

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

Error in the Filing for Rule R277-469 (Dar No. 32257) in the January 15, 2009, Issue of the Bulletin

On 12/20/2008, the Office of Education filed an amendment to Rule R277-469, "Instructional Materials Commission Operating Procedures", under DAR No. 32257. This amendment was published in the January 15, 2009, issue of the *Utah State Bulletin* (2009-2, pg. 20). The text of the rule clearly indicates a newly added incorporated reference. Due to a filing error, this information was omitted from the published rule analysis. In addition, typographical errors existed in the text associated with this incorporation.

The text and rule analysis should have reflected that the amendment to Rule R277-469 adds the incorporation of 34 CFR 300.172 (2007 edition), "Access to Instructional Materials". The Office of Education has filed a nonsubstantive change under DAR No. 32369 to correct the reference. The nonsubstantive change will be made effective the same time the amendment under DAR No. 32257 is made effective so the incorporation information will be correct when codified.

The Division of Administrative Rules regrets any misunderstanding or inconvenience caused by this error.

Questions regarding this issue may be addressed to Nancy Lancaster, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114; telephone: 801-538-3218; FAX: 801-538-3777; or email: nllancaster@utah.gov.

End of the Editor's Notes Section

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for March 2009 Medicaid Rate Changes

Effective March 1, 2009, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, as well as potential adjustments to existing codes. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

Insurance Administration

Public Hearing on Proposed Fees for Services Provided on Costs Incurred by the Utah Insurance Department During Fiscal Year 2010

A hearing date on the proposed fees for services provided on costs incurred by the Utah Insurance Department during fiscal year 2010 has been scheduled for Wednesday, February 25, 2009, at 9:00 a.m. in Room 3112 of the State Office Building (behind the Capitol), 450 N State Street, Salt Lake City, Utah.

Requests for fee reduction:

- (1) The Department has requested the deletion of the \$2.00 e-processing fee from the following fees:
 - (a) license fee for insurer, surplus lines insurer, other organization, accredited/trusteed reinsurer, viatical settlement provider, producer (individual or agency), health insurance purchasing alliance, continuing education provider, captive insurer;
 - (b) copy completed annual statement, accepting service of process, bail bond agency, relative value study book; and
- (2) The Department has requested the deletion of the late renewal fee for producer (individual or agency) and continuing education provider.

Request for fee increase:

The Department has changed the methodology for payment for requests for lists compiled from the Department's database. The new methodology and fee structure is as follows:

Fees for the production of lists of information regarding licensees or other information that can be produced by list:

- (1) printed list, if the information is already in list form and only needs to be printed or reprinted: \$1 per page, whether or not sent to the requestor by mail or electronically;
- (2) electronic list compiled from information stored in the Department's database:
 - (a) a separate fee is assessed for each list compiled;
 - (b) each list is assessed the following fees:
 - (i) a base fee, which entitles the requestor to up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor -- \$50, due with request for information;
 - (ii) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor -- \$50, due by the due date on the invoice;
 - (c) additional CD -- \$1.00, due by the due date on the invoice.

The proposed fee schedule has been submitted to the 2009 General Session of the Utah Legislature for their review and approval. The proposed fee schedule will be distributed at the fee hearing and can be read at: <http://www.insurance.utah.gov/ruleindex.html>.

In compliance with the Americans with Disabilities Act, individuals desiring to attend the hearing who need special accommodations during the hearing (including auxiliary communicative aids and services) should notify us as directed as follows.

Written comments should be directed to Jilene Whitby: email: jwhitby@utah.gov; FAX: 801-538-3829; or mail to: Insurance Department, State Office Building, Room 3110, Salt Lake City, UT 84114.

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 16, 2009, 12:00 a.m., and February 2, 2009, 11:59 p.m. are included in this, the February 15, 2009, 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 17, 2009. 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 63G-3-302 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 June 15, 2009, 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 63G-3-301; 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, Plant Industry
R68-7
 Utah Pesticide Control Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32332

FILED: 01/28/2009, 14:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment will set a minimum age for pesticide applicators, make recertification procedures for Private applicators consistent with Commercial and Non-Commercial applicators, and establish a minimum standard for preconstruction termite treatments to ensure pesticide applicators are making effective applications.

SUMMARY OF THE RULE OR CHANGE: The change is a result of finding pesticide applicators applying pesticides under the age of 16, clearing up inconsistencies between applicator types, and finding violations by termite applicators that are unenforceable under the current regulations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-14-6

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no additional cost to the state associated with the proposed rule changes because there are no new regulations that will be enforced. The Division will continue to enforce the pesticide regulations to the best of our ability.

❖ **LOCAL GOVERNMENTS:** There is no additional cost or savings with to local government with the proposed rule changes because there are no new regulations that will be enforced.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no additional cost for small businesses or others. They will be required to ensure that applicators they employ are at least 16 years of age. This change is consistent with the Child Labor Laws. Recertification requirement changes with Private Applicators is consistent with current practices. Termite applicators are currently required to apply the pesticides according to label directions. This regulation will give us more authority to make sure the application is done properly. The Utah Department of Agriculture and Food (UDAF) met with the Utah Pest Control and Lawn Care Association Board and they agree with the proposed rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no additional cost for affected persons. They will be required to ensure that applicators they employ are at least 16 years of age. This change is consistent with the Child Labor Laws. Recertification requirement changes with Private Applicators is consistent with current practices. Termite applicators are currently required to apply the pesticides according to label directions. This regulation will give the Division more authority

to make sure the application is done properly. UDAF met with the Utah pest Control and Lawn care Association Board and they agree with the proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A minimum age requirement of 16 is necessary to ensure underage applicators do not handle pesticide. Clarifying recertifications requirements to make all pesticide applicator requirements consistent was necessary. Revising termite applicator requirements will ensure products are applied correctly according to label directions. Leonard M. Blackham, Commissioner

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

AGRICULTURE AND FOOD

PLANT INDUSTRY

350 N REDWOOD RD

SALT LAKE CITY UT 84116-3034, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clark Burgess, Kathleen Mathews, Clair Allen, or Kyle Stephens at the above address, by phone at 801-538-9929, 801-538-7103, 801-538-7180, or 801-538-7102, by FAX at 801-538-7126, 801-538-7126, 801-538-7189, or 801-538-7126, or by Internet E-mail at cburgess@utah.gov, kmathews@utah.gov, ClairAllen@utah.gov, or kylestephens@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R68. Agriculture and Food, Plant Industry.

R68-7. Utah Pesticide Control Act.

R68-7-7. Standards of Competence for Certification of Applicators.

Applicators must be at least 16 years of age and show competence in the use and handling of pesticides according to the hazards involved in their particular classification by passing the tests and becoming certified as outlined in R68-7-8. Upon their becoming certified, the department will issue a license which will qualify an applicator to purchase and apply pesticides in the appropriate classification. Standards for certification of applicators as classified in R68-7-4 have been established by the EPA and such standards shall be a minimum for certification of applicators in the State of Utah.

(1) Commercial and Non-Commercial Applicators.

Commercial and non-commercial applicators shall demonstrate practical knowledge by written examination(s) of the principles and practices of pest control and safe use, storage and transportation of pesticides, to include the general standards applicable to all categories and the standards specifically identified for each category or subcategory designated by the applicant, as set forth in 40 CFR, Section 171.4 and the EPA approved Utah State Plan for certification of

pesticide applicators. In addition, applicators applying pesticides by aircraft shall be examined on the additional standards specifically identified for this method of application as set forth herein.

(a) Exemptions. The standards for commercial and non-commercial applicators do not apply to the following persons for purposes of these rules:

(i) Persons conducting laboratory-type research involving pesticides; and

(ii) Doctors of medicine and doctors of veterinary medicine applying pesticides or drugs or medication during the course of their normal practice and who do not publicly represent themselves as pesticide applicators.

(2) Aerial Application. Additional Standards.

Applicators shall demonstrate by examination practical knowledge of pest control in a wide variety of environments. These may include, but are not limited to, agricultural properties, rangelands, forestlands, and marshlands. Applicators must have the knowledge of the significance of drift and of the potential for non-target injury and the environmental contamination. Applicators shall demonstrate competency as required by the general standards for all categories of certified commercial and non-commercial applicators. They shall comply with all standards set forth by the Federal Aviation Administration (FAA) and submit proof of current registration by that agency as a requirement for licensing as an aerial applicator.

(3) Subterranean Termite Pre-Construction Treatment Applications. Minimum Standards. Full treatment: Effective reconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and horizontal barriers between the structure and the termite colonies in the soil.

(a) For Horizontal Chemical Barriers: Applications shall be made using a low pressure spray after grading is complete and prior to the pouring of the footing and the main slab to provide thorough and continuous coverage of the area being treated. Application rates, unless label requires elevated rates, must be at least 1 gallon per 10 square feet.

(b) For Vertical Chemical Barriers: Establish vertical barriers in areas such as around the base of foundations, plumbing lines, backfilled soil against foundation walls and other areas which may warrant more than a horizontal barrier. Application rates, unless labeling requires elevated rates, are to be treated at a rate of 4 gallons per 10 linear feet to soil backfill areas next to walls, piers, pipes, and under other "crucial areas" such as slab expansion joints.

(c) Partial Treatments: Defined as anything less than a full treatment. Partial Pre-Construction treatments are not acceptable.

~~(3)~~(4) Private Applicators. Private applicators shall show practical knowledge of the principles and practices of pest control and the safe use of pesticides, to include the standards for certification of private applicators as set forth in 40 CFR Section 171.5. In addition, private applicators applying restricted-use pesticides by aircraft shall show practical knowledge of the additional standards specifically identified for that method of application in R68-7-6(11) of these rules.

~~(4)~~(5) Supervision of Non-Certified Applicators by Certified Private Applicators.

(a) A certified private applicator that functions in a supervisory role shall be responsible for the actions of any non-certified applicators under his instruction and control.

(b) A certified private applicator shall provide written or oral instruction for the application of a restricted-use pesticide applied by a non-certified applicator under his supervision when the certified applicator is not required to be physically present. If an applicator cannot read, instructions shall be given in a language understood by the

applicator. The instructions shall include procedures for contacting the certified applicator in the event he is needed.

~~(5)~~(6) The certified applicator shall be physically present to supervise the application of a restricted-use pesticide by a non-certified applicator if such presence is required by the label of the pesticide being applied.

