver Program.

(2) This rule is authorized by Section 26-18-3. Waiver services for this program are optional and provided in accordance with 42 CFR 440.225.

R414-510-3. Program Access Requirements.

(1) Legislative appropriations determine the number of participants selected in the particular year for placement in the program.

(2) Upon new legislative appropriation for the program, the Department announces an open application period for accepting applications.

(3) After the open application period, the Department places the name of each applicant on both a longevity list and a random list. On the longevity list, the Department ranks each applicant according to length of consecutive stay in an ICF/MR in Utah. On the random list, the Department randomly ranks each applicant based on a computerized random selection.

(4) The Department takes evenly from the longevity list and the random list for placement in the Community Supports Waiver for Individuals with ~~Mental Retardation~~ Intellectual Disabilities and Other Related Conditions ~~Home and Community-Based Services~~ HCBS Waiver Program. If the Legislature funds an odd number of program participants, the Department places one additional individual from the longevity list.

(5) If an applicant is selected for transition and has a spouse who also resides in a Utah ICF/MR and who meets the eligibility criteria in Section R414-510-2, the Department shall provide an additional slot for the spouse to participate in the transition program without affecting the number of available slots from the longevity and random lists.

(~~5~~)⁶ Once the Department places individuals into the program for the year's appropriation, the longevity and random lists are retired and no longer used. The Department makes no new placements into the program to replace individuals who leave the program for whatever reason.

(~~6~~)⁷ As the Legislature makes new appropriations for the program, the Department creates new longevity and random lists for each new appropriation and selects individuals for the program as described in subsections (2) through (4).

R414-510-4. Service Coverage.

This rule incorporates by reference the services and limitations found in the Medicaid 1915(c) ~~Home and Community Based~~ HCBS Services Waiver and the Community Supports Waiver for Individuals with ~~Mental Retardation~~ Intellectual Disabilities and Other Related Conditions, State Implementation Plan, Effective July 1, 2005.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~January 17, 2007~~ 2008

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

◆ ————— ◆

Human Services, Services for People with Disabilities

R539-1-8

Non-Waiver Services for People with Brain Injury

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30877

FILED: 01/04/2008, 13:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to include as part of the rule the specific International Classification of Diseases diagnosis codes eligible for coverage under the division's brain injury programs. This should remove any ambiguity about the conditions eligible for coverage.

SUMMARY OF THE RULE OR CHANGE: The rule now references the specific diagnostic codes eligible for coverage under the division's brain injury program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The inclusion of specific diagnosis codes in this rule will be budget neutral to the division or any other state agency. The rule will provide administrative clarity to the eligibility process, but it will not increase or decrease the number of individuals receiving services or the amount of services provided.

❖ **LOCAL GOVERNMENTS:** Local governments do not provide these services and will not be otherwise affected by this rule. It will not affect the budgets of local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small businesses and other persons will not be affected by this rule. Some small businesses under contract to the division provide services to those that are eligible. This rule will not affect the services provided by small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only potential compliance costs could be seeking more than one medical opinion to obtain the diagnosis to be considered for eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have any fiscal impact on businesses. Individuals who apply for division brain injury services now have specific diagnostic codes to

help determine eligibility. Businesses will not be affected by the eligibility determinations for these individuals. Lisa-Michele Church, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: George Kelner, Director

R539. Human Services, Services for People with Disabilities.

R539-1. Eligibility.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury[?] (by a licensed physician) according to the International Classifications of Diseases, 9th Revision, (ICD 9 CM). The following codes listed below qualify for ABI services:

047.9--aseptic meningitis (unspecified viral meningitis)
290 - 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)

290.4--vascular dementia

290.10 Prehensile dementia, uncomplicated

293.9--psychotic, post traumatic brain injury syndrome

294.0--amnesia

294.9--unspecified persistent mental disorders due to conditions classified elsewhere

294.9--with psychotic reaction

294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off

310.0 - 310.9 nonpsychotic disorder, brain damage

310.0--frontal lobe syndrome

310.1--mild memory loss or lack following organic brain damage

310.1--personality change due to conditions classified elsewhere

310.2--post concussion syndrome

310.2--post contusion syndrome, includes encephalopathy

310.2--post contusion syndrome, includes TBI

310.2--post contusion syndrome, includes TBI

310.2--post traumatic brain injury
310.2--post traumatic brain injury syndrome
310.8 - 310.9--other nonpsychotic mental disorder, following organic brain damage
310.8--other specified mental disorder following organic brain damage
310.8--other specified nonpsychotic mental disorders following organic brain damage
310.9--organic brain syndrome
310.9--Organic brain syndrome
310.9--organic brain syndrome (chronic or acute)
310.9--unspecified nonpsychotic mental disorder following organic brain damage
320.9--meningitis, bacterial
322.0--meningitis, nonpyogenic
322.2--meningitis, chronic
322.9--meningitis
323.0 - 323.82--choose to pick cause of encephalitis, not 323.9
324.0 - 324.9--Intracranial and intraspinal abscess
325 Phlebitis and thrombophlebitis of intracranial venous sinuses
326 Late effects of intracranial abscess or pyogenic infection
348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)
348.1--anoxic brain damage
349.82 Toxic encephalopathy
430--subarachnoid hemorrhage
431--intracerebral hemorrhage
432.0--hematoma, non-traumatic brain
432.1--subdural hematoma
432--other and unspecified intracranial hemorrhage
433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)
434 Occlusion of cerebral arteries (only if 5th digit is 1)
436--brain or cerebral, acute seizure; need another diagnosis in combination
438 - 438.89 Late effects of cerebrovascular disease (excluding 438.9)
780.93--Memory loss amnesia -only in combination with an E Code - (excludes 310.1 Mild Memory Disturbance due to organic brain damage) need an E code secondary to cause
List codes from 800 - 804 then 5th digit list only those that are 2 - 9 exclude 0 to 1(excluding 802's)
800.0--closed skull fracture, vault (parietal, frontal, vertex)
800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion
800.1--closed skull fracture, vault with cerebral contusion
800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage
800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage
800.2--closed skull fracture, vault with epidural, extradural hemorrhage
800.2--closed skull vault fracture with subdural hemorrhage
800.3--closed skull fracture, vault with intracranial hemorrhage
800.3--Closed skull fx with other and unspecified intracranial hemorrhage
800.4--closed skull fracture, vault with intracranial injury
800.4--closed skull fx with intracranial injury of other and unspecified nature

800.5 - 800.9--Open skull fracture, vault (parietal or frontal area)
800.6--open skull fx with cerebral laceration and contusion
800.7--open skull fx with subarachnoid, subdural, and extradural hemorrhage
800.7--open skull vault fracture with subdural hemorrhage
800.8--open skull fx other and unspecified intracranial hemorrhage
800.9--Open skull fx with intracranial injury of other and unspecified nature
800.9--open vault fracture with intracranial injury of other and unspecified nature
801.0 - 801.9 Fracture of base of skull
801.0--closed skull fracture, base
801.1--closed skull fracture, with cerebral hemorrhage
801.2--closed skull base fracture with subdural hemorrhage
801.2--closed skull fracture with epidural hemorrhage
801.3 - 801.4--closed skull fracture, base with intracranial hemorrhage
801.5 - 801.9--open skull fracture, base of skull
801.7--open skull base fracture with subdural hemorrhage
803.0 - 804.9--Other and unqualified skull fractures (includes single or multiple fx)
803.0--closed skull fracture with facial injuries
803.1--closed skull fracture with cerebral contusion
803.2--closed skull fracture with epidural, extradural hemorrhage
803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage
803.2--other and unqualified skull fractures, closed, subdural hemorrhage
803.3--closed skull fracture with intracranial hemorrhage
803.4--closed skull fracture with intracranial injury
803.5 - 803.9--open skull fracture, other and unqualified
803.7--other and unqualified skull fractures, open, subdural hemorrhage
804.2--multiple fractures skull and face, closed, subdural hemorrhage
804.5 - 804.9--Open skull fracture, multiple fractures skull and face
804.7--multiple fractures skull and face, open, subdural hemorrhage
List codes from 850-854 then 5th digit list only those that are 2 - 9 exclude 0 to 1
850.1 - 850.5--concussion with loss of conscious
851.0 - 851.9--cerebral laceration and contusion, open or closed, specifies site
851.0--cerebral contusion without mention open wound
851.2--cerebral laceration without mention of open wound
851.4 or 851.6--cerebral or brain stem contusion s mention open wnd
851.4--contusion brain stem
851.8--cerebral contusion (851.0 - 851.9--specify site, open, closed)
851.8--contusion brain
851.8--other and unspecified cerebral contusion
851.8--other unspecified cerebral s mention open wound
852.0, 852.2, 854.4 hemorrhage s mention open wound
852.0 - 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury

852.0--subarachnoid hemorrhage
852.2 - 852.3--subdural hemorrhage, injury, without mention open, open
852.2--subdural hemorrhage following injury, s mention open wound
852.2--traumatic brain injury, subdural
852.3--subdural hemorrhage following injury, with open wound
852.4 - 852.5--extradural hemorrhage injury, without mention open
853.0 other intracranial hemorrhage after injury s mention open wound
853.0 - 853.1--other and unspecified intracranial hemorrhage following injury
853.0--hematoma, traumatic brain
854.0 - 854.1--Intracranial injury of other and unspecified nature
854.0--injury intracranial
854.0--intracranial hemorrhage due to injury
854.1--intracranial injury of other and unspecified nature s mention open w
905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 - 9 exclude 0 - 1)
906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 - 9 exclude 0 - 1)
907.0--late effect of intracranial injury (5th digit list only those that are 2 - 9 exclude 0 - 1);
 (b) Be 18 years of age or older;
 (c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.
 (d) meet at least three of the functional limitations listed under number (4).
 (2) Applicants with functional limitations due solely to mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.
 (3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.
 (4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:
 (a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.
 (b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.
 (c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:
 (i) provide personal protection;
 (ii) provide necessities such as food, shelter, clothing, or mental or other health care;
 (iii) obtain services necessary for health, safety, or welfare;
 (iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
 (d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L[~~BI~~], completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

KEY: human services, disabilities, social security numbers
Date of Enactment or Last Substantive Amendment:
[November 14, 2007]2008
Notice of Continuation: November 29, 2007
Authorizing, and Implemented or Interpreted Law: 62A-5-103;
62A-5-105



Natural Resources, Geological Survey
R638-2-6

Investment Tax Credit, Eligible Costs
 for Commercial and Residential
 Systems, Active Solar Thermal

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30902

FILED: 01/14/2008, 10:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide more flexibility in eligibility for tax credits for solar thermal systems that are used to heat pools.

SUMMARY OF THE RULE OR CHANGE: Because pool heating systems are intended primarily for use in summer when the angle of the sun is high, energy losses from orientation that is not near due south are less than for systems intended for year-round use. This change allows such systems to be within 45 degrees of true south if they have a 30 degree or greater pitch from horizontal, and also allows systems to be within 90 degrees of true south for systems pitched at less than 30 degrees.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-614, 59-10-1014, and 59-10-1106

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Cost by allowing more solar thermal systems to be eligible for credits. Likely budget impact at \$10,000 to \$15,000 more in tax credit awards per year.

❖ LOCAL GOVERNMENTS: None--Does not apply to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Benefit (more sales) to small businesses installing pool heating systems. Dollar amount of benefit cannot be determined as the profit margins that installers receive on solar pool systems is proprietary information that is not known by the agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change lowers compliance costs for homeowners and solar thermal installers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will improve the ability of solar thermal installation businesses to sell their products to consumers by lowering their overall costs. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 GEOLOGICAL SURVEY
 Room 3110

1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Philip Powlick at the above address, by phone at 801-537-3365, by FAX at 801-537-4795, or by Internet E-mail at philippowlick@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Rick Allis, Director

R638. Natural Resources, Geological Survey.

R638-2. Renewable Energy Systems Tax Credits.

R638-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R638-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;

2. Thermal storage devices such as tanks or heat sinks;

3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems."

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

<http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>;

2. Fixed collectors shall be oriented within 15 degrees of true south, except that non-glazed collectors used for heating pool water shall be:

a. Oriented within 45 degree of true south if the fixed pitch is greater than 30 degrees from horizontal, or

b. Oriented within 90 degree of true south if the fixed pitch is 30 degrees or less from horizontal.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);
2. A Utah licensed solar hot water contractor (S215 license); or
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);
2. A Utah licensed solar hot water contractor (S215 license); or
3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$0.15 \times$ rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$0.15 \times$ rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R638-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$0.27 \times$ rated output capacity in Btu/day) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$0.27 \times$ rated output capacity in Btu/day) - rebates) x 0.10

3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by USEP. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of USEP and UGS after investigation as to the validity of the waiver claim.

KEY: energy, renewable, tax credits, solar

Date of Enactment or Last Substantive Amendment: [~~October 23, 2007~~]2008****

Authorizing, and Implemented or Interpreted Law: 59-7-614; 59-10-1014; 59-10-1106



Natural Resources, Parks and
Recreation
R651-205-17
Cutler Reservoir

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30900

FILED: 01/14/2008, 10:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add another reservoir, Cutler Reservoir, to the list of reservoirs and lakes with limited horsepower allowed or prohibited. This amendment defines the location for the zoning requirements at Cutler Reservoir.

SUMMARY OF THE RULE OR CHANGE: In order to improve visitor safety and experience, user area zoning is required to limit or prohibit vessels with more than 35 horsepower or wakeless speed. This amendment defines the areas at Cutler Reservoir that are affected by the new limit, i.e., wakeless speed at any time in the area south of the Benson Railroad Bridge and wakeless speed from the last Saturday in September through March 31st in the Bear River, east of the confluence with the reservoir.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(1)(c)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment is not associated with cost or savings, but safety of the public and there are not anticipated costs or savings to the state budget from this action.

❖ **LOCAL GOVERNMENTS:** This amendment applies to state-operated waters only, and therefore, local government should have no cost or savings to their budget.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** No cost or savings is anticipated for small businesses as this amendment deals strictly with speeds on water.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person violates the rule, there could be a citation issued, as this would be considered a Class B misdemeanor.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department finds there would be no fiscal impact on businesses. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Bruce Hamilton, Deputy Director (Operations)

R651. Natural Resources, Parks and Recreation.

R651-205. Zoned Waters.

R651-205-17. Cutler Reservoir.

The use of motors whose manufactured listed horsepower is more than 35 horsepower is prohibited, and a vessel may not be operated at a speed greater than wakeless speed at any time in the area south of the Benson Railroad Bridge. A vessel may not be operated at a speed greater than wakeless speed from the last Saturday in September through March 31st in the Bear River, east of the confluence with the reservoir.

KEY: boating, parks

Date of Enactment or Last Substantive Amendment: ~~July 9, 2007~~ **March 10, 2008**

Notice of Continuation: April 18, 2006

Authorizing, and Implemented or Interpreted Law: 73-18-4(1)(c)



Natural Resources, Parks and Recreation **R651-301** State Recreation Fiscal Assistance Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30899

FILED: 01/14/2008, 10:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to eliminate one program no longer used and bring the rule up-to-date for State Recreation Fiscal Assistance Programs.

SUMMARY OF THE RULE OR CHANGE: The Riverway Enhancement Council no longer exists and other titles for programs have changed. This rule simply updates and helps define the process of the Fiscal Assistance program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11a-501

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Since this is simply to eliminate one program and update the other information for the program being eliminated, there will be no anticipated cost or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** No anticipated cost or savings to local government as this is a state program and does not reflect costs for anything, but rather defines word usage for Fiscal Assistance Programs.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This will not affect small businesses as it is for definition only and is a state fiscal assistance program that is being eliminated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs as there are no affected persons for these definition changes to the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department finds no fiscal impact to businesses. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Mary Tullius, Director

R651. Natural Resources, Parks and Recreation.
R651-301. State Recreation Fiscal Assistance Programs.
R651-301-1. Authority and Effective Date.

(a) These rules are established as required by 63-11a-501, and 63-11-17.8, and apply to the following state funded recreation fiscal assistance programs:

- ~~(1) Riverway Enhancement~~
- (2) 1 ~~[Non-Motorized]~~ Trails and Pathways
- (3) 2 Off Highway Vehicles

(b) These rules govern procedures for fiscal assistance applications, priorities, and project selection criteria commencing on or after April 15, 2000.

R651-301-2. Definitions.

- (a) "Advisory Council" means the ~~[Riverway Enhancement,]~~ Recreational Trails, and Off-Highway Vehicle Advisory Councils.
- (b) "Board" means the Utah Board of Parks and Recreation.
- (c) "Division" means the Utah Division of Parks and Recreation.
- (d) "High density population" means areas in the state where people are grouped in communities, towns, or cities, and where the majority of residents live in the area, regardless of community size.
- (e) "Public comment" means a survey of residents, bond election, written comments, or open public meeting designed to give input to the decision making process from the general public.

~~—(f) "River or stream" means a natural watercourse flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which is continuous in one direction, and which does not lose its character as a watercourse even though it may break and disappear.]~~

R651-301-3. Fiscal Assistance Application Process.

(a) Deadline for submission of applications is May 1 annually. Submissions post-marked on or before that date will be eligible for funding consideration.

(b) Applications are to be submitted on a form to be provided by the Division. Eligible applicants will be notified by mail of the application deadline and procedures at least 45 days prior to the deadline.

- (c) Applications must be submitted to:
 Utah Division of Parks and Recreation
 Attention: Grants Coordinator
 1594 West North Temple, Suite 116
 Salt Lake City, Utah 84114-6001

(d) Eligible applicants include:
~~—(1) Riverway Enhancement Program~~
~~—(i) State agencies~~
~~—(ii) Cities and towns~~
~~—(iii) Counties~~
~~—(iv) Special Improvement Districts]~~
 (2) 1 ~~[Non-Motorized]~~ Trails and Pathways Program

- (i) Federal government agencies
- (ii) State agencies
- (iii) Cities and towns
- (iv) Counties
- (v) Special Improvement Districts
- (3) 2 Off-Highway Vehicle Program
- (i) Federal government agencies
- (ii) State agencies
- (iii) Cities and towns
- (iv) Counties
- (v) Organized User Group (as defined in U.C.A. 41-22-2(15))
- (4) 3 Centennial Non-Motorized Paths and Trail Crossings

Program

- (i) State agencies
- (ii) Cities and towns
- (iii) Counties

R651-301-4. Fiscal Assistance Program Requirements.

- (a) All programs require a 50/50 match.
- (b) An applicant's match may be in the form of cash, force account labor, equipment, or materials; donated materials and labor or donation of land from a third party to be exclusively used for the proposed project. The value of donated labor will be based on a general laborer rate, unless the person is professionally skilled in the work being performed on the project. When this is the case, the wage rate normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the project sponsor pays its own employees having similar experience and performing similar duties. Donated materials and land will be valued at the fair market value based on an appraisal that is approved by the Division.

~~(c) Riverway Enhancement fiscal assistance must be along a river or stream that is impacted by high density population or is prone to flooding.~~

—~~(d)~~(c) Recreational trails that are on lands under the control of the Division must comply with Section 63-11a-203, and require public hearings in the area of proposed trail development.

(~~(e)~~d) Program funds may be used for land acquisition, development, and planning. Off-highway vehicle funds may also be used for operation and maintenance. No administrative or indirect costs are allowed.

(~~(f)~~e) Not more than 50% of program funds may be advanced to the project sponsor, and only after official notice to the Division is made by the sponsor that project costs will be incurred within [~~420~~sixty (60)] days.

(~~(g)~~f) No more than 50% of the monies available to the Centennial Non-Motorized Paths and Trail Crossings Program in a fiscal year may be allocated to a single project, except upon unanimous recommendation of the Recreational Trails Advisory Council.

(~~(h)~~g) The balance of funding shall be provided to sponsors at the project completion, and only after a final accounting is made to the Division of total project costs.

R651-301-6. Priorities and Project Selection Criteria.

(a) All applicants shall be evaluated on administrative considerations, such as prior project performance and proper use of funds.

(b) All applications shall be evaluated on meeting legislative intent, and meeting outdoor recreation needs.

(c) All applications shall be evaluated on cooperative efforts of the project among agencies and user groups. This includes, but is not limited to, cooperative funding.

(d) Location of the proposed project site shall be evaluated based on proximity to the majority of users, adequacy of access to the site, safety, linking similar existing facilities, and convenience to users.

(e) Projects that promote multiple season use for maximum year-round participation and multiple uses or users shall be encouraged.

(f) Planning, design, and [~~programs~~]projects for the [~~Riverway Enhancement and Non-Motorized~~]Trails and Pathways [~~p~~]Program[s] shall be evaluated to encourage:

(1) Innovative or unique design features that enhance the environment and recreation opportunities.

(2) Linking access to natural, scenic, historic, or recreational areas of statewide significance.

(3) Minimizing adverse effects on wildlife, natural areas, and adjacent landowners.

(4) Harmony with existing and planned land uses.

(5) Master [~~p~~]Planning.

KEY: recreation, fiscal, assistance

Date of Enactment or Last Substantive Amendment: [~~May 19, 2003~~]March 10 2008

Notice of Continuation: July 26, 2007

Authorizing, and Implemented or Interpreted Law: 63-11a-501[; ~~63-11-17.8~~]



Natural Resources, Parks and
Recreation
R651-611
Fee Schedule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30898

FILED: 01/14/2008, 07:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to include and update changes that were inadvertently left out of the previous amendment for this rule. These changes are further changes that were approved by the board of Parks and Recreation and will update the rule to be consistent with the changes.

SUMMARY OF THE RULE OR CHANGE: When the last amendment to this rule was entered, there were several changes that did not get included in the summary. These changes have need to be included to bring this rule up-to-date with the changes that were made by the Parks board.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-11-17(8)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There will be little, if any, impact to the state budget costs or savings. These fee changes are essentially "net zero" and are implemented to make it easier for park staff to charge and collect fees.

❖ **LOCAL GOVERNMENTS:** No impact is expected for local government anticipated costs or savings as these changes are made for state park staff and the charging and collection of fees.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** No impact for small businesses and persons other than businesses as these changes are implemented to make the charging and collection of fees easier for park staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals will have little, if any impact as these changes are for park staff to assist in the charging and collection of the fees in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department finds that this rule will have no fiscal impact on businesses. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Mark Forbes, Deputy Director (Legislation)

R651. Natural Resources, Parks and Recreation.

R651-611. Fee Schedule.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. \$75.00 Multiple Park Permit (good for all parks)
2. \$35.00 Senior Multiple Park Permit (good for all parks)
3. \$200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a \$10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$2.00 per person, (\$1.00 for seniors) for pedestrians or bicycles at the following park:

TABLE 1

Dead Horse Point

2. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$5.00 per person, (\$3.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Deer Creek Jordanelle - Hailstone
Willard Bay

3. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$4.00 per person, (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 3

Sand Hollow

4. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$5.00 per person (\$3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 4

Utah Lake

5. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 5

East Canyon Rockport

6. \$8.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 6

Bear Lake Marina Bear Lake - Rendevous
Quail Creek

7. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 7

Jordanelle - Rockcliff Yuba

8. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 8

Goblin Valley Red Fleet
Scofield Starvation
Steinaker

9. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 9

Coral Pink Hyrum
Kodachrome Palisade

10. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$2.00 per person (\$2.00) for seniors), for pedestrians or bicycles at the following park:

TABLE 10

Antelope Island

11. \$2.00 (\$1.00 for seniors) per private vehicle at the following park:

TABLE 11

Great Salt Lake

12. \$6.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and \$3.00 for seniors at Utah Field House State Park.

13. \$5.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively).

TABLE 12

Edge of the Cedars

14. \$2.00 per person (\$1.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 13

Camp Floyd	Territorial
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15. \$4.00 per person (\$2.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 14

Anasazi

16. \$3.00 per person (\$1.50 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 15

Fremont	Iron Mission
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17. \$5.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

18. \$15.00 per OHV rider at the Jordan River OHV Center.

19. \$2.00 per person for commercial groups or vehicles with nine (9) or more occupants (\$15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. \$2.00 per person, age six (6) and over, for sites with basic facilities. Minimum cost for Group Day Use for the following parks:

TABLE 16

1. Fixed (flat) rate:

Bear Lake - East Side	\$ 75.00
Bear Lake - Big Creek	\$ 75.00
Bear Lake - Willow	\$ 75.00
Bear Lake Marina	\$ 75.00
Camp Floyd Day Use Pavilion	\$ 30.00
Deer Creek Island	\$100.00
Deer Creek - Sailboat	\$100.00
Deer Creek - Peterson	\$100.00
Deer Creek - Rainbow	\$200.00
Deer Creek - Wallsburg	\$300.00
East Canyon - Small	\$100.00
East Canyon - Medium	\$175.00
Fremont	\$ 70.00
Hyrum	\$150.00
Jordanelle - Hailstone Cabanas	\$ 20.00
Jordanelle - Beach	\$175.00
Jordanelle - Cove	\$175.00
Jordanelle - Keatley	\$175.00
Jordanelle - Rock Cliff North	\$175.00
Jordanelle - Rock Cliff South	\$175.00
Otter Creek -	\$100.00
Rockport - Crandalls	\$100.00
Rockport - Highland	\$100.00
Rockport - Lariat Loop	\$100.00
Rockport - Old Church	\$250.00
Snow Canyon - Galoot Day Use	\$ 75.00
Starvation - Mountain View	\$150.00
Steinaker -	\$150.00
Wasatch - Cottonwood	\$175.00
Wasatch - Oak Hollow	\$175.00
Wasatch - Soldier Hollow	\$175.00
Willard - Eagle Beach (150 max)	\$200.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba Lake - Group Day Use Area	\$ 75.00

2. \$3.00 per person and \$2.00 per vehicle at Antelope Island State Park.

3. \$2 per person with a minimum fee of \$50 at Huntington, Millsite and Palisade state parks.

E. Antelope Island Wildlife Management Program: A \$1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. \$10.00 with pit or vault toilets; \$13.00 with flush toilets; \$16.00 with flush toilets and showers or electrical hookups; \$20.00 with flush toilets, showers and electrical hookups; \$25.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a \$2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. The following fees will apply to Overnight Group Camping:

TABLE 17

1. Reservation Fee: \$10.65 at the following parks:

Bear Lake - Eastside -	\$ 75.00
Bear Lake - Big Creek -	\$ 75.00
Bear Lake - Willow -	\$ 75.00
Bear Lake Marina -	\$ 75.00
Deer Creek - Wallsburg -	\$400.00
East Canyon - Large Springs -	\$ 50.00
East Canyon - Mormon Flats -	\$ 75.00
East Canyon - New -	\$200.00
Escalante Group Area -	\$ 50.00
Fremont - Group Area -	\$ 70.00
Hyrum -	\$150.00
Jordanelle - Beach	\$250.00
Jordanelle - Cover	\$250.00
Jordanelle - Keatley	\$250.00
Jordanelle - Rock Cliff North	\$250.00
Jordanelle - Rock Cliff South	\$250.00
Kodachrome - Arches -	\$ 65.00
Kodachrome - Oasis -	\$ 65.00
Otter Creek -	\$100.00

Rockport - Hawthorne	\$150.00
Rockport - Riverside	\$150.00
Rockport - Old Church	\$150.00
<u>Snow Canyon - Quail Group Area</u>	<u>\$ 65.00</u>
Steinaker -	\$200.00
Wasatch - Soldier Hollow Chalet	[\$200.00] \$250.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba - Painted Rocks	\$100.00
Yuba - Oasis	\$100.00

- 2. \$3.00 per person at Dead Horse (minimum - \$45.00)
- 3. \$3.00 per person at Goblin Valley, Green River No.1 and No. 2, Starvation, Palisade and Scofield (minimum) - \$75.00
- 4. \$3.00 per person and \$2 per vehicle. Antelope Island (minimum) \$60.00

KEY: parks, fees
Date of Enactment or Last Substantive Amendment: ~~January 1, 2008~~ **March 10, 2008**
Notice of Continuation: February 13, 2006
Authorizing, and Implemented or Interpreted Law: 63-11-17(8)



Natural Resources, Parks and
 Recreation
R651-612
 Firearms, Traps and Other Weapons

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE No.: 30901
 FILED: 01/14/2008, 10:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is made to more clearly define unlawful discharge of weapons or firearms in the state park system, and includes exceptions to the rule, including: when the weapon or device is being used for legal pursuit of wildlife; is authorized by a Special Use Permit; is used in accordance with the Concealed Weapons Act; or when law enforcement officers are in performance of their duties.

SUMMARY OF THE RULE OR CHANGE: This amendment more clearly defines the discharge of weapons or firearms or weapons/devices that could immobilize, injure, or kill any person or animal or damage property. This amendment states the exceptions to this rule (when the weapons may be used per Rules R651-614 and R651-608 and in accordance with Sections 53-5-701, 76-2-204, 76-2-403, or 76-2-405).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated cost or savings to the state budget as this amendment is for the use of weapons/devices already in the state park system.

❖ LOCAL GOVERNMENTS: The state has rules that coincide with the Utah Code citations stated. It does not include local government, therefore, there is no anticipated cost or savings to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No cost or savings is anticipated for small businesses and persons other than businesses as this rule is already in effect and is being updated regarding weapons in the state park system.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person violates this rule, they could be cited in accordance with the Utah Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department finds no fiscal impact on businesses. Michael Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Bruce Hamilton, Deputy Director (Operations)

R651. Natural Resources, Parks and Recreation.
R651-612. Firearms, Traps and Other Weapons.
R651-612-1. ~~Weapons Prohibited.~~ Unlawful Discharge of Weapons or Firearms.