R68-7-8. Certification Procedures.

(A) Commercial Applicators.

(1) License Required. No person shall apply any pesticide for hire or compensation to the lands of another at any time without becoming certified and obtaining a commercial applicator's license and a pesticide applicator business license as described in 4-14-13 issued by the department, or working for a company which has already attained such business license.

(2) The pesticide applicator business fee will be determined by the number of commercial pesticide applicators employed by the business. The fee ranges are 1-4 commercial pesticide applicators, 2-5 commercial pesticide applicators and 10 or more commercial pesticide applicators.

Application for such licenses shall be made in writing on an approved form obtained from the department and shall include such information as prescribed by the department. Each individual performing the physical act of applying pesticides for hire or compensation must be licensed. An applicator and business license fee determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification.

(3) Written Examination. An applicant for a commercial pesticide license shall demonstrate competency and knowledge of pesticide applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department, pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All applicants for a commercial applicator license must pass the general examination and the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 or above is required to pass any written examination. A score of less than 70 on the general standards or category examinations shall result in denial of certification of that test. A person must pass the general and at least one category examination before becoming certified. An applicant scoring less than 65% on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides in the classifications applied for and for which the prescribed fee(s) have been paid, the department shall issue a commercial applicator's license. The license shall expire December 31 of each year unless it has been revoked or suspended prior by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a commercial license is denied the applicant shall be informed of the reason. The applicator is required to have their license in their immediate possession at all times when making a pesticide application. If the applicator requests a duplicate license from the Department of

Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. A pesticide applicator business license shall be required for each pesticide business location with applicators working in the state.

(5) Any new applicator or applicator business license licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification.

(a) A license will be renewed without examination if the renewal notice is received by the Utah Department of Agriculture and Food of prior to January 1 of any year.

(b) If the renewal notice is received after January 1 but before (March 1), individuals will be required to pay the late fee, and no re-examination will be required.

(c) If the renewal notice is received after March 1, individuals will be required to recertify according to the original pesticide-applicator certification procedures.

Each license shall expire on December 31 of the year of its issuance. Commercial applicators may voluntarily pay a triennial license fee in lieu of the annual license fee. Commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfy certification requirements as described herein, or meet any other requirements specified by the commissioner shall be added to this rule as often as necessary.

(d) Recertification options:

(i) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(ii) Attend approved recertification courses and pass the required category examinations with a score of 70% or above or;

(iii) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(7) Records Maintained. Commercial applicators shall keep and maintain records of each pesticide application. These records must be recorded within 24 hours after the pesticide application is made. These application records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the commercial applicator.

(8) Exemption.

The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his neighbors provided he operates and maintains pesticide application equipment for his own use, is not engaged in the business of applying pesticides for hire or compensation, does not publicly represent himself as a pesticide applicator, and operates his pesticide application equipment only in the vicinity of his owned

or rented property for the accommodation of his neighbors; provided, however, that when such persons use a restricted-use pesticide, they shall comply with the certification requirements specified herein.

(B) Non-Commercial Applicators.

(1) License Required. No non-commercial applicator shall use or demonstrate the use of any restricted-use pesticide without becoming certified and obtaining a non-commercial applicator's license issued by the department. Application for such license shall be made in writing on an approved form obtained from the department and shall include such information as is prescribed by the department. Each individual performing the physical act of applying restricted-use pesticides must be licensed.

(2) Written Examination. An applicant for a non-commercial pesticide license shall demonstrate to the department competency and knowledge of pesticides and their applications by passing the appropriate written examinations. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time an individual takes the general and category tests. All applicants for a non-commercial applicator license must successfully pass a general examination based upon standards applicable to all categories. After passing the general examination, applicants must pass the examination(s) pertaining to the category(s) for which they desire to be licensed. Certification examinations shall be conducted by representatives of the commissioner by appointment. A score of 70 percent or above is required for passing any written examination. A score of less than 70 percent on the general or category examinations shall result in denial of certification in that category. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65 percent on any examination must wait three days before retesting on that examination. A person scoring from 65% to 69% may retake the test again the same day, schedule permitting. Any person applying to become certified or recertified must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way.

(3) License Issuance. If the department finds the applicant qualified to apply pesticides in the classification(s) applied for, the department shall issue a non-commercial applicator's license limited to such activities and classifications applied for. A prescribed examination and educational material fees shall be required. The applicator is required to have his/her license in his/her immediate possession at all times when making a pesticide application.

If the applicator requests a duplicate license from the Department of Agriculture and Food, a fee as determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued. The license shall expire December 31, three calendar years after the issuance of the certification, unless it has been suspended or revoked by the commissioner for cause, which may include any of the unlawful acts given in R68-7-11. If an application for a non-commercial license is denied the applicant shall be informed of the reason.

(4) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(5) License Renewal, Recertification. Non-commercial applicators must recertify every three years, and be subject to re-examination at any time. Information that may be required to insure

a continuing level of competence and ability to use pesticides safely and properly due to changing technology, and to satisfying certification requirements as described herein, or any other requirements specified by the commissioner shall be added to this rule as often as necessary.

Recertification options are:

(a) Complete the original certification process of taking the required general and category test(s) and passing each required test with a score of 70% or above or;

(b) Attend approved recertification courses and pass the required category test(s) with a score of 70% or above or;

(c) Participate in approved continuing education courses and accumulate 24 credits during the valid three years of certification.

(6) Records Maintained. Non-commercial applicators shall keep and maintain records of each application of any restricted-use pesticides. These application records must be recorded within 24 hours after the pesticide application is made. These records must include the following information:

(a) Name and address of property owner;

(b) Location of treatment site, if different from (a);

(c) The month, day and year when the pesticide was applied;

(d) Brand name of pesticide, EPA registration number, rate of pesticide applied per unit area, and total amount of pesticide used;

(e) Purpose of application;

(f) The name, address, and license number of the certified applicator who applied the pesticide.

Such records shall be kept for a period of two years from the date of application of the pesticide and shall be available for inspection by the commissioner's designee at reasonable times. The commissioner's designee shall, upon request, be furnished a copy of such records by the non-commercial applicator.

(7) Exemption. The provisions of this section shall not apply to persons conducting laboratory research involving restricted-use pesticides as drugs or medication during the course of their normal practice. Non-Commercial applicators engaged in public-health related activities are exempt from recording the name and address of property owners, but are required to document a detailed description of treatment areas by using such means as GPS coordinates or other locality descriptions for record keeping purposes.

(C) Private Applicators.

(1) License Required. No private applicator shall purchase, use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the department. Issuance of such license shall be conditioned upon the applicator's complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons. Application for a license shall be made in writing on a designated form obtained from the department.

(2) Certification Methods. Any person applying to become licensed must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate competency and knowledge of mixing and applying pesticides in a safe way. All first-time Private Applicators must successfully pass a written test. A score of 70 percent or above is required for passing any written test. A score of less than 70 percent will result in the denial of certification. A person must pass the general and at least one category examination before becoming certified. An applicator scoring less than 65% on any examination must wait three days before retesting on that examination. A person

scoring from 65% to 69% may retake the test again the same day, schedule permitting.

(3) Emergency-Use Permit. A single restricted-use pesticide may be purchased and used by a non-certified person on a one-time-only basis if an emergency control situation is shown to exist. Before purchasing the product, the applicant shall participate in a discussion concerning safe use of the specific product with a representative of the Utah Department of Agriculture and Food. Following an adequate discussion of same, the Department of Agriculture and Food may issue the applicant a permit to purchase and use the product on a specific site on a one-time-only basis. The applicant shall be required to become certified before being authorized to further purchase and use restricted-use pesticides.

(4) License Issuance. If the department finds the applicant qualified to apply pesticides, the applicant shall be issued a private applicator's license. Examination and educational-material fees determined by the department pursuant to Subsection 4-2-2(2), shall be assessed at the time of certification and recertification. The license issued by the commissioner shall expire on December 31, three calendar years after issuance, unless the license has been revoked or suspended by the commissioner. If an application for a private license is denied, the applicant shall be informed of the reason. If the applicator requests replacement from the Department of Agriculture and Food, a fee determined by the department pursuant to Subsection 4-2-2(2), must be paid before a replacement license will be issued.

(5) Any new applicator licensing after November 1 will be licensed for the remainder of that year and the following calendar year.

(6) License Renewal, Recertification. A person applying to recertify must demonstrate the ability to: (a) read and understand three or more sets of pesticide label directions from pesticide containers randomly chosen by division personnel, and (b) demonstrate the mixing and application of pesticides in a safe way. All certified private applicators must recertify every three years, or more frequently if determined necessary by the department, by satisfying any of the following procedures or any other requirements specified by the department.

(a) ~~[Training Course.—]~~Completion of a ~~[training course]~~recertification course approved by the Utah Department of Agriculture and Food ~~[which may require]~~and passing a written test with a score of 70% or above or;

~~[(b) Self Study Program.—Successful completion of an approved written test.—A passing score of 70 percent or above is required or;~~

~~—(e)[(b) Written Examination.—Successful completion of an approved written test.]~~Complete the original certification process of taking the required general and category test(s). A score of 70 percent or above is required to pass or;

~~[(d)](c)~~ Accumulate nine credits of approved continuing education during the valid three years of certification.

(D) Employees of Federal Agencies. Federal Government Employees wishing to be certified in Utah shall be required to qualify as non-commercial applicators by passing the appropriate examinations, unless such requirement is waived upon presentation of adequate evidence of certification in the appropriate categories from another state with comparable certification requirements. In the event a federal agency develops an applicator certification plan which meets the Utah certification standards, employees of that agency who become certified under that plan may qualify for certification in the State of Utah.

(E) Certification of Out-of-State Applicants.

When a pesticide applicator is certified under an approved state plan of another state and desires to apply pesticides in Utah, he/she shall make application to the department and shall include, along with the proper fee and any other details required by the Act or these rules, a true copy of his credentials as proof of certification in the person's state of residence and a letter from that state's department of agriculture stating that he/she has not been convicted of a violation of any pesticide law and is currently licensed as a pesticide applicator in that state. The department may upon review of the credentials, issue a Utah certification to the applicator in accordance with the use situations for which the applicator is certified in another state without requiring determination of competency; provided that the state having certified the applicator will similarly certify holders of Utah licenses or certificates and has entered into a reciprocal agreement with the State of Utah. Out-of-state pesticide applicators who operate in Utah will be subject to all Utah laws and rules.

R68-7-11. Unlawful Acts.

Any person who has committed any of the following acts is in violation of the Utah Pesticide Control Act or rules promulgated thereunder and is subject to penalties provided for in Sections 4-2-2 through 4-2-15:

- (1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;
- (2) Applied known ineffective or improper pesticides;
- (3) Operated in a faulty, careless or negligent manner;
- (4) Neglected or, after notice, refused to comply with the provisions of the Act, these rules or of any lawful order of the department;
- (5) Refused or neglected to keep and maintain records required by these rules, or to make reports when and as required;
- (6) Made false or fraudulent records, invoices or reports;
- (7) Engaged in the business of applying a pesticide for hire or compensation on the lands of another without having a valid commercial applicator's license;
- (8) Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator;
- (9) Used fraud or misrepresentation in making application for, or renewal of, a registration, license, permit or certification;
- (10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
- (11) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the department if those rules further restrict the uses provided on the labeling;
- (12) Aided or abetted a licensed or an unlicensed person to evade the provisions of the Act; conspired with such a licensed or an unlicensed person to evade the provisions of the Act; or allowed one's license or permit to be used by another person;
- (13) Impersonated any federal, state, county, or other government official;
- (14) Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid license, or permit to use, supervise the use, or distribute restricted-use pesticide;
- (15) Applied pesticides onto any land without the consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem.
- (16) For an applicator to apply a termiticide at less than label rate or inconsistent with rules of the department if those rules further restrict the uses provided on the labeling.

(17) For an employer of a commercial or non-commercial applicator to allow an employee to apply pesticide before that individual has successfully completed the prescribed pesticide certification procedures.

(18) For a pesticide applicator not to have his/her current license in his/her immediate possession at all times when making a pesticide application.

(19) To allow an application of pesticide to run off, or drift from the target area to cause plant, animal, human or property damage.

(20) Refused or neglected to register a pesticide applicator business with the Utah Department of Agriculture and Food.

(21) To handle or apply any registered pesticide for which the person does not have an appropriate, complete, or legible label at hand.

KEY: inspections, pesticides

Date of Enactment or Last Substantive Amendment: [~~October 9, 2008~~]2009

Notice of Continuation: March 16, 2006

Authorizing, and Implemented or Interpreted Law: 4-14-6



Alcoholic Beverage Control,
Administration
R81-1-28
Special Commission Meetings-Fees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32333

FILED: 01/29/2009, 12:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed at the request of the Alcoholic Beverage Control (ABC) Commission to authorize the assessment of an administrative fee to cover costs of special commission meetings held to consider applications for single event and temporary special event beer permits.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment will authorize the ABC Commission to assess an administrative fee of \$350 to cover costs of convening a special commission meeting to consider the application of an applicant for a single event or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 32A-1-106(9) and Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Holding a special commission meeting costs the department approximately \$350 in payment of commissioners' per diem and other costs associated with scheduling, arranging, and providing notice of the meeting. The \$350 administrative fee will offset these costs. But, since the special commission meetings are held on an as-needed

basis, it is impossible to know the exact amount of savings to the state.

❖ LOCAL GOVERNMENTS: None--The fees will be assessed to permits issued by the Department of Alcoholic Beverage Control and will not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many of the applicants for single event and temporary special event beer permits are small businesses or associations. They will only be impacted by this proposed rule amendment if they fail to file their permit application in a timely manner to be on the agenda of the regular monthly commission meeting and request that a special commission meeting be scheduled to consider their application. The cost will be \$350 in addition to the permit fee that is already required by statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will only be impacted by this proposed rule amendment if they fail to file their permit application in a timely manner to be on the agenda of the regular monthly commission meeting and request that a special commission meeting be scheduled to consider their application. The cost will be \$350 in addition to the permit fee that is already required by statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For several years, the ABC Commission has held special commission meetings at no charge to accommodate single event and temporary special event beer permit applicants who, for whatever reason, failed to file their application in a timely manner to be on the regular monthly commission meeting agenda. These special meetings cost the department money, but the department has had no way to recoup the costs. The commissioners realize that charging a fee will have a fiscal impact on the permit applicants who request a special meeting. The applicants will need to make a business decision as to whether the revenues from the sale of liquor and/or beer sufficiently justify paying the additional fee for the meeting. It should be noted that there is no additional fee assessed to applicants who file a timely application. Dennis Kellen, Executive Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32A-1-106(9) that gives the commission authority to hold special commission meetings; and 32A-1-107(1) that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of \$350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [~~October 23, 2008~~2009]

Notice of Continuation: August 31, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32A-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Capitol Preservation Board (State),
Administration

R131-2

Capitol Hill Complex Facility Use

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE No.: 32343
 FILED: 01/29/2009, 17:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies when a private caterer can be used versus the preferred caterer. It also updates and clarifies requirements and policies such as heating requirements and other various housekeeping changes.

SUMMARY OF THE RULE OR CHANGE: The main changes are: 1) defines and differentiates between the preferred caterer and private caterers and clarifies policies for obtaining catering services for the Capitol Hill Complex facilities; 2) outlines requirements, schedules, and costs and fees for event applicants and for private caterers who are providing catering services to Capitol Hill complex facilities and grounds; and 3) clarifies procedures to apply for facility use permits, updates security personnel requirements, and outlines an application and appeal process for permit denials. The rule is also being amended to reflect the prohibition of the use of personal space heaters in Capitol Hill Facilities and implement requirements and schedules for photography, videotaping, and filming in/on Capitol Hill facilities and grounds.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63C-9-201, 63C-9-301, 63C-9-102, and 67-1-16

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no difference in cost or savings between the original rule and the proposed changes. Therefore, there are no anticipated cost or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: There were no costs to local government in the original rule. Therefore, there are no anticipated costs to local government from the proposed changes.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are fees in the rule that could affect small businesses. At the same time, there are opportunities in the rule that could benefit small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are fees in the rule that could affect small businesses. At the same time, there are opportunities in the rule that could benefit small businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are fees in the rule that could affect small businesses. At the same time, there are opportunities in the rule that could benefit small businesses. David Hart, AIA, Executive Director

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

CAPITOL PRESERVATION BOARD (STATE)
 ADMINISTRATION
 Room E110 EAST BUILDING

420 N STATE ST
 SALT LAKE CITY UT 84114-2110, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Sarah Whitney, Alan Bachman, David H. Hart, or La Priel Dye at the above address, by phone at 801-538-3074, 801-538-3105, 801-538-3074, or 801-538-3240, by FAX at 801-538-3221, 801-538-3313, 801-538-3221, or 801-538-3313, or by Internet E-mail at sw Whitney@utah.gov, abachman@utah.gov, dhart@utah.gov, or ldye@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: David H. Hart, AIA, Executive Director

R131. Capitol Preservation Board (State), Administration.**R131-2. Capitol Hill Complex Facility Use.****R131-2-3. Definitions.**

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

~~(5)~~ "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event.

Commercial activities do not include private, community service, state sponsored, or free speech activities.

~~(6)7~~ "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

~~(7)8~~ "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

~~(8)9~~ "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

~~(9)10~~ "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

~~(10)11~~ "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

~~(11)12~~ "Free Speech Activity" is as defined in rule R131-11.

~~(12)13~~ "Preferred Caterer" means the Capitol Hill food service provider who is under contract with the Board to provide food/beverages and catering services on the Capitol Hill Complex.

~~(13)14~~ "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

~~(14)15~~ "Private Caterer" means any entity providing catering services and not holding a contract with the Board, and is not the Preferred Caterer.

~~(15)16~~ "Solicitation" is as defined in rule R131-10.

~~(16)17~~ "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

~~(17)18~~ "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

~~(18)19~~ "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed

Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than ~~[480]365~~ calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

~~(2)~~ The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ~~ten~~five working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

- (a) the application does not comply with the applicable rules;
- (b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or
- (c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working~~calendar~~ days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The ~~applicant~~permittee may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days~~48 hours~~ prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities,

all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with

a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held. Signs or posters may not be on sticks or poles.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable

efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) Open flames, flammable fluids, candles, and explosives are prohibited.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities. [At least two uniformed security personnel shall be required for every 400 participants of an event (except free speech activities). Costs for such personnel shall be included as a part of the base fees paid by the sponsor (permit holder), unless a waiver is granted.]

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling. [if it is to be performed by a professional or is commercial in nature.]

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8:00 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(b) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Catering.

(a) Except as provided through a waiver under (13) Below, Catering[Food] services on the Capitol Hill Complex shall be exclusively provided by the Preferred Caterer, for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable.[Board's on-site food service provider. No other food service will be allowed within the facilities or on the grounds, except that the Utah Senate and Utah House of Representatives may obtain off site food services for special events during legislative sessions. Any sale of food items shall be with advance written permission of the executive director only.]The Preferred Caterer shall be responsible for all activities in the kitchen, server, dining and conference rooms associated with the dining room, and located on the first floor of the Senate Building.

(b) [Fees associated with food services shall be the responsibility of the user.]Any Private Caterer requested through a waiver under (13) below, must comply with all of the following:

(i) An applicant desiring catering services must first meet with the Preferred Caterer in a good faith attempt to find out if the Preferred Caterer can reasonably provide the catering service requested;

(ii) If the applicant, after such good faith attempt, reasonably determines that the Preferred Caterer cannot provide the requested catering service and a waiver is approved, then the applicant may use a Private Caterer if all the criteria and requirements of this Rule are met, which criteria and requirements cannot be waived;

(i) Area where Preferred Caterer has Exclusive Rights. The Preferred Caterer shall have exclusive rights to the food service facilities, dining room and conference rooms in the Senate building located on the first floor. No other food service will be allowed within this area in the Senate Building.

(ii) Quality Control Policies. The Private Caterer must meet or exceed all Quality Control Policies that are in the contract between the Board and the Preferred Caterer. The Board shall provide a form stipulating the minimum standards.

(iii) Verification Forms. Supplier/Vendor verification forms, which form shall be on the Board's approved form only, must be provided by the Private Caterer. This form shall include all pertinent information about the Private Caterer's vendors and sources for food and beverages including recall and verification information similar to the requirements imposed upon the Preferred Caterer.