~~[Possession or use of firearms]~~ The discharge of weapons or firearms, including air and gas powered types, ~~[traps]~~ and all other devices capable of launching a projectile which could immobilize, injure, or kill any person or animal or damage property are prohibited in the park system unless:

(1) The weapon or device is being used for the legal pursuit of wildlife as per R651-614.

(2) The use of the weapon or device is authorized by a Special Use Permit or an authorized event as per R651-608.

~~(1) The weapon or device is unloaded and cased or otherwise packed away to prevent its use in the park area.~~

~~(2)~~ (3) The weapon or device is [being] used [for the legal pursuit of wildlife, see R651-614, or] in accordance with UCA 53-5-701 Concealed Weapons Act, or UCA 76-2-402, 76-2-403, or 76-2-405.

~~(3)~~(4) The weapon or device is being used by authorized law enforcement officers in the performance of their official duties in accordance with UCA 76-2-204.

KEY: parks, firearms

Date of Enactment or Last Substantive Amendment: ~~[October 4, 1999]~~ **March 10, 2008**

Notice of Continuation: October 23, 2003

Authorizing, and Implemented or Interpreted Law: 63-11-17(2)(b)



Natural Resources, Wildlife Resources

R657-13-4

Fishing Contests

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30904

FILED: 01/14/2008, 14:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to Section R657-13-4: 1) remove the criteria for fishing contests and clinics; and 2) add reference to the new Rule R657-58, Fishing Contests and Clinics. (DAR NOTE: The proposed new Rule R657-58 is under DAR No. 30903 in this issue, February 1, 2008, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment clarifies stipulations currently in place. DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this amendment only clarifies restrictions already in place, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** These amendments clarify requirements for fishing. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that because these amendments only clarify an existing process they do not create a cost or savings impact to individuals wishing to participate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-4. Fishing Contests.

(1) All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics. ~~[(a) A certificate of registration from the division is required for fishing contests:~~

~~— (i) with 50 or more contestants; or~~

~~— (ii) any fishing contest offering \$500 or more in prizes.~~

~~— (b)(i) Application for certificates of registration are available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.~~

~~— (ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.~~

~~— (c) A certificate of registration may cover more than one fishing contest.~~

~~— (d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.~~

~~— (e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.~~

~~—(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.~~

~~—(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).~~

~~—(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if:~~

~~—(i) contestants are limited to persons 11 years of age or younger; and~~

~~—(ii) less than \$500 are offered in prizes.~~

~~—(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:~~

~~—(a) if the fishing contest offers \$500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;~~

~~—(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.~~

~~—(3) Contests for warm water species of fish shall be conducted as follows:~~

~~—(a) all contests as provided in Subsection (1)(a) must be:~~

~~—(i) authorized by the division through the issuance of a certificate of registration; and~~

~~—(ii) carried out consistent with any requirements imposed by the division;~~

~~—(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh in site and must be released back into suitable habitat for that species; and~~

~~—(c) If tournament rules allow larger or smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.]~~

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [August 7, 2007]2008

Notice of Continuation: October 11, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3



Natural Resources, Wildlife Resources

R657-33

Taking Bear

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30906

FILED: 01/15/2008, 07:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public

input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking bear.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) clarify an online application procedure for obtaining bear permits; 2) alter the firearms and archery equipment restrictions to become consistent with other big game species requirements; 3) require all material used as bait at a bear bait station be removed before a new Certificate of Registration can be obtained; and 4) make technical corrections for consistency and accuracy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment only clarifies requirements currently in place. Therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.

❖ LOCAL GOVERNMENTS: Since this amendment only clarified restrictions already in place this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for sportsmen wishing to hunt bear in Utah. Therefore, the rule amendments do not create a cost or savings impact to individuals who participate in hunting bear.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-33. Taking Bear.

R657-33-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Bait" means any lure containing animal, mineral or plant materials.
- (b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.
- (c) "Bear" means *Ursus americanus*, commonly known as black bear.
- (d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.
- (e) "Cub" means a bear less than one year of age.
- (f) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.
- (g) "Green pelt" means the untanned hide or skin of a bear.
- (h) "Limited entry hunt" means any hunt listed in the hunt table, published in the proclamation of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include pursuit only.
- (i) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.
- (j) "Pursue" means to chase, tree, corner or hold a bear at bay.
- (k)(i) "Valid application" means:
- (A) it is for a species for which the applicant is eligible to possess a permit;
- (B) there is a hunt for that species regardless of estimated permit numbers; and
- (C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.
- (ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is ~~timely~~ corrected before the deadline through the application correction process.
- (l) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

R657-33-6. Firearms and Archery Equipment.

- (1) A person may use the following to take bear:
- (a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and
- (b) ~~[a bow and arrows.]~~ archery equipment meeting the following requirements:
- (i) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and
- (ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;
- (iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) ~~[A person]~~ The following equipment or devices may not [use a crossbow] be used to take bear:

- (a) a crossbow, except as provided in Rule R657-12;
- (b) arrows with chemically treated or explosive arrowheads;
- (c) a mechanical device for holding the bow at any increment of draw;
- (d) a release aid that is not hand held or that supports the draw weight of the bow; or
- (e) a bow with an attached electronic range finding device or a magnifying aiming device.
- (3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.
- (4)(a) A person who has obtained a limited entry bear archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery bear hunt.
- (b) The provisions of Subsection (a) do not apply to:
- (i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;
- (ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;
- (iii) livestock owners protecting their livestock; or
- (iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-33-13. Certificate of Registration Required for Bear Baiting.

- (1) A certificate of registration for baiting must be obtained before establishing a bait station.
- (2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.
- (3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.
- (4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.
- (5) The following information must be provided to obtain a Certificate of Registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.
- ~~(5)(a)~~ (6)(a) Any person interested in baiting on lands administered by the U.S. Forest Service or Bureau of Land Management must verify that the lands are open to baiting before applying for a limited entry bear archery permit.
- (b) Information on areas that are open to baiting on National Forests must be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a Certificate of Registration.
- (c) Areas generally closed to baiting stations by these federal agencies include:

- (i) designated Wilderness Areas;
- (ii) heavily used drainages or recreation areas; and
- (iii) critical watersheds.
- (d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.
 - (~~6~~7) A [~~\$~~5] handling fee must accompany the application.
 - (~~7~~8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.
 - (~~8~~9) Any person tending a bait station must be listed on the certificate of registration.

R657-33-23. Livestock Depredation.

- (1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:
 - (a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;
 - (b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or
 - (c) the livestock owner may notify a Wildlife Services specialist of the depredation~~[who]~~, and that specialist or another agency employee may take the depredating bear.
- (2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.
 - (3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:
 - (a) any weapon authorized for taking bear; or
 - (b) with the use of snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.
 - (i) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating bear and must be verified by Wildlife Services or division personnel.
 - (4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.
 - (b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.
 - (c) A person may acquire only one bear annually.
 - (5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.
 - (b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, determine harvest success and other valuable information.

R657-33-25. Taking Bear.

- (1)(a) A person who has obtained a limited entry bear permit may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.
- (b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.
 - (2)(a) A person may not take or pursue a ~~female bear with~~ cub, or a sow accompanied by cubs.
 - (b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.
 - (3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.
 - (4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.
 - (b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.
 - (5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-29. Application Procedure.

- (1) Applications are available ~~from license agents and~~ through the division~~[offices]~~'s internet address.
- (2)(a) Group applications are not accepted. A person may not apply more than once annually.
 - (b) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.
 - (c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.
 - (i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.
 - (ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.
 - (3)(a) Applications must be submitted by the means and date provided in the proclamation of the Wildlife Board for taking bear. Applications filled out incorrectly may be rejected.
 - (b) If an error is found on an application, the applicant may be contacted for correction.
 - (c) The opportunity to correct an error is not guaranteed.
 - (4) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.
 - (5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-33-32(6)(b).
 - (6) To apply for a resident permit, a person must establish residency at the time of purchase.
 - (7) The posting date of the drawing shall be considered the purchase date of a permit.

R657-33-30. Fees.

~~(1) Each application must include:~~
~~— (a) the permit [fee]fees[;] and~~
~~— (b) the nonrefundable] handling [fee.~~
~~— (c) the Utah hunting or combination license fee, if the applicant does not possess one of the licenses.~~
~~— (2) F]fees must be paid [in accordance with]pursuant to Rule R657-42-8(5).~~

R657-33-31. Drawings and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of draw results by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.~~—The drawing results will be posted on the division's Web site.]~~

(3) Permits remaining after the drawing will be sold on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing provided a written request for such is received by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking bear.

(6)(a) An applicant may amend their application for the limited entry bear permit drawing provided a written request for such is received by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking bear.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended, and that amendment results in an error, the division reserves the right to reject the entire application.

(8) Handling fees and hunting or combination license fees will not be refunded.

R657-33-33. Refunds.

(1) Unsuccessful applicants ~~[who applied with a credit or debit card]~~ will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

KEY: wildlife, bear, game laws

Date of Enactment or Last Substantive Change: ~~[August 7, 2007]~~2008

Notice of Continuation: December 11, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2



Natural Resources, Wildlife Resources

R657-58

Fishing Contests and Clinics

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 30903

FILED: 01/14/2008, 14:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to provide standards and procedures for conducting fishing contests and events including tagged fish contests and fishing clinics.

SUMMARY OF THE RULE OR CHANGE: This rule provides the standards and procedures for fishing contests and events including: Type I fishing contests; Type II fishing contests; tagged fish contests; and fishing clinics.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This new rule will replace the stipulations found in Section R657-13-4, Fishing Contests, which are currently in place. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget. (DAR NOTE: The proposed amendment to Section R657-13-4 is under DAR No. 30904 is this issue, February 1, 2008, of the Bulletin.)

❖ **LOCAL GOVERNMENTS:** Since this amendment only clarifies restrictions already in place, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This rule may impose additional financial requirements on persons requesting to sponsor a fishing contest or clinic since this new rule requires payment of a fee to obtain a Certificate of Registration to host certain fishing contests.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create a cost or savings impact to individuals who participate in fishing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-58. Fishing Contests and Clinics

R657-58-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

- a) Type I fishing contests;
- b) Type II fishing contests;
- c) tagged fish contests; and
- d) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

R657-58-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and R657-13-2.

(2) In addition:

(a) "Certificate of Registration (COR)" means a license or permit issued by the division that authorizes a contest organizer to conduct a contest and spells out any special provisions and conditions that must be followed.

(b) "cold water fish species" means: mountain whitefish, Bonneville whitefish, Bear Lake whitefish, Bonneville cisco, Bear Lake cutthroat, Bonneville cutthroat, Colorado River cutthroat, Yellowstone cutthroat, rainbow trout, lake trout, brook trout, arctic grayling, brown trout, and kokanee salmon.

(c) "cull" or "high-grade" means to release alive and in good condition, a fish that has been held as part of a possession limit for the purpose of including larger fish in the possession limit.

(d) "fishing clinic" means an organized gathering of anglers for non-competitive, educational purposes that does not offer cash, awards or prizes for their individual or team catches.

(e) "live weigh" or "live weigh-in" means that fish are held in possession by contest participants and transported live to a specified location to be weighed.

(f) "possession" means active or constructive possession.

(g) "tagged fish contest" means any fishing contest where prizes are awarded for the capture of fish previously tagged or marked specifically for that contest.

(h) "Type I fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets any of the following criteria:

- i) involves 50 or more participants;
- ii) awards cash and/or prizes valued at \$2,000 or more; or
- iii) utilizes a live weigh-in.

(i) "Type II fishing contest" means a competitive event for warm or cold water fish species, other than a tagged fish contest, that meets all of the following criteria:

- (a) involves fewer than 50 contestants;
- (b) awards cash and/or prizes valued at less than \$2,000; and
- (c) does not utilize a live weigh-in.

(j) "warmwater fish species" means: walleye, yellow perch, striped bass, largemouth bass, white bass, smallmouth bass, bullhead, channel catfish, black crappie, northern pike, green sunfish, wipers, bluegill, tiger muskellunge, common carp, and burbot.

R657-58-3. Certificate of Registration (COR) and General.

(1) A COR is required for all Type I fishing contests and all tagged fish contests. The requirements are listed in subsections R657-58(4)(5)(6).

(2) A COR is not required for Type II fishing contests and fishing clinics.

(3) A COR is valid for only one fishing tournament/tagged fish contest on one water.

(4) The division may request public comment before issuing a COR if, in the opinion of the division, the proposed contest has potential impacts to the public or could substantially impact a public fishery.

(5)(a) A COR may be denied for:

- (i) failure to comply with the fishing proclamation and rule;
- (ii) potential for resource damage;
- (iii) location;
- (iv) occurrence on a legal holiday or Free Fishing Day;
- (v) public safety issues;
- (vi) conflicts with the public;
- (vii) failure to adequately protect state waters from invasive species;
- (viii) problems with the applicants prior performance record; and
- (ix) failure to comply with other state laws, including those applying to raffles and lotteries in Utah.

(b) The reason for denial will be identified and reported to the applicant in a timely manner. The division may impose conditions on the issuance of the Certification of Registration in order to achieve a management objective or adequately protect a fishery. Any conditions will be listed on the COR.

(6) All COR applications submitted for Type I fishing contests must include a written protocol for participants to disinfect boats and

equipment to prevent the spread of aquatic nuisance species. The protocol must be consistent with division policy and rule.

(7)(a) COR applications are available at all division offices and online at the division's website.

(b) Applications must be received by the division at least 45 days prior to the contest. In some cases a public comment process, Subsection R657-58-3(4), may alter the 45-day COR review period.

(c) Variances to the COR review period may only be granted by the director.

(8) A COR application must include:

(a) a copy of proposed rules for the contest, and

(b) a complete schedule of entry fees, cash awards and prize values.

(9) Anyone conducting a Type I fishing contest or tagged fish contest must complete a post-contest report and that report must be received by the division within 30 days after the event is completed.

(10) Anyone conducting a Type I fishing contest or tagged fish contest who fails to obtain a COR or to follow the rules set by the division may be prohibited from conducting any fishing contests, and may be subject to other penalties.

R657-58-4. Requirements for Type I Fishing Contests for Warm Water Fish Species.

(1) A COR from the Division of Wildlife Resources is required for any Type I fishing contest for any warm water fish species.

(2) All participants' boats must be readily identifiable as such at a distance of 100 yards.