(iv) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The selected Private Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. The selected Private Caterer shall also maintain, if applicable to Provider's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in the waiver process, at the Private Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Private Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Provider shall also maintain "all risk" property insurance at replacement cost applicable to the Private Caterer's property and/or its equipment.

(D) The Private Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Private Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Private Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(v) Indemnification: The Private Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Private Caterer, or its agents, employees subcontractors or anyone for whom Private Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(vi) Record Keeping and Audit Rights: The Private Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Private Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vii) Equal Opportunity: No Private Caterer shall unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(viii) Taxes: The Private Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Private Caterer, including taxes levied or incurred against Private Caterer's income, inventory, property, sales, or other taxes.

(ix) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(x) Payment and Performance Evidence: The Private Caterer shall provide evidence of financial responsibility as may be required as a condition of the waiver, which demonstrates the Private Caterer's ability to perform the services contemplated by the waiver request. Such evidence of financial strength as further specified as part of the waiver approval process may be in the form of a performance bond, letter of credit, financial statements or other form which is reasonably acceptable to the Board. Additionally, the Private Caterer shall post a \$10,000 cash bond or letter of credit in

an amount specified in the waiver approval process, in a form approved by the Attorney General's Office, payable to the Board which the Board (or financial institution for a letter of credit) shall hold for a 90 day period from the date of the catering service in an interest bearing account. At the end of the 90 day period, the remaining funds in that account shall be returned to the private cater provider. During the term of the account, these funds may be used by the Executive Director to repair any damage to the Capitol Hill Complex caused by the Private Caterer or anyone for whom the Private Caterer is liable. If the amount of the bond or letter of credit is insufficient to cover such damage(s), then the Private Caterer either directly or through its insurance provider shall promptly pay the excess amount needed to cover the cost of the Board to repair the damage. The use of these funds shall be at the reasonable discretion of the executive director with advance written notice provided to the private caterer.

(xi) Certification. The Private Caterer shall certify that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in providing the catering services of the subject waiver request, by any governmental department or agency. If the Private Caterer cannot certify this statement, the Private Caterer shall attach a written explanation for review by the Selection Committee. The Private Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(xii) Comply with Facility Use Rules. The Private Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Private Caterer has not complied with a rule enacted by the Board, the Private Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xiii) Inspection. The Board or the Executive Director reserves the right to inspect the Private Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xiv) Energy. The Private Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xv) Food Handlers Permits. All of the Private Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xvi) Financial Arrangements. The Board shall receive an amount per person served by the Private Caterer as described in the Board's adopted fee schedule. The payment of this amount per person shall apply even if the catered event is donated in whole or in part. These funds shall be used to subsidize, when subsidization is necessary, the Preferred Caterer.

(xvii) The Private Caterer must have a locally grown food quality assurance program similar to that required of the Preferred Caterer, which covers the food or products that are not provided by nationally recognized vendors. This quality assurance program shall set minimum standards for locally grown or produced goods and services similarly to that required by the Preferred Caterer.

(xviii) Fees associated with catering services shall be the responsibility of the Applicant and cannot be waived.

(xix) Security.

(A) The Private Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee can not be waived.

(C) Fees associated with catering services, including the Preferred Caterer or any Private Caterer shall be the responsibility of the Applicant.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state or other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulleting boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) ~~Exemptions and~~ Waivers.

~~(a)~~ The Budget Development and Board Operations Subcommittee ~~[executive director]~~ may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. The Subcommittee may also waive the requirements of the use of the Preferred Caterer, upon a finding that the catering service requested cannot be reasonably accommodated by the Preferred Caterer. Any approved waiver must still require compliance with all other provisions of this Rule. Notwithstanding any provision of this Rule, provisions of this Rule which impose requirements upon a Private Caterer may not be waived. The waiver request must be submitted in writing to the Executive Director, for consideration by the Subcommittee at its next regularly scheduled meeting, and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the Subcommittee to assure the appropriate protection of facilities, grounds and persons. An appeal to the Board of a denial or the conditions of a request for such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.(1) ~~Use~~ Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. ~~(a)~~ Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall ~~may~~ be charged a ~~fee~~ rental of the space fee as specified on the Board's fee schedule. ~~[A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. Additionally, fees may be assessed for technology assistance, use of state equipment, recording, security, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, employee recognition events and holiday parties. There are no fees for free speech activities, but costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees.]~~

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Private Caterer fee. At any time a Private Caterer is used on the Capitol Hill Complex in accordance with this Rule, the applicant shall pay a fee based upon the number of people at the event. This fee shall be determined by the Board and shall be listed on the Board's fee schedule.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

(2) Waiver.

~~(a) Costs and fees shall be waived for state sponsored activities. However, state agencies will be required to pay the costs and fees identified in the Schedule of Costs and Fees when the activity is not required for the conducting of state business, such as after hour social events, employee recognition events, and holiday parties. Costs and fees will not be waived for commercial, private and solicitation activities.]~~

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall

forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.~~[for use by elected officials. Food service in the Gold Room shall be only through the Board's on site food service provider. Furniture in the Gold Room shall be gently used and protected and none of the furniture shall be moved or relocated in the room, except as approved by the executive director.]~~

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities,~~[and full kitchen facilities. Kitchen use includes electric stove, oven, refrigerator, double sinks, and work counter.]~~

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.~~[Intent to display, prepare, or consume food shall be communicated to the executive director on the Facility Use Application prior to issuance of the permit. Users shall treat the equipment with the utmost care and leave the equipment in its original condition after use.]~~

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

KEY: public buildings, facilities use

Date of Enactment or Last Substantive Amendment: ~~[December 13, 2006]~~2009

Notice of Continuation: February 16, 2005

Authorizing, and Implemented or Interpreted Law: 63C-9-101 et seq.



Environmental Quality, Water Quality **R317-1-9** Electronic Submissions and Electronic Signatures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32341

FILED: 01/29/2009, 16:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to allow for an additional option for Utah Pollutant Discharge Elimination System (UPDES) permittees to submit the monthly Discharge Monitoring Reports (DMR). The additional option will allow for electronic submission of the DMR using EPA's NetDMR program.

SUMMARY OF THE RULE OR CHANGE: The rule change allows UPDES permittees to submit the DMRs electronically through EPA's NetDMR program, providing they meet the provisions that are being added to this rule, which is complete a subscriber agreement in which all requirements from EPA's Cross -- Media Electronic Reporting Regulation (CROMERR) are met. The change outlines how long the subscriber agreement is valid. The change also includes a certification statement that will need to be agreed to before submission of any DMR through EPA's NetDMR program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The change will allow for an additional method of DMR submission for UPDES permittees. The submission of DMR's electronically through EPA's NetDMR program is voluntary. Depending on the number of UPDES permittees that take advantage of the rule changes, the Division of Water Quality could save hundreds of man-hours every year from not having to manually input the data.

❖ **LOCAL GOVERNMENTS:** The electronic filing provisions of the rule are voluntary. Local governments which are UPDES permittees could take advantages of the electronic submission of DMRs, which would reduce the amount of paper used and save on postage. No costs to local governments are anticipated.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The electronic filing provisions of the rule are voluntary. Businesses which are UPDES permittees could take advantages of the electronic submission of DMRs, which would reduce the amount of paper used and save on postage. No costs to other persons or businesses are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The electronic submission of DMRs is voluntary, and no compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The UPDES permittee could realize a savings from not using paper or postage, which is needed for current DMR submittal, and could realize a time savings by adopting the the electronic submission of DMRs. William J. Sinclair, Acting Executive Director

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

ENVIRONMENTAL QUALITY
WATER QUALITY
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:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2009

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-1. Definitions and General Requirements.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Executive Secretary to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

KEY: water pollution, waste disposal, industrial waste, effluent standards

Date of Enactment or Last Substantive Amendment: ~~February 4, 2008~~ 2009

Notice of Continuation: October 2, 2007

Authorizing, and Implemented or Interpreted Law: 19-5



Environmental Quality, Water Quality **R317-3-1** Technical and Procedural Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32342

FILED: 01/29/2009, 16:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed revisions to Section R317-3-1 establish the operating permit program in response to H.B. 222 (2008 General Session) amending the powers and duties of the Water Quality Board to include the authority to issue operating permits for wastewater treatment works (Section 19-5-104). (DAR NOTE: H.B. 222 (2008) is found at Chapter 336, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The changes define scope and information required for coverage under a new operating permit program and establishes a deadline for submitting this information. Most wastewater systems in Utah are currently permitted by one of four programs: 1) Ground Water Quality Protection; 2) Underground Injection Control (UIC); 3) Utah Pollutant Discharge Elimination System (UPDES); or 4) Permits for a Water Reuse Project. Only underground wastewater systems are currently exempted from permitting, along with approximately 87 other wastewater facilities that are not classified as underground wastewater systems. The proposed amendment captures these 87 wastewater facilities under an operating permit.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-5-104 and 19-5-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated impacts to the state budget. The proposed change will be implemented using existing resources.

❖ LOCAL GOVERNMENTS: Most of the 87 wastewater facilities addressed by this rule are operated by local governments. Local governments which operate one of the wastewater facilities required to obtain an operating permit under this rule may incur some additional monitoring and costs. Such costs vary from facility to facility, but are estimated at approximately

\$200 per facility per year. The operating permit may slightly increase a facility's administrative burden, however the Division anticipates that these requirements can be addressed using existing resources.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Most of the 87 wastewater facilities addressed by this change are operated by local governments. However, small businesses or other persons which operate one of the wastewater facilities required to obtain an operating permit under this rule may incur some additional monitoring and costs. Such costs vary from facility to facility, but are estimated at approximately \$200 per facility per year. The operating permit may slightly increase a facility's administrative burden, however the Division anticipates that these requirements can be addressed using existing resources.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will vary from facility to facility but are estimated at approximately \$200 per year. The operating permit may slightly increase a facility's administrative burden, however the Division anticipates that these requirements can be addressed using existing resources.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Most of the 87 wastewater facilities addressed by this change are operated by local governments. However, businesses which operate one of the wastewater facilities required to obtain an operating permit under this rule may incur some additional monitoring and costs. Such costs vary from facility to facility, but are estimated at approximately \$200 per facility per year. The operating permit may slightly increase a facility's administrative burden, however the Division anticipates that these requirements can be addressed using existing resources. William Sinclair, Acting Executive Director

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

ENVIRONMENTAL QUALITY
WATER QUALITY
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:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@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 03/17/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/06/2009 at 9:45 AM, Dixie Center, Ballroom C/D, St George, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2009

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems.

R317-3-1. Technical and Procedural Requirements.

1.1. Scope of This Rule

A. General. This rule is intended to aid the logical development, from feasibility study, ~~to~~ through startup, to operation of a wastewater collection, treatment and disposal project.

B. Authority. Construction and operating permits and approvals are issued pursuant to the provisions of Sections 19-5-104, 19-5-107 and 19-5-108. Violation of ~~construction~~ these permit(s) or approval(s) including compliance with the conditions thereof, or beginning of construction, or modification without the executive secretary's approval, is subject to the penalties provided in Section 19-5-115.

C. Applicability

1. This rule applies to:

- a. communities, sewerage agencies, industries, and federal or state agencies (hereinafter referred to as the applicant), and
- b. i. construction, installation, modification or operation of any treatment works or part thereof or any extension or addition thereto, or
- ii. construction, installation, modification or operation of any establishment or any extension or modification or addition to it, the operation of which would probably result in a discharge.

2. The applicant must not advertise the project for bids and must not begin construction without receiving a construction permit.

D. Requirements

1. The design requirements in this rule are for collection, treatment and disposal of wastewater largely originating from domestic sources. These criteria are intended to be limiting values for items upon which an evaluation of such plans and specifications will be made and to establish, as far as practicable, uniformity of practice. This rule also provides for a mechanism to apply water pollution control research and recommendations for further evaluation by the design engineer.

2. Communities, and the engineering profession should discuss with the staff of the executive secretary possible combinations of wastewater treatment and disposal processes or situations not covered in detail by this rule.

E. Construction Permit and Approvals

1. When a Permit or an Approval is Issued. A construction permit or an approval is issued when the applicant has met all requirements of this rule, including any additional requirements of funding programs administered by the executive secretary. The applicant or the designee or the consultant should meet with the staff of the executive secretary to discuss the plan of study before undertaking extensive engineering studies for construction of treatment works. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

2. Variance. The executive secretary may grant a variance from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice. The applicant must submit pertinent and relevant material in support of a variance from the minimum requirements.

3. Limitations

a. The issuance of a construction permit does not relieve in any way the applicant of the obligation to obtain other approvals and permits, i.e., ground water discharge permit, clearances etc., from other agencies which may have jurisdiction over the project.

b. The permit will expire at the end of one year from the date of issuance if the approved project is not under substantial construction. Plans and specifications must be resubmitted for review and reissuance of the expired permit.

F. Operating Permits

1. Scope

Permits are issued to any wastewater treatment works covered under R317-3 with the following exceptions:

a. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

b. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

c. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

d. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

2. Facilities requiring operating permits that treat domestic waste will typically be issued a general permit rather than individual permits. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-5 and R317-8-6. General permits shall be effective for a fixed term not to exceed 5 years.

3. Facilities requiring operating permits that treat non-domestic waste will be issued individual permits. Individual permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of R317-8-5 and R317-8-6. Individual permits shall be effective for a fixed term not to exceed 5 years.

4. Application requirements.

a. Facilities currently in operation shall submit to the Executive Secretary a written notice of intent to be covered by the general permit or by an individual permit no later than January 1, 2010. New facilities must submit a written notice of intent prior to commencing operation. A facility that fails to submit a notice of intent in accordance with the terms of the permit is not authorized to operate.

b. The notice of intent shall include:

i. the legal name and address of the owner.

ii. the facility name and address.

iii. design flow, actual flow, and type of waste treated.

iv. disposal method, effluent quality (if applicable).

v. location of nearest public drinking water well.

vi. diagram of system showing major components.

5. Requirements for recording and reporting monitoring results. All permits shall specify:

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, (including biological monitoring methods when appropriate);

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

c. Reporting shall be monthly in accordance with R317-1-2.4.

[F]G. Definitions

1. The annual average daily rate of flow is defined as:

a. an average of daily rates of flow over a period of not less than one year; or

b. the rate of flow equal to or greater than 50 percent of the daily flow rate data.

2. The average design rate of flow or the average peak-monthly rate of flow is defined as:

a. a moving average of daily rates of flow over a thirty consecutive days; or over a period of month whichever produces a higher rate of flow; or

b. the rate of flow equal to or greater than 92 percent of the daily flow rate data.

3. The maximum design rate of flow or peak-daily rate of flow is defined as:

a. the maximum rates of flow over a 24 hour period; or

b. the rate of flow equal to or greater than 99.7 percent of the daily flow data.

4. The peak design rate of flow or peak-hourly rate of flow is defined as:

a. the maximum rate of flow over a 60-minute period; or

b. the rate of flow equal to or greater than 99.9 percent of the daily flow data.

5. The minimum daily rate of flow is defined as the minimum rate of flow over a twenty-four hour period.

6. Industrial waste flow is defined as the maximum rate of flow for each of industries tributary to the sewer system.

7. Other Definitions. Other definition of terms and their use in this rule is intended to be in accordance with:

a. R317-1 (Definitions and General Requirements), and

b. Glossary - Water and Wastewater Control Engineering, jointly prepared by American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and Water Pollution Control Federation (WPCF).

8. Units of Expression The units of expression used are in accordance with those recommended in WPCF Manual of Practice Number 6, Units of Expression for Wastewater Treatment.

9. Terms

a. The term shall is used where practice is standardized to permit specific delineation of requirements or where safeguarding of the public health or protection of water quality justifies such definite action.

b. Other terms, such as should, recommended, preferred, indicate desirable procedures or methods, with deviations subject to individual consideration and justification, but not overriding safeguarding of public health or protection of water quality or engineering practice.

c. Desirable procedures or methods may be mandatory requirements for projects using state or federal funds.

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KEY: wastewater, water quality, water pollution
Date of Enactment or Last Substantive Amendment: [February 4, 2008]2009
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503



Environmental Quality, Water Quality
R317-8
 Utah Pollutant Discharge Elimination
 System

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 32340
 FILED: 01/29/2009, 16:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to allow for an additional option for Utah Pollutant Discharge Elimination System (UPDES) permittees to submit the monthly Discharge Monitoring Reports (DMR). The additional option will allow for electronic submission of the DMR using EPA's NetDMR program.

SUMMARY OF THE RULE OR CHANGE: The rule change in Sections R317-8-3 and R317-8-4 adds language allowing UPDES permittees to submit DMRs electronically through EPA's NetDMR program if a subscriber agreement is in place.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The change will allow for an additional method of DMR submission by UPDES permittees. The submission of DMR's electronically through EPA's NetDMR program is voluntary. Depending on the number of UPDES permittees that take advantage of the rule changes, the Division of Water Quality could save hundreds of man-hours every year from not having to manually input the data.

❖ **LOCAL GOVERNMENTS:** The electronic filing provisions of the proposed rule are voluntary. Local government which are UPDES permittees could take advantage of the electronic submission of DMRs, which would reduce the amount of paper used and save on postage. No costs to local governments are anticipated.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The electronic filing provisions of the proposed rule are voluntary. Local businesses which are UPDES permittees could take advantages of the electronic submission of DMRs, which would reduce the amount of paper used and save on postage. No cost to other persons or businesses are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The electronic submission of DMRs is voluntary, and no compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The UPDES permittee could realize a savings from not using paper or postage, which is needed for current DMR submittal, and could realize a time savings by adopting the the electronic submission of DMRs. William J. Sinclair, Acting Executive Director

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

ENVIRONMENTAL QUALITY
 WATER QUALITY
 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:

Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/02/2009

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-3. Application Requirements.

3.4 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports. All reports required by permits and other information requested by the Executive Secretary under R317-8-3.9(3) shall be signed by a person described in subsection (1), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section:

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and

(c) The written authorization is submitted to the Executive Secretary.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section must be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(5) Discharge Monitoring Reports and related information may be signed and submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

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R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS.

The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

(1) Duty to Comply.

(a) General requirement. The permittee must comply with all conditions of the UPDES permit. Any permit noncompliance is a violation of the Utah Water Quality Act, as amended and is grounds for enforcement action; permit termination, revocation and reissuance or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions for toxic pollutants and with standards for sewage sludge use or disposal established by the State within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement (40 CFR, 129).

2. The Utah Water Quality Act, in 19-5-115, provides that any person who violates the Act, or any permit, rule, or order adopted under it is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or with gross negligence violates

the Act, or any permit, rule or order adopted under it is subject to a fine of not more than \$25,000 per day of violation. Any person convicted under 19-5-115 a second time shall be punished by a fine not exceeding \$50,000 per day.

(2) Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required in R317-8-3.1.

(3) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. (Upon reduction, loss, or failure of the treatment facility, the permittee, to the extent necessary to maintain compliance with the permit, shall control production of all discharges until the facility is restored or an alternative method of treatment is provided.)

(4) Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the UPDES permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property Rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to Provide Information. The permittee shall furnish to the Executive Secretary, within a reasonable time, any information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary, upon request, copies of records required to be kept by the permit.

(9) Inspection and Entry. The permittee shall allow the Executive Secretary, or an authorized representative, including an authorized contractor acting as a representative of the Executive Secretary) upon the presentation of credentials and other documents as may be required by law to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times for the purposes of assuring UPDES program compliance or as otherwise authorized by the Utah Water Quality Act any substances or parameters, or practices at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary at any time. Records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, shall be retained for a period of at least five years or longer as required by State promulgated standards for sewage sludge use and disposal.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) and times analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR 136 or in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use or disposal, unless other test procedures, approved by EPA under 40 CFR 136, have been specified in the permit.

(e) Section 19-5-115(3) of the Utah Water Quality Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be punished by a fine not exceeding \$10,000 or imprisonment for not more than six months or by both.

(11) Signatory Requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified as indicated in R317-8-3.4. The Utah Water Quality Act provides that any person who knowingly makes any false statements, representations, or certifications in any record or other document submitted or required to be maintained under the permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or by both.

(12) Reporting Requirements.

(a) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in R317-8-8; or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit nor to notification requirements under R317-8-4.1(15).
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the

permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated Noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification on and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Utah Water Quality Act, as amended. (In some cases, modification, revocation and reissuance is mandatory.)

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in the permit. Monitoring results shall be reported as follows:

1. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Executive Secretary for reporting results of monitoring of sludge use or disposal practices. Monitoring results may also be submitted electronically to the EPA's NetDMR program, if a Subscriber Agreement is in place. See Utah Admin. Code R317-1-9.