(3) All participants must complete online training provided by the 100th Meridian Initiative for Preventing the Spread of Aquatic Nuisance Species as provided at <http://www.100thmeridian.org/certificate.asp> and must be in the possession of each participant through the duration of the fishing contest.

(4) Contestants may not possess fish species, numbers of fish, or sizes of fish that are in violation of the proclamation approved by the Utah Wildlife Board.

R657-58-5. Requirements for Type I Fishing Contests for Cold Water Fish Species.

(1) A COR from the division is required for all Type I fishing contests for cold water fish species.

(2) Type I fishing contests for cold water fish may not:

(a) involve more than 200 participants,

(b) offer more than \$2,000 in total prizes,

(c) utilize live weigh-ins.

(3) Type I fishing contests for cold water fish species are prohibited on waters where the Wildlife Board has imposed more restrictive special harvest rules for targeted cold water fish species including tackle restrictions, size restrictions, and other exceptions to the general fishing regulations, except as provided in (4).

(4) At Flaming Gorge and Echo Reservoirs there is no limit to the number of participants or total prizes.

(5) Type I fishing contests for cold water fish species may not be held

(a) on Free Fishing Day except at Echo Reservoir.

(6) Fish taken in Type I cold water fishing contests may not be culled.

R657-58-6. Requirements for Tagged Fish Contests.

(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.

(2) All COR application for a tagged fish contest must be received by the division between December 1st and December 31st of the year prior to when the contest is to be held.

(3) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.

(4) Only one tagged fish contest per year may be held on any water approved for tagged fish contests.

(5) Tagged fish contests must have the start date and end date identified on the COR Application.

(6) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.

(7) Without prior authorization from the division, it is prohibited to:

(a) tag, fin-clip or mark fish in any way, or

(b) introduce tagged, fin-clipped or marked fish into a water.

(8) The organizer of a tagged fish contest will assume all responsibility for the contest and the purchase of tags and tagging equipment.

(9) Tagged fish contests are permitted only on the following waters and only for the fish species listed for those waters:

(a) Lake Powell for striped bass;

(b) Flaming Gorge Reservoir for burbot, lake trout;

(c) East Canyon Reservoir for smallmouth bass;

(d) Scofield Reservoir for rainbow trout;

(e) Willard Bay for carp, hybrid striped bass;

(f) Utah Lake for white bass, carp;

(g) Starvation Reservoir for walleye;

(h) Yuba Reservoir for walleye;

(i) Millsite Reservoir for trout;

(j) Deer Creek Reservoir for trout;

(k) Gunlock Reservoir for crappie, bass;

(l) Hyrum Reservoir for yellow perch, trout;

(m) Jordanelle Reservoir for yellow perch, trout, bass;

(n) Otter Creek Reservoir for trout;

(o) Palisade for trout;

(p) Piute Reservoir for trout;

(q) Red Fleet Reservoir for trout, bluegill;

(r) Steinaker Reservoir for trout, bluegill;

(s) Sand Hollow Reservoir for bluegill, bass;

(t) Rockport Reservoir for yellow perch, trout;

(u) Echo Reservoir for yellow perch, trout; and

(v) Quail Creek Reservoir for trout, bass.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3



Public Safety, Fire Marshal
R710-2-4
 Indoor Sales

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30918

FILED: 01/15/2008, 21:59

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on 01/08/2008 and the Board voted unanimously to amend Rule R710-2 to establish a limit on the amount of fireworks that can be displayed for sale inside of a retail occupancy.

SUMMARY OF THE RULE OR CHANGE: A summary of the rule change are as follows: 1) in Subsection R710-2-4(4.5), the board proposes to allow in a building protected throughout with an automatic fire sprinkler system to display not more than 25 percent of the retail sales area or exceed 600 square feet, whichever is less, to display Class C common state approved explosives for retail sale; 2) in Subsection R710-2-4(4.6), the board proposes to limit the amount of fireworks for sale in a building not protected with an automatic fire sprinkler system to 125 pounds of pyrotechnic composition; 3) in Subsection R710-2-4(4.7), the board proposes to limit the height of fireworks for sale to not exceed six feet; and 4) in Subsection R710-2-4(4.8), the board proposes to not allow fireworks inside of buildings to be stored in rack storage.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There would be no aggregate anticipated cost or savings to the state budget because this proposed amendment will not require efforts by the state to monitor the amount of fireworks storage in retail occupancies.

❖ LOCAL GOVERNMENTS: There could be an aggregate anticipated cost of approximately \$1,000 per local government agency to oversee the reduced amount of fireworks storage in the retail occupancies in their local communities. The cost would depend on the amount of enforcement already considered normal in the regulation of fireworks displayed inside of buildings. Trying to establish a total aggregate cost to local government agencies is impossible due to the unknown communities that will increase or begin monitoring the amount of fireworks storage inside of retail occupancies during the holiday periods.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The aggregate anticipated cost to small businesses would depend on whether the business was protected with an automatic fire sprinkler system. Those businesses not protected with an automatic fire sprinkler system might have to rent an outside storage container if the small business wishes to house more than two pallets of fireworks inside the

retail occupancy. It could have an aggregate anticipated cost of approximately \$1,000 per retail occupancy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be a cost from \$1,000 to \$3,000 to rent outside storage containers to house fireworks that would be more than allowed inside the retail occupancy. Retail occupancies that are fire-sprinklered can have 30 to 35 pallets for retail display and sale inside the store. Non-fire-sprinklered retail occupancies are allowed two pallets of fireworks for retail display inside the store. Any overages of storage would require outside container storage at approximately \$1,000 per container that would be rented during the holiday period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be a fiscal impact on businesses of approximately \$1,000 to rent an outside storage container for the holiday period if the retail agency is not protected with an automatic fire sprinkler system and the retail occupancy wishes to house more than two pallets of fireworks inside the retail store. Each pallet of fireworks weighs approximately 400 pounds. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-2. Rules Pursuant to the Utah Fireworks Act.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

4.5 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.6 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.7 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.8 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

KEY: fireworks

Date of Enactment or Last Substantive Amendment: [~~March 12, 2007~~]**March 10, 2008**

Notice of Continuation: June 4, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204



Public Safety, Fire Marshal
R710-5-1
Adoption, Title, Purpose, and
Prohibitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 30896

FILED: 01/11/2008, 13:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled board meeting on 01/08/2008 and voted after extensive discussion to update the incorporated reference, NFPA 25, Standard for the Inspecting, Testing, and Maintenance of Water-Based Fire Protection Systems, from the currently adopted 2002 edition to the 2008 edition.

SUMMARY OF THE RULE OR CHANGE: The Utah Fire Prevention Board proposes in Subsection R710-5-1(1.1) to update the currently adopted incorporated reference NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems to the 2008 edition and no longer use the currently adopted 2002 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association, NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2008 edition

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The aggregate anticipated cost to the state budget would be approximately \$300 to purchase the needed NFPA 25 documents for use in the regulation of this certification program.

❖ LOCAL GOVERNMENTS: There is no aggregate anticipated cost or savings to local government because this proposed edition upgrade of an incorporated reference does not affect local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The impact on small businesses would be approximately \$39 per volume of NFPA 25 that needs to be purchased for use by the small business to inspect automatic fire sprinkler systems. The aggregate cost is unknown due to the unknown number of copies of the document that would be purchased by each small business for use by their employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately \$39 per volume of NFPA 25. Each person inspecting automatic fire sprinkler systems would need a current copy of this document to properly inspect facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses would be approximately \$39 per volume to purchase the newly updated NFPA 25. The industries involved in certification like to see the newest volume used due to the acceptance of the most current standards of inspection practices. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

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Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

**R710. Public Safety, Fire Marshal.
R710-5. Automatic Fire Sprinkler System Inspecting and Testing.
R710-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

There is adopted as part of these rules the following code which are incorporated by reference:

1.1 National Fire Protection Association [~~NFPA~~], [~~Standard NFPA 25~~], Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, [~~2002~~]2008 edition, except as amended by provisions listed in R710-5-6, et seq.

1.2 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

KEY: automatic fire sprinklers
Date of Enactment or Last Substantive Amendment: [September 15, 2004] March 10, 2008
Authorizing, and Implemented or Interpreted Law: 53-7-204

◆ ————— ◆
**Public Safety, Fire Marshal
R710-9-6
Amendments and Additions**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 30919
FILED: 01/15/2008, 23:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on 01/08/2008, and proposed to amend Rule R710-9 by limiting the amount of fireworks to be displayed and sold inside of retail occupancies and to amend and allow aerosol wall mounted alcohol-based hand rub sanitizers.

SUMMARY OF THE RULE OR CHANGE: A summary of the proposed rule amendment is as follows: 1) in Subsections R710-9-6(6.8.2) through (6.8.5), the board proposes to limit the amount of fireworks that can be displayed for sale inside of retail occupancies. In retail occupancies protected with an automatic fire sprinkler system, the fireworks display would be limited to 25 percent of the retail floor area or 600 square feet, whichever is less. In retail occupancies not protected with an automatic fire sprinkler system, the occupancy is limited to 125 pounds of pyrotechnic composition or approximately two pallets of fireworks. The fireworks for display and sale cannot be housed to a height over six feet or placed in rack storage; and 2) in Subsection R710-9-6(6.9.2), the board proposes to allow aerosol wall mounted alcohol-based hand rub sanitizers in corridors. This is an amendment to the International Fire Code that prohibited the usage of wall mounted alcohol-based hand rub sanitizers that used aerosol as a propellant. The aerosol propellant is limited to Level 1 containers of not more than 18 ounces.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There would be no aggregate anticipated cost or savings to the state budget for limiting fireworks displays because the state does not monitor the amount of fireworks for display in retail occupancies. There would also be no additional cost or savings from the monitoring of aerosol alcohol-based wall mounted hand sanitizers to the state budget. They are already required and the type of propellant does not add an additional cost to the inspection process.

❖ **LOCAL GOVERNMENTS:** There could be an aggregate anticipated cost of approximately \$1,000 per local government agency to oversee the reduced amount of fireworks storage in the retail occupancies in their local communities. The cost would depend on the amount of enforcement already considered normal in the regulation of fireworks display inside of buildings. Trying to establish a total aggregate cost to local government agencies is impossible due to the unknown communities that will increase or begin monitoring the amount of fireworks storage inside of retail occupancies during the holiday periods. There would be no additional cost to local government to monitor the type of propellant of wall mounted alcohol base hand sanitizers because they are required and the type of propellant does not alter the current requirement.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The aggregate anticipated cost to small businesses would depend on whether the business was protected with an automatic fire sprinkler system. Those businesses not protected with an automatic fire sprinkler system might have to rent an outside storage container if the small business wishes to house more than two pallets of fireworks inside the retail occupancy. It could have an aggregate anticipated cost of approximately \$1,000 per retail occupancy. There would be no cost to small businesses to use either a gel or aerosol propellant in the wall mounted alcohol-based hand rub sanitizers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be a cost from \$1,000 to \$3,000 to rent outside storage containers to house fireworks that would be more than allowed inside the retail occupancy. Retail occupancies that are fire-sprinklered can have 30 to 35 pallets for retail display and sale inside the store. Non-fire-sprinklered retail occupancies are allowed two pallets of fireworks for retail display inside the store. Any overages of storage would require outside container storage at approximately \$1,000 per container that would be rented during the holiday period. There would be no cost for the type of propellant used in wall mounted hand rub sanitizers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be a fiscal impact on businesses of approximately \$1,000 to rent an outside storage container for the holiday period if the retail agency is not protected with an automatic fire sprinkler system and the retail occupancy wishes to house more than two pallets of fireworks inside the retail store. That could also apply to those occupancies that are protected with an automatic fire sprinkler system if they wish to house more than 30 to 35 pallets of

fireworks inside their store. Each pallet of fireworks weighs approximately 400 pounds. There is no fiscal impact on businesses to decide which propellant they wish to use in wall mounted alcohol-based hand sanitizers. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 International Fire Code - Administration

6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 International Fire Code - Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons

shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 International Fire Code - General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".

6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 International Fire Code - Emergency Planning and Preparedness

6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

6.5 International Fire Code - Building Services and Systems

6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service.

6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 International Fire Code - Fire Protection Systems

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following:

The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as

required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m²) accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and

exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached

one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.8.2 IFC, Chapter 33, Section 3308.12 is a new section as follows: Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

6.8.3 IFC, Chapter 33, Section 3308.13 is a new section as follows: Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

6.8.4 IFC, Chapter 33, Section 3308.14 is a new section as follows: Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

6.8.5 IFC, Chapter 33, Section 3308.15 is a new section as follows: Rack storage of Class C common state approved explosives inside of buildings is prohibited.

6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add the following at the end of the section: The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.9.2 IFC, Chapter 34, Section 3405.5.1 is deleted and rewritten as follows: Corridor installations. Where wall-mounted dispensers containing alcohol-based hand rubs are installed in corridors, they shall be in accordance with all of the following: 1. Level 2 and Level 3 aerosol containers shall not be allowed in corridors. 2. The maximum capacity of each Class I or II liquids dispenser shall be 41 ounces and the maximum capacity of each Level I aerosol dispenser shall be 18 ounces. 3. The maximum quantity allowed in a corridor within a control group area shall be 10 gallons of Class I or II liquids or 1135 ounces of Level I aerosols or a combination of Class I or II liquids and Level I aerosols not to exceed in total the equivalent of 10 gallons. 4. Projections into a corridor shall be in accordance with Section 1003.3.3.

6.9.[2]3 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

6.9.[3]4 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

6.10 International Fire Code - Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".

6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

6.11 National Fire Protection Association

6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.11.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

KEY: fire prevention, law

Date of Enactment or Last Substantive Amendment: ~~May 8, 2007~~ **March 10, 2008**

Notice of Continuation: June 8, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204



Public Safety, Fire Marshal
R710-10
 Rules Pursuant to Fire Service Training,
 Education, and Certification

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 30894
 FILED: 01/11/2008, 09:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 01/08/2008 in a regularly

scheduled board meeting, and voted to amend Rule R710-10 by removing two sections and transferring them to the newly created Rule R710-12, Hazardous Materials Training and Certification. (DAR NOTE: The proposed new Rule R710-12 is under DAR No. 30893 in this issue, February 1, 2008, of the Bulletin.

SUMMARY OF THE RULE OR CHANGE: A summary of the rule changes are as follows: 1) in Subsection R710-10-2(2.9), the board proposes to strike the definition of Hazardous Material and transfer it to Rule R710-12; and 2) in Section R710-10-7, the board proposes to strike the entire section that creates the Hazardous Materials Advisory Council and transfer it to the newly created Rule R710-12.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these changes are just removing two sections from one rule and placing the exact same verbiage in a new rule.