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or the in the case of sludge use or disposal, approved under 40 CFR 136 unless otherwise specified in State standards for sludge use and disposal, or as specified in the permit according to procedures approved by EPA, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Executive Secretary.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

(e) Compliance Schedules. Reports of compliance or noncompliance with, or any progress report on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than fourteen days following each scheduled date.

(f) Twenty-Four Hour Reporting. The permittee shall (orally) report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four hours from the time the permittee becomes aware of the circumstances. (The report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance.) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within twenty-four hours.) The following shall be included as events which must be reported within twenty-four hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in R317-8-4.1(13).
2. Any upset which exceeds any effluent limitation in the permit.
3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Executive Secretary in the permit to be reported within twenty-four hours, as indicated in R317-8-4.2(7). The Executive Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(g) Other NonCompliance. The permittee shall report all instances of noncompliance not reported under R317-8-4.1(12)(d), (e), and (f) at the time monitoring reports are submitted. The reports shall contain the information listed in R317-8-4.1(12)(f).

(h) Other Information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in its permit application or in any report to the Executive Secretary, it shall promptly submit such facts or information.

(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c) or (d).

(c) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)(d).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)(c) a, b, and c.

(d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, if the permittee knows in advance of the need for a bypass, it shall submit prior notice, at least 90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Executive Secretary:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Executive Secretary in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the Executive Secretary.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the Executive Secretary, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Executive Secretary the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Executive Secretary as required in R317-8-4.1(12)(f). The permittee shall also immediately notify the Director of the Department of Natural Resources, the public and downstream users and shall implement measures to minimize impacts to public health and the environment to the extent practicable.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional Conditions Applicable to Specified Categories of UPDES Permits. The following conditions, in addition to others set forth in these regulations apply to all UPDES permits within the categories specified below:

(a) Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under R317-8-4.1(12), (13), and (14), any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the Executive Secretary as soon as it knows or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(7) or (10).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

2. That any activity has occurred or will occur which would result in any discharge on a non-routine or infrequent basis of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 ug/l).

b. One milligram per liter (1 mg/l) for antimony.

c. Ten times the maximum concentration value reported for that pollutant in the permit application in accordance with R317-8-3.5(9).

d. The level established by the Executive Secretary in accordance with R317-8-4.2(6).

(b) POTWs. POTWs shall provide adequate notice to the Executive Secretary of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the UPDES regulations if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW; and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been determined by the Executive Secretary under R317-8-3.9(1)(a)5 of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;

2. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with R317-8-3.9(3)(b)3; and

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under R317-8-3.9(3)(b)4 and 3.9(3)(b)5;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs;

7. Identification of water quality improvements or degradation.

(d) Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include:

1. Requirements to develop and implement a Comprehensive Nutrient Management Plan (CNMP). At a minimum, a CNMP must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Operations defined as CAFOs before (insert rule effective date here) and permitted prior to December 31, 2006 must have their CNMPs developed and

implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 and all operations defined as CAFOs after (insert rule effective date here) must have a CNMP developed and implemented upon the date of permit coverage. The CNMP must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with waters of the United States;

e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater;

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs (d)(1)a. through (d)(1)h. of this section; and

j. Include documentation that the CNMP was prepared or approved by a certified nutrient management planner.

2. Recordkeeping requirements.

a. The permittee must create, maintain for five years, and make available to the Director, upon request, the following records:

(i) All applicable records identified pursuant paragraph (d)(1)i. of this section;

(ii) In addition, all CAFOs subject to 40 CFR part 412 must comply with record keeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).

b. A copy of the CAFO's site-specific CNMP must be maintained on site and made available to the Director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 CFR part 412. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/ gallons);
- d. Total number of acres for land application covered by the CNMP developed in accordance with paragraph (d)(1) of this section;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and
- g. A statement that the current version of the CAFO's CNMP was developed or approved by a certified nutrient management planner.

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KEY: water pollution, discharge permits
Date of Enactment or Last Substantive Amendment: ~~September 10, 2008~~2009
Notice of Continuation: October 4, 2007
Authorizing, and Implemented or Interpreted Law: 19-5; 19-5-104; 40 CFR 503



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-1-5** Incorporations by Reference

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE No.: 32329
 FILED: 01/27/2009, 14:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services. This change, therefore, incorporates the most current Medicaid State Plan by reference. It also implements by rule ongoing Medicaid policy for services described in the Utah Medicaid Provider Manual, Medical Supplies Manual and List, and policy described in the hospital services provider manual. It further incorporates these manuals by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference effective 04/01/2009. It also incorporates State Plan Amendments that become effective no later than 04/01/2009. The change further incorporates by reference the Medical Supplies Manual and List and the hospital services provider manual, effective 04/01/2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Medicaid State Plan, 04/01/2009; Utah Medicaid Provider Manual, Medical Supplies Manual and List, 04/01/2009; and Hospital Services Provider Manual, 04/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to the Department or other state agencies.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to local government.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no budget impact to other persons and small businesses because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to small businesses or other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to any single entity or person because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the Medical Supplies Manual and List and in the hospital services provider manual does not create costs or savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the State Plan by this rule assures that the Medicaid program is implemented through administrative rule. 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

(1) The Department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective ~~January~~ April 1, 2009. It also incorporates by reference State Plan Amendments that become effective no later than ~~January~~ April 1, 2009.

(2) The Department adopts the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, ~~January~~ April 1, 2009, as applied in Rule R414-70.

(3) The Department adopts the Hospital Services Provider Manual, effective April 1, 2009.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~January 1,~~ 2009

Notice of Continuation: April 16, 2007

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

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**Health, Health Care Financing,
 Coverage and Reimbursement Policy**

R414-54-3

Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32326

FILED: 01/27/2009, 09:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Speech-Language Pathology Services Provider Manual, effective 04/01/2009.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Speech-Language Pathology Services Provider Manual, effective 04/01/2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Speech-Language Pathology Services Provider Manual, effective 04/01/2009

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create costs or savings to the Department or other state agencies.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide speech-language pathology services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no budget impact because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create costs or savings to other persons and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Speech-Language Pathology Services Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule. 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-3. Services.**

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Pathology Services Provider Manual, effective [January]April 1, 2009, which is incorporated by reference.

(3) The Speech-Language Pathology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

KEY: Medicaid, speech-language pathology services

Date of Enactment or Last Substantive Amendment: [~~October 2, 2008~~]2009

Notice of Continuation: March 23, 2004

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



Health, Health Care Financing, Coverage and Reimbursement Policy

R414-59-4

Client Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32327

FILED: 01/27/2009, 09:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference the Audiology Provider Manual, effective 04/01/2009.

SUMMARY OF THE RULE OR CHANGE: This change incorporates by reference the Audiology Provider Manual, effective 04/01/2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Audiology Provider Manual, effective 04/01/2009

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create costs or savings to the Department or other state agencies.

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide audiology services to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no budget impact because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create costs or savings to other persons and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the incorporation of ongoing Medicaid policy described in the Audiology Provider Manual does not create additional costs to a Medicaid client or a loss of revenue to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of this section of the Provider Manual by this rule assures that the Medicaid program is implemented through administrative rule. 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-59. Audiology-Hearing Services.

R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Provider Manual, effective [January]April 1, 2009, which is incorporated by reference.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Provider Manual and obtain prior approval if required.

KEY: Medicaid, audiology**Date of Enactment or Last Substantive Amendment:** [~~October 2, 2008~~2009]**Notice of Continuation:** November 22, 2005**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

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Natural Resources, Geological Survey R638-2 Renewable Energy Systems Tax Credits

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32331
FILED: 01/28/2009, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The need for rule changes was determined through communications with taxpayers, licensed solar and geothermal contractors, state inspectors, and other industry professionals. Once the proposed rule changes were written, they were submitted to the Utah State Tax Commission, the Director of Utah Geological Survey (UGS), and the UGS Board for review and approval.

SUMMARY OF THE RULE OR CHANGE: The main points of the rule changes are as follows: 1) add language to include direct use geo-exchange technology as an eligible technology, and recognize the certification systems employed and certified by the Air Conditioning Heating and Refrigeration Institute (AHRI); 2) extend the solar array orientation limit of within 15 degrees of true south. Orientation restrictions have become an issue for residents that have east-and-west-facing rooftops. The State Energy Program (SEP) recommends that west-facing rooftops be included as they follow peak demand of load more closely than south-facing rooftops. In addition, east-facing roofs with a low-angle pitch (less than 30 degrees should also be allowed; 3) allow custom sized solar thermal systems, which are not found on standard industry rating lists, e.g., Solar Rating Certification Corporation (SRCC). Because these systems are large and custom made, they are not able to undergo the same certification process that standard solar hot water systems are. Each system is subject to a SEP analysis of efficiency on a case-by-case basis for custom-sized systems; and 4) increase amount allowed for reasonable cost of small wind turbine generators from \$5 to \$8 per watt based on available technologies and industry standards. Market trends suggest that the majority of many small wind systems are in the \$6 to \$8 per watt range.

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:** The anticipated impacts to the state budget are minimal. Based on past renewable energy tax credit records, the SEP anticipates that these rule changes may result in a few more tax credits being approved yearly. The fiscal impact for these newly accepted systems is unknown, though they are anticipated to be marginal. Renewable Energy Systems Tax Credits are processed and administered by the UGS. Rule changes are not expected to substantially increase the workload of the UGS in the processing of tax credit applications.

❖ **LOCAL GOVERNMENTS:** Local governments are not affected by the operation of the Renewable Energy Systems Tax Credit. Local governments are minimally involved, nor required to participate, in the process of the tax credit.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The fiscal impact for these newly accepted systems is unknown, though they are anticipated to be marginal. Some businesses may see a positive impact via increased business opportunities due to the inclusion of new technologies and more flexible design and reasonable cost criteria of technology.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will not change for applicants because the basic nature of the Renewable Energy Tax Credit law remains unchanged.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the proposed rule amendments for rule R638-2 and concur with UGS's analysis that there some businesses may see a positive impact via increased business opportunities due to the inclusion of new technologies and more flexible design and reasonable cost criteria of technology. 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:

Jason Berry at the above address, by phone at 801-538-5413, by FAX at 801-538-4795, or by Internet E-mail at jasonberry@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Michael R Styler, Executive Director

R638. Natural Resources, Geological Survey.**R638-2. Renewable Energy Systems Tax Credits.****R638-2-2. Authority.**

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the UGS and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the UGS is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the UGS may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the UGS may also establish rules defining the reasonable costs of a system.