❖ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed changes are eliminating two sections from this rule and placing the exact same verbiage in the newly proposed Rule R710-12.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses due to the fact that this rule change is moving two sections of the rule to another proposed rule and effects governmental agencies only and does not effect small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons in the removal of these two sections of the rule and their transfer to the newly created Rule R710-12.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses by this proposed rule change. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 FIRE MARSHAL
 Room 302
 5272 S COLLEGE DR
 MURRAY UT 84123-2611, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.

R710-10-2. Definitions.

- 2.1 "Academy" means Utah Fire and Rescue Academy.
- 2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.
- 2.3 "Administrator" means Fire Service Education Administrator.
- 2.4 "Board" means Utah Fire Prevention Board.
- 2.5 "Career Firefighter" means one whose primary employment is directly related to the fire service.
- 2.6 "Certification Council" means the Fire Service Certification Council.
- 2.7 "Certification System" means the Utah Fire Service Certification System.
- 2.8 "Coordinator" means Fire Service Education Program Coordinator.
- ~~[— 2.9 "Hazardous Material" means a substance that can be solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.~~
-] 2.~~[40]~~⁹ "Non-Affiliated" means an individual who is not a member of an organized fire department.
- 2.~~[41]~~¹⁰ "Plan" means Fire Academy Strategic Plan.
- 2.~~[42]~~¹¹ "SFM" means State Fire Marshal or authorized deputy.
- 2.~~[43]~~¹² "Standards Council" means Fire Service Standards and Training Council.
- 2.~~[44]~~¹³ "UCA" means Utah Code Annotated, 1953.
- 2.~~[45]~~¹⁴ "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

~~[R710-10-7. Hazardous Materials Advisory Council.~~

- ~~— 7.1 There is created by the Board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the Board in matters relating to training and certification of hazardous materials.~~
- ~~— 7.2 The Hazardous Materials Advisory Council's members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:~~
- ~~— 7.2.1 Representative from the career fire service.~~
- ~~— 7.2.2 Representative from the volunteer fire service.~~
- ~~— 7.2.3 Representative from the Department of Environmental Quality.~~
- ~~— 7.2.4 Representative from the Department of Transportation.~~
- ~~— 7.2.5 Representative from law enforcement.~~
- ~~— 7.2.6 Representative from the Fire and Rescue Academy.~~
- ~~— 7.2.7 Representative from the Hazardous Materials Institute.~~
- ~~— 7.2.8 Representative from the National Guard.~~
- ~~— 7.2.9 Representative from the Local Emergency Planning Commission (LEPC).~~

~~— 7.2.10 Representative from private industry.~~

~~— 7.3 The Hazardous Materials Advisory Council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.~~

~~— 7.4 The Hazardous Materials Advisory Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.~~

~~— 7.5 If a Hazardous Materials Advisory Council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the member to the Board for status review.~~

~~— 7.6 A member of the Hazardous Materials Advisory Council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the Coordinator prior to the meeting.~~

~~— 7.7 The Chair or Vice Chair of the Hazardous Materials Advisory Council shall report to the Board the activities of the council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the council in the absence of the Chair or Vice Chair.~~

~~— 7.8 The Hazardous Materials Advisory Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.~~

~~— 7.9 One half of the members of the Hazardous Materials Advisory Council shall be reappointed or replaced by the Board every two years.~~

[R710-10-8]7. Utah Fire and Rescue Academy.

[8]7.1 The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

[8]7.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

[8]7.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

[8]7.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

[8]7.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the Academy in the following categories:

[8]7.5.1 Those who have received certification during the previous contract period at each certification level.

[8]7.5.2 Those who have received an academic degree in any Fire Science category in the previous contract period.

[8]7.5.3 Those who have completed other Academy classes during the previous contract period.

[8]7.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories

required in Section 7.5, comparing attendance in the previous contract period.

[8]7.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, the following:

[8]7.7.1 A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the Academy.

[8]7.7.2 A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

[8]7.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

[8]7.8.1 Non-affiliated personnel enrolled in college courses.

[8]7.8.2 Career fire service personnel enrolled in college credit courses.

[8]7.8.3 Volunteer and part-paid fire service personnel enrolled in college credit courses.

[8]7.8.4 Non-affiliated personnel enrolled in non-credit continuing education courses.

[8]7.8.5 Career fire service personnel enrolled in non-credit continuing education courses.

[8]7.8.6 Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

[8]7.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

R710-10-[9]8. Non-Affiliated Fire Service Training.

[9]8.1 Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive approval in writing from the Standards Council and the Academy Director.

[9]8.2 Before approval is granted, the training organization requesting approval shall demonstrate the following:

[9]8.2.1 Complete a written application requesting approval to conduct the training course.

[9]8.2.2 Designate an approved course coordinator to oversee the course delivery and insure the course meets each of the applicable objectives.

[9]8.2.3 Insure that qualified instructors are used to teach each subject.

[9]8.2.4 Insure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

[9]8.2.5 Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

[9]8.2.6 Maintain course documentation as required through the Certification System to insure that all elements of the necessary training is completed.

[9]8.2.7 Follow the accepted requirements of the Certification System for requesting testing and certification.

[9]8.3 As required in Section 8.2.2 of these rules, the designated course coordinator shall meet the following requirements:

[9]8.3.1 Be currently certified at the certification level as established by the Standards Council.

[9]8.3.2 Insure that all assigned instructors meet the requirements as required in Section 8.4 of these rules.

[9]8.3.3 Insure that the course syllabus and practical skills guide meet the requirements of the Certification System.

[9]8.3.4 Insure that the requirements of Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7 of these rules are met.

[9]8.4 As required in Section 8.2.3 of these rules, qualified instructors shall meet the following requirements:

[9]8.4.1 Must be currently certified at the certification level as established by the Standards Council.

[9]8.4.2 If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

R710-10-[40]9. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-10-[44]10. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-10-[42]11. Adjudicative Proceedings.

[42]11.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

[42]11.2 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

[42]11.3 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

[42]11.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[42]11.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

[42]11.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

[42]11.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: fire training

Date of Enactment or Last Substantive Amendment: ~~November 8, 2006~~ **March 10, 2008**

Authorizing, and Implemented or Interpreted Law: 53-7-204



Public Safety, Fire Marshal **R710-12** Hazardous Materials Training and Certification

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 30893

FILED: 01/10/2008, 14:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 01/08/2008 in a regularly scheduled Board meeting, and voted unanimously to adopt a new administrative rule. The creation of this new administrative rule is in response to legislation enacted during the 2007 session of the Utah State Legislature (S.B. 227) that directed the Utah Fire Prevention Board to enact administrative rules for certification of persons who provide response services to hazardous materials emergencies. The legislation also establishes minimum ongoing training standards for hazardous materials emergency response agencies. (DAR Note: S.B. 227 is found at Chapter 96, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The rule is summarized as follows: 1) Section R710-12-1 adopts NFPA 472 as an incorporated reference, and establishes minimum requirements to be certified in hazardous materials; 2) Section R710-12-2 sets forth needed definitions for the application of this rule; 3) Section R710-12-3 moves the Hazardous Materials Advisory Council from Rule R710-10 to this rule; 4) Section R710-12-4 creates minimum standards for those receiving training and testing in hazardous materials; 5) Section R710-12-5 establishes levels of certification from Awareness Level to Hazardous Materials Incident Commander; and 6) Sections R710-12-6 and R710-12-7 establish Adjudicative Proceedings and Fees. (DAR NOTE: The proposed amendment to Rule R710-10 is under DAR No. 30894 in this issue, February 1, 2008, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association, NFPA 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There would be an anticipated cost to the state budget of approximately \$1,000 to provide the adopted standards and provide the funding for the Hazardous Materials Advisory Council meetings.
- ❖ LOCAL GOVERNMENTS: There would be an anticipated cost of approximately \$15,000 to local government to provide training and certification to any persons in local government who have not received a certificate showing they have a degree of hazardous materials training.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There would be no anticipated cost or savings to small business because the requirement in this new set of administrative rules applies to governmental agencies and does not affect small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost there would be for affected persons would be the \$40 certification fee that would need to be paid by governmental agencies for any hazardous materials responder that has not received a certification in hazardous materials training. There would also be a \$33 compliance fee for each copy of NFPA 472 that would be purchased by the affected person or the agency the person works for.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The creation and adoption of this administrative rule will correct a long standing problem with the training requirements for hazardous materials throughout government. This proposed administrative rule will not have a fiscal impact on businesses. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-12. Hazardous Materials Training and Certification.
R710-12-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules establishing ongoing training standards for hazardous materials emergency response agencies. The Board also adopts minimum rules for certification for persons who provide hazardous materials emergency response services.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition, except as amended by provisions listed in R710-12, et seq.

1.2 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-12-2. Definitions.

- 2.1 "AHJ" means Authority Having Jurisdiction.
- 2.2 "Board" means Utah Fire Prevention Board.
- 2.3 "Certificate" means a written document issued by the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification System, to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.
- 2.4 "Council" means Hazardous Materials Advisory Council.
- 2.5 "Emergency response agencies" means those agencies that are created and under the control of local, state or federal government or regional inter-governmental agencies to provide emergency response for hazardous materials.
- 2.6 "Hazardous Material" means a substance that can be solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.
- 2.7 "Emergency Response Services" means providing or coordinating on-site protective or offensive actions to reduce the risk of harm to people, the environment and property during the initial, time-critical phase of a hazardous materials/WMD incident.
- 2.8 "Institute of Emergency Services and Homeland Security" means a college entity of Utah Valley University of that same name.
- 2.9 "NFPA" means National Fire Protection Association.
- 2.10 "SFM" means State Fire Marshal or authorized deputy.
- 2.11 "UCA" means Utah State Code Annotated 1953 as amended.
- 2.12 "Utah Fire Service Certification System" means the system approved by the Board to provide certification to those emergency personnel certifying in hazardous materials.

R710-12-3. Hazardous Materials Advisory Council.

- 3.1 There is created by the Board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the Board in matters relating to training and certification standards for hazardous materials emergency responders and emergency response agencies.
- 3.2 The Council's members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:
- 3.2.1 Representative from the career fire service.
- 3.2.2 Representative from the volunteer fire service.
- 3.2.3 Representative from the Department of Environmental Quality.
- 3.2.4 Representative from the Department of Transportation.
- 3.2.5 Representative from law enforcement.
- 3.2.6 Representative from the Fire and Rescue Academy.
- 3.2.7 Representative from the Hazardous Materials Institute.
- 3.2.8 Representative from the National Guard.
- 3.2.9 Representative from a Local Emergency Planning Committee (LEPC).
- 3.2.10 Representative from private industry.
- 3.3 The Council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.
- 3.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year. If voted upon by

the council, the vice chair will become the chair the next succeeding calendar year.

3.5 If a Council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the member to the Board for status review.

3.6 A member of the Council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the Coordinator prior to the meeting.

3.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the council in the absence of the Chair or Vice Chair.

3.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

3.9 One-half of the members of the Council shall be reappointed or replaced by the Board every two years.

R710-12-4. Training.

4.1 All instruction materials designed for statewide use that will teach minimum core competencies for those persons certifying to provide response services regarding hazardous material emergencies shall be approved by the Hazardous Materials Advisory Council before commencement of the instruction.

4.2 All written examinations, practical or actual demonstrations, and any other required testing given for core competency, shall be approved by the Council before administration of the examinations.

R710-12-5. Certificates.**5.1 Required Certificates.**

No person shall provide hazardous materials services as a member of an emergency response agency without first receiving a certificate issued by the Institute of Emergency Services and Homeland Security or a certification issued by the Utah Fire Service Certification Council.

5.2 Application.

5.2.1 To be certified in hazardous material response, a request for certification shall be made in writing to the Utah Fire Service Certification System.

5.2.2 The applicant shall indicate which of the five certification levels the applicant will apply for:

5.2.2.1 Awareness Level

5.2.2.2 Operations Level Responder

5.2.2.3 Hazardous Materials Technician

5.2.2.4 Hazardous Materials Officer

5.2.2.5 Hazardous Materials Incident Commander

5.3 Examination.

The applicant for a certificate shall complete the following:

5.3.1 An applicant certifying at the Awareness Level shall be trained to meet all the competencies in Chapter 4 of NFPA 472 and pass a written examination with a minimum score of 70%.

5.3.2 An applicant certifying as an Operations Level Responder shall meet all the requirements listed in Section 5.3.1 of these rules, and shall be trained to meet all the competencies in Chapter 5 of NFPA 472, and pass a written examination with a

minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

5.3.3 An applicant certifying as a Hazardous Materials Technician shall pass all the requirements listed in Sections 5.3.1 and 5.3.2 of these rules, and shall be trained to meet all the competencies in Chapter 7 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

5.3.4 An applicant certifying as a Hazardous Materials Officer shall meet all the requirements listed in Sections 5.3.1, 5.3.2 and 5.3.3 of these rules, and shall be trained to meet all the competencies in Chapter 10 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

5.3.5 An applicant certifying as a Hazardous Materials Incident Commander shall meet all the requirements listed in Sections 5.3.1, 5.3.2 and 5.3.3 of these rules, and shall be trained to meet all the competencies in Chapter 8 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

5.4 Issuance.

Following receipt of the properly completed application, compliance with Section 5.3 of these rules, the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification Council shall issue a certificate.

5.5 Original and Renewal Valid Date.

Original certificates shall be valid for three years from the date of certification issuance. Thereafter, each certificate of registration shall be renewed every three years from issuance, unless otherwise specified by a Utah certification standard.

5.6 Renewal Date.

Renewal shall be made as directed by the Utah Fire Service Certification Council.

5.7 Re-certification Renewal.

Every holder of a valid certificate shall provide to the Utah Fire Service Certification Council written verification from the authorizing agency that they have received continuing training in hazardous materials necessary to maintain competency over the previous three-year period of certification issuance.

R710-12-6. Adjudicative Proceedings.

6.1 All adjudicative proceedings performed with regard to a certificate issued under Section 5 of these rules shall proceed as outlined in the Utah Fire Service Certification System, Policy and Procedures Manual.

R710-12-7. Fees.

7.1 Payment of Fees.

The required fee for certification and recertification shall be paid to the Utah Fire Service Certification System.

KEY: hazardous materials

Date of Enactment or Last Substantive Amendment: March 10, 2008

Authorizing, and Implemented or Interpreted Law: 53-7-204



Tax Commission, Auditing **R865-6F-28** Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30913

FILED: 01/15/2008, 12:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to indicate what items qualify for the enterprise zone investment credit.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment states that items that leave the enterprise zone qualify for the investment credit if the items are based in the enterprise zone.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-38F-401 through 63-38F-414

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--The proposed amendment clarifies industry practice.
- ❖ LOCAL GOVERNMENTS: None--The proposed amendment clarifies industry practice.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The proposed amendment clarifies industry practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Affected persons may receive the investment credit on certain items that leave the enterprise zone. This practice is codified in the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs. D'Arcy Dixon, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections ~~9-2-404~~63-38f-401 through ~~9-2-415~~63-38f-414.

~~A-](1) Definitions:~~

~~(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:~~

~~(i) that is designed, constructed, and used to store or maintain equipment:~~

~~(A) that is transported outside of the enterprise zone; and~~

~~(B) for which the credit is taken;~~

~~(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and~~

~~(iii) from where the use of the equipment is directed or managed.~~

~~[1-](b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.~~

~~[2-](c) "Construction work" does not include facility maintenance or repair work.~~

~~[3-](d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).~~

~~[4-](e) "Public utilities business" means a public utility under Section 54-2-1.~~

~~[5-](f) "Qualifying investment" [in the case of a business firm that is a member of a unitary group,] does not include an investment made by [that business firm] a member of a unitary group in plant, equipment, or other depreciable property of another member of [the] that unitary group.~~

~~(g) "Taxpayer" means the person claiming the tax credits in section 63-38f-413.~~

~~[6-](h) "Transfer" pursuant to Section ~~9-2-414~~63-38f-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.~~

~~[7-](i) "Unitary group" is as defined in Section 59-7-101.~~

~~[B-](2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:~~

~~[1-](a)(i) [The plant, equipment, or other depreciable property for which the credit is taken is] located within the boundaries of the enterprise zone[-]; and~~

~~[2-](ii) [The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational] used exclusively in business operations conducted within the enterprise zone; or~~

~~(b) in the case of equipment or other depreciable property, based in the enterprise zone.~~

~~(3) The following examples relate to the investment tax credit.~~

~~(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final~~

~~customers, some or all of whom may be outside the enterprise zone.~~

~~The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.~~

~~(b) If the same manufacturer described in Subsection (4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.~~

~~(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.~~

~~(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.~~

~~(e) The same business described in Subsection (4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.~~

~~[C-](4) The calculation of the number of full-time positions for purposes of the credits allowed under [Section ~~9-2-413~~(4)(a)] Subsections 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.~~

~~[D-](5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.~~

~~[E-](6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section ~~9-2-413~~63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.~~

~~[F-](7) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.~~

~~[G-](8) Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.~~

~~[H-](9) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992,~~

records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

~~[(10)]~~ If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

KEY: taxation, franchises, historic preservation, trucking industries

Date of Enactment or Last Substantive Amendment: ~~November 27, 2007~~ 2008

Notice of Continuation: March 8, 2007

Authorizing, and Implemented or Interpreted Law: 63-38f-401 through 63-38f-414



Tax Commission, Auditing
R865-91-37
 Enterprise Zone Individual Income Tax
 Credits Pursuant to Utah Code Ann.
 Sections 63-38f-401 through 63-38f-
 414

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 30916

FILED: 01/15/2008, 13:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to indicate what items qualify for the enterprise zone investment credit.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment states that items that leave the enterprise zone qualify for the investment credit if the items are based in the enterprise zone.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-38F-401 through 63-38F-414

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The proposed amendment clarifies industry practice.

❖ **LOCAL GOVERNMENTS:** None--The proposed amendment clarifies industry practice.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** None--The proposed amendment clarifies industry practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Affected persons may receive the investment credit on certain items that leave the enterprise zone. This practice is codified in the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs. D'Arcy Dixon, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION
 AUDITING
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment;

(A) that is transported outside of the enterprise zone; and

(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

~~(b)~~(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

~~(c)~~(c) "Construction work" does not include facility maintenance or repair work.

~~(d)~~(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

~~(e)~~(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Taxpayer" means the person claiming the tax credits in section 63-38f-413.

~~(g)~~(g) "Transfer" pursuant to Section 63-38f-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) ~~[The plant, equipment, or other depreciable property for which the credit is taken is]~~ located within the boundaries of the enterprise zone[-]; and

~~[(b)](ii) [The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational] used exclusively in business operations conducted within the enterprise zone[-] or~~

~~(b) in the case of equipment or other depreciable property, based in the enterprise zone.~~

~~(3) The following examples relate to the investment tax credit.~~

~~(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.~~

~~(b) If the same manufacturer described in Subsection (4)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.~~

~~(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.~~

~~(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.~~

~~(e) The same business described in Subsection (4)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be~~

~~occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.~~

~~[(3)](4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63-38f-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.~~

~~[(4)](5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.~~

~~[(5)](6) A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 63-38f-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.~~

~~[(6)](7) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.~~

~~[(7)](8) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.~~

~~[(8)](9) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.~~

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [~~November 27, 2007~~]2008

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 63-38f-401 through 63-38f-414

◆ ————— ◆

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 public 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.

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 (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [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 Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 3, 2008. At its option, the agency may hold public hearings.

From the end of the waiting period through May 31, 2008, the agency may notify the Division 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 this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-71
Medical Supplies - Parenteral, Enteral,
and IV Therapy**

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 30378
Filed: 01/10/2008, 08:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Medicaid, based on a public hearing and other comments, proposes to amend its original rule filing and put the rule back out for additional comments. The proposed amendments to the original filing clarify Medicaid policy regarding program access and service coverage for nutritional supplements and oral nutrition.

SUMMARY OF THE RULE OR CHANGE: This change clarifies Medicaid policy regarding program access and service coverage for nutritional supplements and oral nutrition. It also makes other minor clarifications. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the September 15, 2007, issue of the Utah State Bulletin, on page 40. 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 change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5, and 42 CFR 440.70 and 441.15

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The original filing estimated an annual cost of \$52,255 to the General Fund and \$122,745 in federal funds to pay for the expansion of nutritional services. There is no anticipated change in that budget impact based on the further amendments proposed by this filing.
- ❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do fund or provide oral nutrition for Medicaid clients.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The original filing estimated that businesses that provide nutritional supplies will experience approximately \$175,000 in additional sales. Qualifying Medicaid clients will receive an additional \$175,000 in nutritional services. There is no anticipated change in that budget impact based on the further amendments proposed by this filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only clarifies Medicaid policy regarding nutritional supplements and oral nutrition for Medicaid clients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No unacceptable fiscal impact is expected on businesses impacted by this rule change. This will be evaluated after the public has an opportunity to comment. David N. Sundwall, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-71. Medical Supplies -- Parenteral, Enteral, and IV Therapy.**

R414-71-4. Program Access Requirements.

- (1) TPN and total EN is available to individuals with a:
 - (a) missing digestive organ;
 - (b) long term or permanently non-functioning gastrointestinal tract; or
 - (c) short term non-functioning gastrointestinal tract which may occur following a surgical procedure.
- (2) IV therapy requires a physician's order or prescription and prior authorization.
- (3) TPN, EN or other related nutritional products require a physician's order or prescription which must specify the kilo calories necessary per day. Parenteral infusion is identified and reimbursed per daily kilocalorie requirements.

~~[(4) EN products must be given by gastrostomy, jejunostomy or nasogastric tube to qualify for coverage under the EN Program.~~

~~[(5)](4) Total oral nutrition and supplemental oral or by tube nutrition is available for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) eligible children if it is an integral part of another EPDST service or has a curative or healing effect on the recipient beyond that which would be provided by ordinary food. All total oral nutrition or supplemental nutrition must be a medical food for reimbursement by Medicaid.~~

R414-71-5. Service Coverage.

(1) TPN and EN systems, related supplies, equipment, and nutrients are covered as prosthetic devices if they replace normal nutritional function of the esophagus, stomach or bowel.

(2) TPN or EN therapy is a covered benefit for clients residing at home or in a long term care facility.

(3) The following services are allowed for clients residing at home or in a long term care facility:

(a) parenteral solutions;

(b) a monthly parenteral nutrition administration kit which includes all catheters, pump filters, tubing, connectors, and syringes relating to the parenteral infusions;

(c) ~~enteral solutions for total enteral therapy;~~ IV medications, blood factors, and solutions;

(d) ~~IV medications, blood factors, and solutions;~~ heparin flush and heparin;

(e) ~~enteral administration kits; and~~ enteral solutions for total enteral therapy through a tube; and

(f) ~~heparin flush and heparin;~~ enteral administration kits.

(4) Nutritional supplements are covered for infants and children ages 0 through 5 who live at home and are in the WIC program, for quantities ~~which exceed 8 ounces per day and time which exceeds 60 days if the~~ beyond what WIC allows if:

(a) the target weight of a child cannot be attained with expected oral feedings;

(b) the oral feedings are present but ~~too extended~~ due to weakness, illness, or disease ~~to~~ the ~~infant~~ child's nutritional level is difficult to maintain; or

(c) the child is concurrently using a ventilator or oxygen, or has a tracheostomy.

(5) IV Therapy and treatment which may include injections or infusions are a covered service. IV therapy may include:

(a) pain medication therapy;

(b) antibiotics and antimicrobials;

(c) fluids such as glucose and fluid replacement;

(d) electrolytes;

(e) blood products;

(f) IV supply kit for recipients residing at home;

(g) extension tubing set for peripheral or midline catheter; or

(h) solutions used to cleanse or irrigate the catheter for which a national drug code (NDC) code exists.

(6) Administration supplies, syringes, bags, pumps, tubes, and administration kits for providing TPN, EN and IV therapies are covered with reasonable limitations as to amounts and length of administration as medically indicated and according to current standard medical practices.

(7) Total nutrition without a feeding tube and supplemental nutrition with a feeding tube are covered for children 0 through 20 years of age if the requirements of subsections (a) through (e) are met. Nutritional supplements are covered for children 5 through 20 years of age if the requirements of subsections (a) through (e) are met.

(a) The prescribed nutritional product is a medical food.

(b) Current disease or dysfunction of the digestive tract, including dysphagia, causes nutritional deficiency with insufficient nutrients to maintain body weight by impaired delivery of nutrients to the small bowel or due to impaired digestion and absorption by the small bowel, or both.

(c) The client's physician provides documentation to the Department:

(i) that the client has been unable to reach or maintain weight in the 10th percentile for the client's age and sex by taking food orally for the ~~three~~ two months prior to the request;

(ii) that the client's specific diagnosis and current condition require medical food supplementation; and

(iii) by peer review medical literature that the prescribed medical food will improve body weight, the clinical outcome, and limit disease progression for the client's specific diagnosis and current condition when compared to nonmedical food.

(8) Oral supplemental nutrition is covered for adults and children to treat inborn errors of metabolism subject to all criteria listed in Sub[S]section R414-71-5(7).

(9) To reauthorize ongoing care the following is waived:

(a) The need to document the recipient's weight under the 10th percentile;

(b) If the client's medical diagnosis has not materially changed, the need to resubmit peer review medical literature if it has been previously submitted.

R414-71-6. Limitations ~~for TPN or EN Therapy~~.

The specific limitations ~~for TPN, or~~ EN, or IV therapy are as follows:

(1) Cassettes shall be supplied with the parenteral administration kits and not as separate items.

(2) Enteral nutrients, IV diluents, injectable medications, and solutions are available as allowed in the pharmacy program with the limitations stipulated therein.

(3) ~~[Baby foods such as Similac, Enfamil, Mully Soy or other foods generally used as breast milk substitutes are not medical foods, and are not covered by Medicaid.]~~ A monthly supply and administration kit containing all supplies except the catheter is a Medicaid benefit only for recipients residing at home. Bags can not be reimbursed separately if a kit is supplied.

(4) ~~[Kits, bags and pumps are not covered benefits with nutritional supplements unless administered by a tube.]~~ Equipment such as IV poles, disposable swabs, antiseptic solutions and dressings for the catheter are not reimbursable by Medicaid for nursing home patients, but are provided by the nursing home under a per diem rate.

(5) ~~[A monthly supply and administration kit containing all supplies except the catheter is a Medicaid benefit only for recipients residing at home. Bags can not be reimbursed separately if a kit is supplied.]~~ To begin an infusion, an intravenous catheter may be placed by a home health agency nurse who has been trained for IV catheter placement, a physician, or a physician's assistant whose training and protocols allow for this service.

(6) ~~[Total and supplemental nutrition are not available for persons with nutritional need resulting from psychological problems or a failure to thrive.]~~ Breast milk from breast milk banks and infant formulas such as Similac, Enfamil, or other foods generally used as breast milk substitutes are not medical foods, and are not covered by Medicaid unless formulated for use through a feeding tube.

(7) ~~[Equipment such as IV poles, disposable swabs, antiseptic solutions and dressings for the catheter are not reimbursable by Medicaid for nursing home patients, but are provided by the nursing home under a per diem rate.]~~ Kits, bags and pumps are not covered benefits with nutritional supplements unless administered by a tube.

(8) ~~[General nutrition is included in the per diem rate paid by Medicaid under a contract with a long term care facility and is not separately reimbursable for its patients.]~~ Total and supplemental

nutrition are not available for persons with an organic nutritional need resulting from psychological problems or a failure to thrive.

~~(9) [Nutritional supplements are not covered for adults residing at home or in a long term care facility. Total nutrition for children age 0 through 5 is covered under the WIC program, as stated in Subsection R414-71-5(4).]General nutrition is included in the per diem rate paid by Medicaid under a contract with a long term care facility and is not separately reimbursable for its patients.~~

~~(10) [A pharmacy provider may be reimbursed for TPN or EN supplies, nutrients and medications. There is no additional reimbursement to the pharmacist for preparing the medication, such as filling syringes, mixing solutions, or adding drugs to an infusion solution. Pharmacists bill Medicaid using National Drug Codes. Heparin for flushing the infusion catheter is billed through the pharmacy point of sale system using the NDC for heparin.]Nutritional supplements are not covered for adults residing at home or in a long term care facility. Total nutrition for children ages 0 through 5 is covered under the WIC program as stated in Subsection R414-71-5(4).~~

~~(11) [To begin an infusion, an intravenous catheter may be placed by a home health agency nurse who has been trained for IV catheter placement, a physician, or a physician's assistant whose training and protocols allow for this service.]A pharmacy provider may be reimbursed for TPN or EN supplies, nutrients and medications. There is no additional reimbursement to the pharmacist for preparing the medication, such as filling syringes, mixing solutions, or adding drugs to an infusion solution. Pharmacists bill Medicaid using National Drug Codes. Heparin for flushing the infusion catheter is billed through the pharmacy point of sale system using the NDC for heparin.~~

.....

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~2007~~**2008**
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5



Insurance, Administration
R590-167-11
Individual, Small Employer, and Group
Health Benefit Plan Rule

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 30462
Filed: 01/11/2008, 14:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A date in Subsection R590-167-11(3)(a)(iii) of the rule was not changed when the others in Subsection R590-167-11(3)(a) were.