R638-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

- a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;
- b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and
- c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

- a. material from a plant or tree; or
- b. other organic matter that is available on a renewable basis, including:
 - i. slash and brush from forests and woodlands;
 - ii. animal waste;
 - iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;
 - iv. aquatic plants; and
 - v. agricultural products.

2. A biomass system does not include:

- a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants
- b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and
2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, ~~and~~ water source heat pumps using ground water or surface water, and direct geoechange heat pump systems.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10-1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and
2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10-1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7-614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;
2. Biomass except for systems combusting biomass for heat;
3. Direct-use geothermal;
4. Geothermal electricity
5. Geothermal heat pump;
6. Hydroenergy;
7. Passive solar for heating or cooling;
8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

(Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Geological Survey, which is responsible for certifying tax credits specified under this rule.

(Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R638-2-4. Investment Tax Credit Certification Process.

(A) The Utah State Energy Program (USEP), a subdivision of the UGS, is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by USEP to gather information necessary to implement this rule.

(C) USEP will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, USEP reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, USEP may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, USEP finds that a renewable energy system is eligible for a residential or commercial tax credit, USEP will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only USEP may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of USEP's evaluation of an application, USEP will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;
2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or
3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section ~~[63-46b-42]~~[63G-4-301] (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section ~~[63-46b-13]~~[63G-4-302].

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;
2. The tax identification number or numbers of persons seeking a tax credit;
3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit USEP staff to locate the site for on-site verification of the information in the application.
4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H) Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that USEP staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.

2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.

3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow UGS to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

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." The applicant can

demonstrate to USEP that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:

1. Detailed engineering design and performance data that show system performance, or
2. Certification from other recognized National or European solar thermal testing labs.

(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, non-glazed 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 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or
- b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.

3. Fixed, glazed collectors shall be:

- a. 165 degrees and 225 degrees if the fixed pitch is greater than 30 degrees from horizontal, or
- b. 165 degrees and 270 degrees 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 x 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 = $((\$0.15 \times \text{rated output capacity in Btu/day}) - \text{rebates}) \times 0.10$

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 = $((\$0.27 \times \text{rated output capacity in Btu/day}) - \text{rebates}) \times 0.25$

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 = $((\$0.27 \times \text{rated output capacity in Btu/day}) - \text{rebates}) \times 0.10$

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.

R638-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

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

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);
2. Inverter;
3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:

1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:

http://www.consumerenergycenter.org/cgi-bin/eligible_pvmodules.cgi <http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to USEP that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:

1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:

http://www.consumerenergycenter.org/cgi-bin/eligible_inverters.cgi <http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to USEP that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of \$2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the [the]National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:

<http://redc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>);

3. Positioned such that ~~the fixed [modules and/or] solar array[s] azimuth shall be [are]~~ oriented within: ~~[-15 degrees of true south.]~~

a. 165 degrees and 225 degrees if the fixed pitch is greater than 30 degrees from horizontal, or

b. 165 degrees and 270 degrees if the fixed pitch is 30 degrees or less from horizontal.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);
2. A Utah licensed solar photovoltaic contractor (S202);
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or

4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$10 per watt of rated output capacity 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).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$10 \times$ rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$10 \times$ rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$13 per watt of rated output capacity 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).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$13 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$13 \times$ rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$13 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$13 \times$ rated output capacity in watts) - rebates) x 0.10

R638-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

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

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed as eligible under the California Emerging Renewables Program in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_smallwind.cgi; or

2. The applicant can demonstrate to USEP that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program as of calendar year 2007.

(C) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid[]-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:

- a. Buildings;
- b. Utility poles or overhead utility lines;
- c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.

2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:

- a. Trees or other vegetation;
- b. Buildings and other structures;
- c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that SEP can verify appropriate siting. SEP also reserves the right to conduct a site visit to verify appropriate siting.

(F) Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$[5] per watt of rated output capacity 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).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (([5] x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$[5] per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (([5] x rated output capacity in watts) - rebates) x 0.10

R638-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R638-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;
2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or
4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).

5. For direct geotexchange systems, a person designated as a certified designer by an AHRI accredited direct geotexchange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a

plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a provisional well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a geothermal heat pump system is considered to be no higher than \$4,000 per ton of output capacity 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).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$4,000 per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((4,000 x rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$4,000 per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((4,000 x rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds \$4,000 per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling 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.

R638-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to USEP for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;
2. Wind energy systems; or

3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to USEP:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;

3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by USEP staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, USEP staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. USEP may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) USEP will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, USEP will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63G, Chapter 4[66] (Administrative Procedures Act), upon its decision to grant or deny a certification request, USEP will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the

Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R638-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, USEP must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to USEP information regarding the following:

1. The date that the commercial energy system first entered commercial service;

2. The beginning and ending dates of the company's tax year;

3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by USEP.

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to USEP invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. USEP will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, USEP will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;

2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;

3. The number of kilowatts deemed to be valid;

4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) A company claiming a production tax credit must submit the information specified above to USEP on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once USEP has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either USEP or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If USEP denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section ~~[63-46b-42]~~[63G-4-301] (Administrative Procedures Act), request that the decision be reviewed by the USEP manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of UGS, consistent with Section ~~[63-46b-13]~~[63G-4-302].

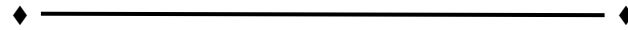
(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC ~~[63-2-304(1)]~~[63G-2-305(1)] and/or UC ~~[63-2-304(2)]~~[63G-2-305(2)] when the applicant provides USEP with a

written claim of confidentiality and a concise statement supporting the claim, consistent with UC ~~[63-2-308-(1)(a)(i)]~~63G-2-309(1)(a)(i). USEP shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar

Date of Enactment or Last Substantive Amendment: ~~[March 10, 2008]~~2009

Authorizing, and Implemented or Interpreted Law: 59-7-614; 59-10-1014; 59-10-1106



Natural Resources, Geological Survey

R638-3

Energy Efficiency Fund

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 32330
FILED: 01/28/2009, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The need for rule changes was determined through marketing the Fund directly to Utah Public School Districts, based upon the barriers they specifically identified. Further prioritization of rule changes was obtained from stakeholder surveys submitted to all 40 public school Superintendents, the membership of Utah Association of School Business Officials and Utah Facilities and Maintenance Organization, and a number of architecture firms identified by the Utah State Office of Education as conducting the majority of school design work. Likewise, the Revised Draft Rule Change has been vetted, discussed, and approved by the Loan Fund Review Committee that was established through the original rule.

SUMMARY OF THE RULE OR CHANGE: The main points of the rule changes are as follows: 1) propose changing eligibility requirements to allow marginally cost-effective proposals to compete for available funding, rather than out-right denying them eligibility; 2) propose changing application deadline to rolling basis; 3) recommend adding requirement of working with State Energy Program (SEP) on pre-application process; 4) suggest streamlining requirements for application materials by removing extensive facility descriptions, and moving all documentation materials to appendices; 5) consider consolidating criteria Review Committee uses to evaluate proposals; 6) suggest simplifying information contained in Review Committee recommendations to the Utah Geological Survey (UGS) Board; 7) recommend adding provision for UGS Board to approve applications through electronic communication; and 8) propose changing distribution of loan funds to accessible escrow account rather than lump sum upon completion.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-20c-102

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no impacts to the state budget, because the Energy Efficiency Loan Fund appropriation was in a previous budget year. Additionally, the financial services provided by State Finance are already paid by a fee assessed to the recipient of the loan as established in the original rules. Likewise, the administration of the loan fund is already within the scope of the SEP, which does not change as a result of these amendments. While there was a change in the oversight of application processes, this additional effort is anticipated to be offset by reduced time spent in technical review of projects that were already evaluated throughout the course of the pre-application process. Fundamentally, many of the amendments are intended to ease the time burden on school district staff preparing applications.

❖ **LOCAL GOVERNMENTS:** Local Governments are not affected by the operation of the Loan Fund. There will not be an impact on local government because the program and the process does not require any interaction or participation of the local government involvement in the application, approval, and deployment of the program.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Other persons will not be impacted by amendments to the Loan Fund rule. Small businesses will not see a fiscal impact because the suggested rule changes will not require any additional time or effort by small businesses during the application, approval, and deployment of the program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will not change for the majority of applicants, because the basic nature of the Loan Fund remains unchanged. In some cases where compliance cost is considered the opportunity cost for school districts making an application with no guarantee of funding, the compliance costs will be reduced because projects that were not previously eligible for funding will now be able to compete for remaining funding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the proposed rule amendments for Rule R638-3 and concur with UGS's analysis that there will not be a fiscal impact on business. 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:

Jason Berry at the above address, by phone at 801-538-5413, by FAX at 801-538-4795, or by Internet E-mail at jasonberry@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Michael R Styler, Executive Director

R638. Natural Resources, Geological Survey.

R638-3. Energy Efficiency Fund.

R638-3-3. Definitions.

- A. "Board" means the Board of the Utah Geological Survey.
- B. "Energy" means, for the purposes of this rule, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by a school district to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.
- C. "Energy cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money and is sometimes referred to as simple payback.
- D. "Energy cost savings" means the monetary value to a school district of the energy that is saved or is not consumed as a result of an energy efficiency project and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.
- E. "Energy efficiency project" means
1. For existing buildings, a retrofit to improve energy efficiency; or
 2. For new buildings, an enhancement to improve energy efficiency beyond the minimum required by the energy code.
 3. It does not mean
 - a. The repair of existing buildings or equipment;
 - b. Projects that save money through the switching of fuels, energy sources, or vendors;
 - c. Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or
 - d. Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.
 - F. "Energy savings" means the [source thermal value (British thermal units or Btu's) of energy] combined value, in British thermal units (Btu's), of all energy sources saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in [converting energy units saved by a project into source Btu's when evaluating loan applications] calculating the total energy savings:
 1. Electricity - One kilowatt hour = 10,495 Btu's.
 2. Natural gas or methane - One therm = 100,000 Btu's.
 3. Natural gas or methane - One cubic foot = 1,030 Btu's.
 4. Fuel oil - One gallon = 138,690 Btu's.
 5. Coal - One pound = 11,580 Btu's.
 6. Propane - One gallon = 91,333 Btu's.
 - G. "Fund" means the Energy Efficiency Fund established by Utah Code Section 53A-20c-102.
 - H. "Utah Energy Code" means the most-recent edition of the International Energy Conservation Code currently in effect within the State of Utah and as incorporated and amended by Utah Rule 156.56 (Utah Uniform Building Standard Act Rules).
 - I. "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

[F]J. "SEP" means the State Energy Program, a subdivision of the Utah Geological Survey, which is required by Utah Code 53A-20c-102 to serve as staff to the revolving loan program associated with the Energy Efficiency Fund.