SUMMARY OF THE RULE OR CHANGE: The March date in Subsection R590-167-11(3)(a)(iii) should be changed to January to conform with the other dates in Subsection R590-167-11(3)(a). (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed

amendment that was published in the October 15, 2007, issue of the Utah State Bulletin, on page 23. 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 change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-30-106

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This change will not affect the revenues or expenses of the department or state. Licensees will not be required to make any filings or pay any fees as a result of this change.
- ❖ LOCAL GOVERNMENTS: Since this rule deals solely with the relationship of the department with their licensees, it will have not impact on local governments.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This change will have no fiscal impact on small businesses or individuals. It just sets the point at which the average percentage change in the index premium rate is determined for a report to be filed with the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will have no fiscal impact on small businesses or individuals. It just sets the point at which the average percentage change in the index premium rate is determined for a report to be filed with the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change to this rule will have no fiscal impact on businesses. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2008

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.****R590-167-11. Actuarial Certification and Additional Filing Requirements.**

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Section 31A-30-106(4)(b) and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carrier's classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of January 1 of the previous year;

(ii) the small employer index premium rate as of January 1 of the current year; and

(iii) the average percentage change in the index premium rate as of ~~March~~ January 1 of the current and preceding year.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than February 1 of each year.

KEY: health insurance

Date of Enactment or Last Substantive Amendment: ~~2007~~2008

Notice of Continuation: September 28, 2004

Authorizing, and Implemented or Interpreted Law: 31A-30-106



End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Labor Commission, Antidiscrimination and Labor, Labor **R610-3-4** Filing Procedure and Commencement of Agency Action

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 30876
FILED: 01/03/2008, 14:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to allow the Labor Commission's Antidiscrimination and Labor Division to accept wage claims that have been signed but not notarized.

SUMMARY OF THE RULE OR CHANGE: The rule removes the existing rule's requirement that wage claims must be notarized.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-23-101 et seq., 34-28-1 et seq., 34-40-101 et seq., and 63-46b-1 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Because this rule only removes the existing notarization requirement applicable to wage claimants, and does not impose any additional requirements, it will neither increase UALD's costs of administering the Payment of Wages Act nor impose any additional compliance costs on the State of Utah in its capacity as an employer. Consequently, the rule amendment will not result in any costs or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** Because this rule amendment only removes the existing notarization requirement applicable to wage claimants, and does not impose any additional requirements, it will not result in any additional compliance costs for local government and will not result in any costs or savings to local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Because this rule amendment only removes the existing notarization requirement applicable to wage claimants, and does not impose any additional requirements, it will not result in any additional compliance costs or savings for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By eliminating the current notarization requirement applicable to wage claimants, the proposed amendment will eliminate the need for claimants to pay a notary fee, thereby reducing compliance costs for claimants. No other persons are affected by the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment simplifies the wage claim filing process for employees. The amendment does not change existing requirements for employers. Consequently, the amendment will have no fiscal impact on businesses. Sherrie Hayashi, Commissioner

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Many Utah employees depend upon their wages to pay for food, shelter, education, and medical care for themselves and their families. The Utah Payment of Wages Act (Title 34, Chapter 28), requires employers to pay wages in full and on time. If wages are not paid, the Act allows employees to file claims with the Utah Antidiscrimination and Labor Division (UALD). UALD then adjudicates the employees' right to payment and, when appropriate, orders employers to pay

wages. The Payment of Wages Act does not require that wage claims be notarized. Therefore, the existing rule's notarization requirement is inconsistent with the Act. Furthermore, the notarization requirement prevents employees who lack the identification documents necessary for notarization from exercising their rights under the Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION
 ANTIDISCRIMINATION AND LABOR, LABOR
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY UT 84111-2316, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Heather Morrison or Brent Asay at the above address, by phone at 801-530-6921 or 801-530-6802, by FAX at 801-530-7601 or 801-530-7601, or by Internet E-mail at hmorrison@utah.gov or basay@utah.gov

THIS RULE IS EFFECTIVE ON: 01/03/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor. R610-3. Filing, Investigation, and Resolution of Wage Claims.

R610-3-4. Filing Procedure and Commencement of Agency Action.

A. For purposes of Section 63-46b-3, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63-46b-3(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of

calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

- a. vacation;
- b. holiday;
- c. sick leave;
- d. paid time off; and
- e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature [notarized before a notary public].

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

I. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

KEY: wages, minors, labor, time

Date of Enactment or Last Substantive Amendment: January 3, 2008

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63-46b-1 et seq.



End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Education, Administration
R277-518
Applied Technology Education
Licenses

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30878
FILED: 01/08/2008, 14:37

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-6-104 permits the Utah State Board of Education to issue licenses for educators, and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides the standards used for applied technology education licensure. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

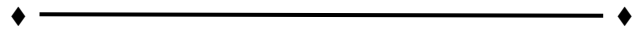
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835,

by FAX at 801-538-7768, or by Internet E-mail at
carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and
Legislation

EFFECTIVE: 01/08/2008



Education, Administration
R277-600
Student Transportation Standards and
Procedures

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 30879
FILED: 01/08/2008, 14:37

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53A-1-402(1)(d)(i), (ii), and (iii) direct the Utah State Board of Education to develop rules and minimum standards for state-reimbursed bus routes, bus safety and operational requirements, and other transportation needs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides the standards and procedures, as required by state law, used for determination of funding and eligibility for student transportation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

Education, Administration
R277-605
 Coaching Standards and Athletic
 Clinics

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 30880
 FILED: 01/08/2008, 14:38

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities; and Subsection 53A-1-402(1)(b) directs the Utah State Board of Education to establish rules and minimum standards regarding access to programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for individuals involved in coaching and working with public school students in Utah's public schools. Therefore, this rule should be continued.

Education, Administration
R277-610
 Released-Time Classes for Religious
 Instruction

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 30881
 FILED: 01/08/2008, 14:38

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1) directs the Utah State Board of Education to establish rules and minimum standards for public schools; and Subsection 53A-1-401(3) permits the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides procedures to school districts regarding releasing students from classes for religious instruction. The rule continues to be used as a source of guidance when schools release students for this purpose. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

students toward graduation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

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Education, Administration
R277-700

**The Elementary and Secondary School
Core Curriculum**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30882
FILED: 01/08/2008, 14:38

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53A-1-402(1)(b)(iii) and (iv) directs the Utah State Board of Education to establish rules and minimum standards for competency levels and graduation requirements; Subsection 53A-1-402(1)(c)(iv) directs the Utah State Board of Education to establish rules and minimum standards for curriculum and instruction requirements; Section 53A-1-402.6 directs the Utah State Board of Education to implement a core curriculum; and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the minimum standards for the Utah Core Curriculum and minimum graduation requirements. The rule is not only required by state law, but it also provides the necessary information for school districts and schools to work with

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Education, Administration
R277-702

**Procedures for the Utah General
Educational Development Certificate**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30883
FILED: 01/08/2008, 14:38

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 53A-1-402(1)(b)(i), (iii), and (iv) requires the Utah State Board of Education to establish rules and minimum standards regarding access to programs, competency levels, and graduation requirements; and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide the standards necessary for determination of eligibility for students to participate in the Utah General Educational Development Certificate (GED) testing. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

Education, Administration
R277-709

Education Programs Serving Youth in
 Custody

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 30884
 FILED: 01/08/2008, 14:38

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-403(1) makes the Utah State Board of Education directly responsible for the education of youth in custody; and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide standards and procedures for education of youth in custody. The requirements in the rule continue to be necessary for the administration and funding of the program. Therefore, this rule should be continued.

Education, Administration
R277-718

Utah Career Teaching Scholarship
 Program

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 30885
 FILED: 01/08/2008, 14:40

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-10-103 directs the State Board of Regents to administer the Terrell H. Bell Teaching Incentive Loans Fund in accordance with criteria, policies, and procedures established by the State Board of Regents and the Utah State Board of Education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The name of the Utah Career Teaching Scholarship Program has been changed to the Terrell H. Bell Teaching Incentive Loans Program. This rule is still necessary because it provides criteria and procedures for awarding scholarships. It will require amendments to make the rule consistent with current statutory language. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

Education, Administration

R277-721

Deadline for CACFP Sponsor Participation in Food Distribution Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 30886
FILED: 01/08/2008, 14:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities; and Subsection 53A-1-402(3) permits the Utah State Board of Education to administer funds made available through programs of the federal government.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Upon review of this rule, it has been determined that the rule is no longer necessary. All requirements relating to deadlines for Child and Adult Care Food Program (CACFP) sponsor participation in food distribution programs is included in federal law and regulations. The rule will be continued so it will not expire and then will be processed for repeal.

Education, Administration

R277-722

Withholding Payments and Commodities in the CACFP

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 30887
FILED: 01/08/2008, 14:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities; and Subsection 53A-1-402(3) permits the Utah State Board of Education to administer funds made available through programs of the federal government.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Upon review of this rule, it has been determined that the rule is no longer necessary. Any requirements relating to withholding payments and commodities in the Child and Adult Care Food Program (CACFP) are provided for in federal law and regulations. The rule will be continued so it will not expire and then will be processed for repeal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
**EDUCATION
 ADMINISTRATION**
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

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Education, Administration
R277-730
Alternative High School Curriculum

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR File No.: 30888
 FILED: 01/08/2008, 14:41

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1) directs the Utah State Board of Education to adopt minimum standards for public schools; and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide guidance for schools and school districts that provide an alternative high school curriculum or program and a graduation option from an alternative program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
**EDUCATION
 ADMINISTRATION**
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 01/08/2008

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Environmental Quality, Air Quality
R307-214
**National Emission Standards for
 Hazardous Air Pollutants**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR File No.: 30895
 FILED: 01/11/2008, 11:54

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules regarding the control, abatement, and prevention of air pollution from all sources and establishing the maximum quantity of air contaminants that may be emitted by any source. Rule R307-214 incorporates by reference the federal standards for emissions of hazardous pollutants from various sources.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-214 was amended four times. The first was under DAR No. 27293 and was effective 10/07/2004, no written or oral comments were received on this amendment. The second amendment was under DAR No. 28130 and was effective 11/03/2005, no written or oral comments were received on this amendment. The third amendment was under DAR No. 29194 and was effective 02/09/2006, no written or oral comments were received on this amendment. The fourth amendment was under DAR No. 30430, no written or oral comments were received on this amendment. No other comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Incorporating federal rules into the Utah rules allows enforcement by staff of the Utah Division of Air Quality rather than by the federal Environmental Protection Agency, and therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

EFFECTIVE: 01/11/2008

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Human Services, Recovery Services **R527-39** Applicant/Recipient Cooperation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 30891
FILED: 01/10/2008, 12:02

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Section 62A-11-104 gives ORS the authority to determine whether an applicant or recipient of financial assistance or Medicaid is cooperating in good faith as required in Section 62A-11-307.2. Section 62A-11-307.2 specifies that to cooperate in good faith an applicant/recipient must provide the name and other identifying information of the other parent unless good cause or other exception applies. In addition, the applicant/recipient must supply additional necessary information and appear at interviews, hearings, and legal proceedings. When paternity needs to be established, the statute requires the applicant/recipient and child to submit to genetic testing. Section 62A-11-307.2 requires ORS to determine and redetermine, when appropriate, whether a recipient has cooperated in establishing paternity or in establishing, modifying, or enforcing a child support order. When a determination of noncooperation is made, the statute requires ORS to provide notice to the applicant/recipient including information that the determination may be contested. Also, this rule describes the options available to an applicant/recipient who wishes to contest a noncooperation determination when a good cause or other exception does not apply. This rule explains that if an applicant/recipient disagrees with the Decision and Order that is issued, the

recipient may request a reconsideration within a certain time frame or petition the district court to review the order.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because of the laws that require ORS to determine and redetermine whether an applicant or recipient of financial assistance or Medicaid is cooperating. The rule provides the office with the requirements that are necessary for the recipient/applicant to be considered cooperating. In addition, this rule provides the applicant/recipient the additional option to contest a noncooperation determination informally at the agency level rather than proceeding under the Utah Administrative Procedures Act or through the district court. The rule also provides each progressive level of appeal. Therefore, this rule should be continued. Upon review of this rule, the department recognizes the need for this rule to be amended to add an authority and purpose section and it will be done soon.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shancie Lawton at the above address, by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at shancielawton@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 01/10/2008

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Human Services, Recovery Services **R527-430** Administrative Notice of Lien-Levy Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 30905
FILED: 01/14/2008, 14:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Section 62A-11-304.1 authorizes ORS to implement liens to satisfy past-due support, subject to the obligor's right to contest the lien-levy action, and the amount claimed to be past-due. The statute also permits ORS to intercept and seize the assets of an obligor held in financial institutions, and attach retirement funds if the obligor is receiving periodic payments or has the authority to make withdrawals from the retirement account.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the previous five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 62A-11-304.1, upon which this rule is based, is still in effect and the lien-levy procedures described in the rule are reflected in current ORS policy and procedures. This rule establishes procedures regarding the release of funds to an unobligated spouse when the unobligated spouse is co-owner of a financial account or joint-recipient of certain non-means tested payments and contests a lien-levy action upon any of those assets. Therefore, this rule should be continued. Upon review of this rule, ORS recognizes that this rule needs to be amended to include the statutory authorization for rulemaking and it will be done soon.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shancie Lawton at the above address, by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at shancielawton@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 01/14/2008



Insurance, Administration
R590-157
Surplus Lines Insurance Premium Tax
and Stamping Fee

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 30890
FILED: 01/10/2008, 11:26

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to write rules to implement the provisions of Title 31A. Subsection 31A-3-303(2) prescribes accounting and reporting forms and procedures to be used in calculating and paying the surplus lines premium tax. Subsection 31A-15-103(11)(d) specifies the stamping fee amount and how it is to be collected.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department received one written comment during the past five years. The comment came from the Surplus Lines Association suggesting changes. Two of those changes were not included in the original change request given to the department. The department inserted these changes and refiled the rule for an additional comment period. No further comments were received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides procedures and reporting forms to be used by insurers, brokers and policyholders in calculating the tax due. As a result of the regulation, all who charge the tax use the same calculation to determine the amount. It makes the payment uniform and fair. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/10/2008



Insurance, Administration
R590-218
 Permitted Language for Reservation of
 Discretion Clauses

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 30897
 FILED: 01/11/2008, 16:49

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to write rules to enforce Title 31A. Subsections 31A-21-201(3) and 31A-21-314(2) authorizes the department to regulate the use of "reservation of discretion clauses" in policy forms filed with the department. The rule prohibits their use in forms not associated with the Employee Retirement Income Security Act (ERISA) employee benefit plans and prescribes language to be used in reservation of discretion clauses used in ERISA employee benefit plans.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have

been received by the department in the past five years regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule creates a safe harbor for insurance companies that provide insurance to ERISA employee benefit plans sponsored by employers, allowing insurers to know what language in insurance forms is acceptable to the department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
 ADMINISTRATION
 Room 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 01/11/2008



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Natural Resources

Administration

No. 30875: R634-1. Americans with Disabilities Complaint Procedure.

ENACTED OR LAST REVIEWED: 01/15/2003 (No. 25950, 5YR, filed 01/15/2003 at 2:15 p.m., published 02/01/2003).

EXTENDED DUE DATE: 05/14/2008

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food

Plant Industry

No. 30611 (AMD): R68-7. Utah Pesticide Control Act.
Published: November 15, 2007
Effective: January 7, 2008

Commerce

Occupational and Professional Licensing

No. 30655 (AMD): R156-1-102a. Global Definitions of Levels of Supervision.
Published: December 1, 2007
Effective: January 8, 2008

No. 30654 (AMD): R156-38a. Residence Lien Restriction and Lien Recovery Fund Rules.
Published: December 1, 2007
Effective: January 7, 2008

No. 30694 (AMD): R156-76. Professional Geologist Licensing Act Rules.
Published: December 1, 2007
Effective: January 8, 2008

Crime Victim Reparations

Administration

No. 30593 (AMD): R270-1-11. Collateral Source.
Published: November 15, 2007
Effective: January 2, 2008

Environmental Quality

Air Quality

No. 30430 (AMD): R307-214. National Emission Standards for Hazardous Air Pollutants.
Published: October 1, 2007
Effective: January 11, 2008

No. 30431 (AMD): R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).
Published: October 1, 2007
Effective: January 11, 2008

Environmental Response and Remediation

No. 30567 (AMD): R311-401-2. Utah Hazardous Substances Priority List.
Published: November 1, 2007
Effective: January 2, 2008

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 30653 (R&R): R414-21. Physical and Occupational Therapy.
Published: December 1, 2007
Effective: January 10, 2008

Human Services

Child and Family Services

No. 30716 (REP): R512-20. Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services.
Published: December 1, 2007
Effective: January 7, 2008

No. 30718 (REP): R512-50. Fee Collection for Clients Served by Pre-School Day Treatment Contract.
Published: December 1, 2007
Effective: January 7, 2008

Insurance

Administration

No. 30490 (NEW): R590-243. Commercial Motor Vehicle Insurance Coverage.
Published: October 15, 2007
Effective: January 11, 2008

Natural Resources

Parks and Recreation

No. 30621 (AMD): R651-611. Fee Schedule.
Published: November 15, 2007
Effective: January 1, 2008

Wildlife Resources

No. 30676 (AMD): R657-13. Taking Fish and Crayfish.
Published: December 1, 2007
Effective: January 7, 2008

Tax Commission

Administration

No. 30688 (AMD): R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 9-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, 63-46b-14.

Published: December 1, 2007

Effective: January 11, 2008

No. 30589 (AMD): R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

Published: November 1, 2007

Effective: January 11, 2008

No. 30717 (AMD): R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 and 63-46b-11.

Published: December 1, 2007

Effective: January 11, 2008

Treasurer

Unclaimed Property

No. 30596 (AMD): R966-1-2. Proof Requirements and Bonds.

Published: November 15, 2007

Effective: January 7, 2008

End of the Notices of Rule Effective Dates Section

RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2008, including notices of effective date received through January 15, 2008, the effective dates of which are no later than February 1, 2008. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Agriculture and Food					
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Act	30611	AMD	01/07/2008	2007-22/11
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-1-102a	Global Definitions of Levels of Supervision	30655	AMD	01/08/2008	2007-23/3
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rules	30654	AMD	01/07/2008	2007-23/14
R156-56	Utah Uniform Building Standard Act Rules	30574	AMD	01/01/2008	2007-21/38
R156-56-420	Administration of Building Code Training Fund	30573	AMD	01/01/2008	2007-21/57
R156-76	Professional Geologist Licensing Act Rules	30694	AMD	01/08/2008	2007-23/17

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Community and Culture					
<u>Housing and Community Development</u>					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	30451	AMD	01/01/2008	2007-19/6
Crime Victim Reparations					
<u>Administration</u>					
R270-1-11	Collateral Source	30593	AMD	01/02/2008	2007-22/33
Education					
<u>Administration</u>					
R277-469	Instructional Materials Commission Operating Procedures	30781	AMD	01/22/2008	2007-24/4
R277-518	Applied Technology Education Licenses	30878	5YR	01/08/2008	2008-3/72
R277-600	Student Transportation Standards and Procedures	30879	5YR	01/08/2008	2008-3/72
R277-605	Coaching Standards and Athletic Clinics	30880	5YR	01/08/2008	2008-3/73
R277-610	Released-Time Classes for Religious Instruction	30881	5YR	01/08/2008	2008-3/73
R277-700	The Elementary and Secondary School Core Curriculum	30882	5YR	01/08/2008	2008-3/74
R277-702	Procedures for the Utah General Educational Development Certificate	30883	5YR	01/08/2008	2008-3/74
R277-709	Education Programs Serving Youth in Custody	30884	5YR	01/08/2008	2008-3/75
R277-718	Utah Career Teaching Scholarship Program	30885	5YR	01/08/2008	2008-3/75
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	30886	5YR	01/08/2008	2008-3/76
R277-722	Withholding Payments and Commodities in the CACFP	30887	5YR	01/08/2008	2008-3/76
R277-730	Alternative High School Curriculum	30888	5YR	01/08/2008	2008-3/77
Environmental Quality					
<u>Air Quality</u>					
R307-214	National Emission Standards for Hazardous Air Pollutants	30430	AMD	01/11/2008	2007-19/12
R307-214	National Emission Standards for Hazardous Air Pollutants	30895	5YR	01/11/2008	2008-3/77
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	30431	AMD	01/11/2008	2007-19/15
<u>Environmental Response and Remediation</u>					
R311-401-2	Utah Hazardous Substances Priority List	30567	AMD	01/02/2008	2007-21/59
Governor					
<u>Economic Development</u>					
R357-2	Rural Broadband Service Fund	30788	NEW	01/30/2008	2007-24/9
R357-2-7	Ranking and Approval of Applications	30859	NSC	01/30/2008	Not Printed
Health					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-21	Physical and Occupational Therapy	30653	R&R	01/10/2008	2007-23/50
R414-27	Medicare Nursing Home Certification	30920	5YR	01/17/2008	Not Printed
R414-302	Eligibility Requirements	30921	5YR	01/25/2008	Not Printed
R414-303	Coverage Groups	30925	5YR	01/25/2008	Not Printed
R414-304	Income and Budgeting	30924	5YR	01/25/2008	Not Printed

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R414-304	Income and Budgeting	30652	AMD	01/28/2008	2007-23/54
R414-306	Program Benefits	30922	5YR	01/25/2008	Not Printed
Human Resource Management					
<u>Administration</u>					
R477-8-5	Overtime	30778	AMD	01/22/2008	2007-24/16
Human Services					
<u>Child and Family Services</u>					
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services (5YR EXTENSION)	30720	NSC	01/07/2008	Not Printed
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services	30716	REP	01/07/2008	2007-23/58
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract (5YR EXTENSION)	30721	NSC	01/07/2008	Not Printed
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract	30718	REP	01/07/2008	2007-23/60
<u>Recovery Services</u>					
R527-39	Applicant/Recipient Cooperation	30891	5YR	01/10/2008	2008-3/78
R527-430	Administrative Notice of Lien-Levy Procedures	30905	5YR	01/14/2008	2008-3/79
<u>Services for People with Disabilities</u>					
R539-1-8	Non-Waiver Services for People with Brain Injury	30926	EMR	01/28/2008	Not Printed
Insurance					
<u>Administration</u>					
R590-157	Surplus Lines Insurance Premium Tax and Stamping Fee	30890	5YR	01/10/2008	2008-3/79
R590-218	Permitted Language for Reservation of Discretion Clauses	30897	5YR	01/11/2008	2008-3/80
R590-243	Commercial Motor Vehicle Insurance Coverage	30490	NEW	01/11/2008	2007-20/28
Labor Commission					
<u>Antidiscrimination and Labor, Labor</u>					
R610-3-4	Filing Procedure and Commencement of Agency Action	30876	EMR	01/03/2008	2008-3/70
<u>Industrial Accidents</u>					
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	30594	AMD	01/01/2008	2007-22/76
Natural Resources					
<u>Administration</u>					
R634-1	Americans With Disabilities Complaint Procedure.	30923	5YR	01/25/2008	Not Printed
R634-1	Americans with Disabilities Complaint Procedure (5YR EXTENSION)	30875	NSC	01/25/2008	Not Printed
<u>Parks and Recreation</u>					
R651-611	Fee Schedule	30621	AMD	01/01/2008	2007-22/80
<u>Wildlife Resources</u>					
R657-12	Hunting and Fishing Accommodations for Disabled People	30777	AMD	01/22/2008	2007-24/19
R657-13	Taking Fish and Crayfish	30676	AMD	01/07/2008	2007-23/61

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Tax Commission					
<u>Administration</u>					
R861-1A-20	Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 9-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, 63-46b-14	30688	AMD	01/11/2008	2007-23/68
R861-1A-24	Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10	30589	AMD	01/11/2008	2007-21/69
R861-1A-26	Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 and 63-46b-11	30717	AMD	01/11/2008	2007-23/69
R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	30780	AMD	01/25/2008	2007-24/24
Treasurer					
<u>Unclaimed Property</u>					
R966-1-2	Proof Requirements and Bonds	30596	AMD	01/07/2008	2007-22/87

RULES INDEX - BY KEYWORD (SUBJECT)

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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>adult education</u>					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<u>air pollution</u>					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
	30431	R307-405	AMD	01/11/2008	2007-19/15
<u>alternative school</u>					
Education, Administration	30888	R277-730	5YR	01/08/2008	2008-3/77
<u>applied technology education</u>					
Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
<u>benefits</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	Not Printed
<u>bonds</u>					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87

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<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>breaks</u>					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<u>broadband</u>					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<u>budgeting</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30652	R414-304	AMD	01/28/2008	2007-23/54
	30924	R414-304	5YR	01/25/2008	Not Printed
<u>building codes</u>					
Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
<u>building inspection</u>					
Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
<u>career education</u>					
Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
<u>CERCLA</u>					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<u>child abuse</u>					
Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
<u>child support</u>					
Human Services, Recovery Services	30891	R527-39	5YR	01/10/2008	2008-3/78
	30905	R527-430	5YR	01/14/2008	2008-3/79
<u>child welfare</u>					
Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
<u>civil rights</u>					
Natural Resources, Administration	30875	R634-1	NSC	01/25/2008	Not Printed
	30923	R634-1	5YR	01/25/2008	Not Printed
<u>Class I area</u>					
Environmental Quality, Air Quality	30431	R307-405	AMD	01/11/2008	2007-19/15
<u>commercial motor vehicle insurance</u>					
Insurance, Administration	30490	R590-243	NEW	01/11/2008	2007-20/28
<u>contractors</u>					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<u>coverage groups</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30925	R414-303	5YR	01/25/2008	Not Printed
<u>curricula</u>					
Education, Administration	30882	R277-700	5YR	01/08/2008	2008-3/74
<u>developmentally disabled</u>					
Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<u>disabilities</u>					
Human Services, Services for People with Disabilities	30926	R539-1-8	EMR	01/28/2008	Not Printed
<u>disabled persons</u>					
Natural Resources, Wildlife Resources	30777	R657-12	AMD	01/22/2008	2007-24/19
<u>disclosure requirements</u>					
Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<u>discretion clauses</u>					
Insurance, Administration	30897	R590-218	5YR	01/11/2008	2008-3/80
<u>diversion programs</u>					
Commerce, Occupational and Professional Licensing	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
<u>dual employment</u>					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<u>education</u>					
Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
	30885	R277-718	5YR	01/08/2008	2008-3/75
	30888	R277-730	5YR	01/08/2008	2008-3/77
<u>educational testing</u>					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<u>educator licensing</u>					
Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
<u>eligibility</u>					
Human Services, Child and Family Services	30718	R512-50	REP	01/07/2008	2007-23/60
	30721	R512-50	NSC	01/07/2008	Not Printed
<u>extracurricular activities</u>					
Education, Administration	30880	R277-605	5YR	01/08/2008	2008-3/73

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<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>fees</u>					
Human Services, Child and Family Services	30718	R512-50	REP	01/07/2008	2007-23/60
	30721	R512-50	NSC	01/07/2008	Not Printed
Natural Resources, Parks and Recreation	30621	R651-611	AMD	01/01/2008	2007-22/80
<u>financial disclosures</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30652	R414-304	AMD	01/28/2008	2007-23/54
	30924	R414-304	5YR	01/25/2008	Not Printed
<u>fish</u>					
Natural Resources, Wildlife Resources	30676	R657-13	AMD	01/07/2008	2007-23/61
<u>fishing</u>					
Natural Resources, Wildlife Resources	30676	R657-13	AMD	01/07/2008	2007-23/61
<u>food aid programs</u>					
Education, Administration	30886	R277-721	5YR	01/08/2008	2008-3/76
	30887	R277-722	5YR	01/08/2008	2008-3/76
<u>geology</u>					
Commerce, Occupational and Professional Licensing	30694	R156-76	AMD	01/08/2008	2007-23/17
<u>grants</u>					
Community and Culture, Housing and Community Development	30451	R199-8	AMD	01/01/2008	2007-19/6
<u>grievance procedures</u>					
Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<u>hazardous air pollutant</u>					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
<u>hazardous substances priority list</u>					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<u>human services</u>					
Human Services, Services for People with Disabilities	30926	R539-1-8	EMR	01/28/2008	Not Printed
<u>income</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	Not Printed
	30925	R414-303	5YR	01/25/2008	Not Printed
	30652	R414-304	AMD	01/28/2008	2007-23/54
	30924	R414-304	5YR	01/25/2008	Not Printed
<u>income distribution</u>					
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	30720	R512-20	NSC	01/07/2008	Not Printed

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<u>insurance</u> Insurance, Administration	30897	R590-218	5YR	01/11/2008	2008-3/80
<u>insurance fee</u> Insurance, Administration	30890	R590-157	5YR	01/10/2008	2008-3/79
<u>job creation</u> Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<u>juvenile courts</u> Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
<u>labor</u> Labor Commission, Antidiscrimination and Labor, Labor	30876	R610-3-4	EMR	01/03/2008	2008-3/70
<u>liberties</u> Natural Resources, Administration	30875	R634-1	NSC	01/25/2008	Not Printed
	30923	R634-1	5YR	01/25/2008	Not Printed
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	30654	R156-38a	AMD	01/07/2008	2007-23/14
	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
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	30895	R307-214	5YR	01/11/2008	2008-3/77
<u>Medicaid</u> Health, Health Care Financing, Coverage and Reimbursement Policy	30653	R414-21	R&R	01/10/2008	2007-23/50
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