[F]K. "UGS" means the Utah Geological Survey.

R638-3-4. Eligibility of Projects for Loans.

- A. Eligibility for loans from the Fund is limited to school districts within the state of Utah.
- B. Loans may be used only by school districts to fully or partially finance energy efficiency projects within buildings owned and operated by the school district.
- C. For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures are eligible for loan financing from the Fund:
1. Building ~~[shell improvements]~~ exterior weatherization, air sealing, or thermal efficiency;
 2. Increase or improvement in building insulation;
 3. ~~[Penetration]~~ Door, window, or skylight upgrades;
 4. Lighting technology upgrades, or reduction of the number of fixtures;
 5. ~~[Lighting delamping;~~
 6. ~~—~~ Heating, ventilation, and air conditioning (HVAC) replacements or upgrades;
 6. ~~[7]~~ Improvements to energy control systems;
 7. ~~[8]~~ Other energy efficiency projects that a school district can demonstrate will result in a significant reduction in the consumption of energy within a building.
- D. An energy efficiency project can be eligible as part of a new building construction if the following conditions are met:
1. The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and
 2. The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.
- E. There is no limit to the total number of loans a single school district may receive from the Fund, however, no school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$500,000.
- F. An energy efficiency project is eligible for a loan only if the [energy cost payback of] total amount of funds awarded to the project [is] repaid in a term of more than two and less than twelve years.

R638-3-5. Eligible Costs.

- A. This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.
- B. The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:
1. Building materials;
 2. Doors ~~[and]~~, windows, and skylights;
 3. Mechanical systems and components including HVAC and hot water;
 4. Electrical systems and components including lighting and energy management systems.
 5. Labor necessary for the construction or installation of the energy efficiency project;
 6. Design and planning of the energy efficiency project;
 7. Energy audits that identify measures that are included in the energy efficiency project;

8. ~~[H]~~Commissioning, inspections or certifications necessary for implementing the energy efficiency project.

C. The following costs are not eligible for financing from the Fund:

1. The costs of a construction or renovation project that are not directly related to energy efficiency measures;
2. Costs incurred for the acquisition of financing for the project;
3. Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

D. In cases for which the school district receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the school district for the project after third party financing.

E. For an energy efficiency project undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.

F. For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

R638-3-6. Loan Application Process.

A. The Board shall receive and evaluate applications for loans from the Fund ~~[no fewer than three times per year]~~ on a rolling basis as complete proposals are developed in conjunction with SEP staff. ~~[Notice of due dates for applications will be made available to school districts no less than three months in advance of the next scheduled Board meeting at which applications will be evaluated.]~~

B. School districts interested in applying for a loan should first contact SEP. SEP staff will consult or meet with school district staff to make an initial assessment of the strength or weakness of a proposed project. SEP staff may also choose to conduct a site visit of the proposed project location prior to an application. SEP staff ~~[may assist]~~ shall engage with school districts in a pre-application process evaluating potential project measures and ~~[in]~~ preparing [an] applications. Final applications shall be checked for completeness and eligibility by SEP staff prior to submission to the Board.

C. Applications for loans will be made using forms developed by SEP. Application forms shall require that the following information be provided by the school district:

1. ~~[Name and location of the district]~~ Identification of school district personnel responsible for financial authority and project management;
2. Name and location of the building or buildings where the energy efficiency project will take place;
3. ~~[A description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;~~
4. ~~A description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and their age and condition;~~
5. ~~—~~ A description of the energy efficiency project to be undertaken, including existing conditions, specific measures to be

undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

~~[6]~~ 4. Projected or estimated energy savings that result from each measure undertaken as part of the project;

~~[7]~~ 5. Projected or estimated energy cost savings from each measure undertaken as part of the project;

~~[8. District funds expended per pupil in the district's most recent completed budget year;~~

~~—~~ 9] 6. [A] Appendices providing supplemental information detailing the extent of school district commitment to the project (i.e. special needs, prior investments, existing audit/design documents) or descriptions of any additional community or environmental benefits that may result from the project.

~~[D. Applications shall be received for the Board by the SEP which will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, whether proposed projects, measures, and costs are eligible for loan financing, and to assist the loan applicant in improving its application.~~

~~—~~ E] D. The Board shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee must consist of at least the following:

1. The SEP Manager;
2. An SEP technical specialist chosen by the SEP Manager;
3. The UGS Associate Director;
4. One member of the Board selected by the Board for a two year renewable term;
5. A representative of the Utah Office of Education approved by the Board for a two year renewable term.

Other members may be designated at the discretion of the Board.

~~[F]~~ E. When SEP has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation. ~~[The Review Committee shall provide an opportunity for applicants to make presentations on their projects to the Committee before it has evaluated pending applications.]~~

~~[G]~~ E. The Review Committee will review and discuss the merits of each application in light of ~~[the application provided by the applicant, presentations made by the applicant,]~~ all materials submitted by the school district and technical analysis undertaken by SEP staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:

1. The feasibility and practicality of the project (maximum 30 points);
2. The projected energy cost payback period of the project (maximum 20 points);
3. The energy savings and energy cost savings attributable to the project (maximum ~~[40]~~ 30 points);
4. ~~The energy savings attributable to the project (maximum 20 points);~~
5. ~~The financial need of the district for the loan including its financial condition, expenses per pupil, and the availability of other grants, rebates, or low interest loans for the project (maximum 10 points);~~
6. ~~The environmental and other benefits to the state and local community attributable to the project (maximum 10 points).~~ 4. Any supplemental information contained in the appendices or available to the Review Committee through the Utah State Office of Education (i.e. school district finances and enrollment) (maximum 20 points).

A separate score sheet will be completed by each Review Committee member for each application under consideration.

~~[H]C.~~ The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Board for the funding of energy efficiency projects. For applications that receive an average score of less than 70 points, the Review Committee shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the Review Committee will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.

~~[F]H.~~ The Review Committee provides advice and recommendations to the Board. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

~~[J]I.~~ Based upon the Review Committee's evaluations and recommendations, SEP will prepare a memorandum for the Board that will

1. Provide a brief description of each project reviewed by the Review Committee;

~~[2. List the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;~~

~~3. List the energy savings, energy cost savings, and cost payback for each project as estimated by the SEP technical specialist for the program;~~
2. List estimates of energy savings, energy cost savings and simple paybacks.

~~[4. List the aggregated total score and scores in each evaluation criterion for each application;~~

~~5]3.~~ Specify projects recommended for funding and those not recommended for funding;

~~[6]4.~~ Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.

~~[This memorandum is to be provided to each member of the Board no less than one week prior to the next scheduled Board meeting at which applications will be evaluated.~~

~~[K]J.~~ ~~[At its next scheduled meeting after the Review Committee has met, the Board will consider pending applications for loans from the Fund and will review the Review Committee's recommendations for each project. The Board will then vote on each application. Applications receiving a majority of votes for approval from members that are present will be awarded loans from the Fund.]~~ The Board can approve or deny loans through electronic correspondence if a majority of the quorum is in favor.

~~[L]K.~~ When considering Loan applications, the Board may modify the dollar amount or project scope for ~~[which a loan is awarded]~~ approved projects if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

R638-3-7. Loan Terms.

A. The maximum amount that may be approved by the Board for any single energy efficiency project is \$250,000. The minimum amount that may be approved is \$5,000.

B. No school district may receive a loan that would cause the sum of its outstanding loan balances to exceed \$500,000.

~~C. [The amount of a loan award approved by the Board represents a maximum approved project cost.]~~ The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the school district. In cases where costs have exceeded those presented in the initial application, a school district may request that the Board increase its loan award, subject to the limitations of subsections (A) and (B) above.

D. After approval of a loan application by the Board, a school district has one year in which to complete the energy efficiency project. If at the end of one year a school district is unable to meet this time limitation, it may request an extension from the Board of no more than six additional months.

E. Loan amounts from the Fund will be ~~[disbursed only upon the completion of an energy efficiency project]~~ encumbered in an escrow account for periodic disbursement at the discretion of the school district-appointed project manager (designated in loan application form, see R638-3-6.C1), with invoices of the expenditures documented in each quarterly progress report, and the final 10% withheld pending a determination of substantial completion by SEP.

F. Once a project has been completed, the school district shall provide to SEP documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SEP will use this information to determine the actual cost of the project measures approved by the Board.

G. The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless

1. This amount exceeds \$250,000, in which case the amount of the loan will be set at \$250,000; or

2. This amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

3. This amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the school district.

H. No interest will be charged to school districts receiving loans for energy efficiency projects from the Fund.

I. ~~[A small]~~ An administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts. ~~[The fee will be no less than \$100 and no more than \$200 per year of the loan's term.]~~

J. Loan repayment periods will be set to ~~[be approximately equal to the energy cost payback of each loan]~~ any term desired by the applicant between two and twelve years. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after all of the loan funds have been disbursed.

K. Loan repayments will be due at the beginning of each quarter.

L. ~~[L]Quarterly~~ loan repayment amounts will be calculated as follows:

~~[(Final loan amount + administrative fee) / cost payback period] / 4~~ [(Total loan amount + (annual administrative fee x loan repayment period) / loan repayment period) / 4.

M. School districts that are approved for a loan award will enter into a contract with SEP that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

R638-3-8. Reporting and Site Visits.

A. In the period between Board approval and project completion, the school district shall complete and provide to SEP a report at the beginning of each quarter. The report shall include information on the school district's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, what

proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes in the project since Board approval such as construction delays or cost overruns.

B. If a school district fails to submit the quarterly reports described in subsection (A) above, the Board may freeze the remainder of the loan award escrow account.

~~_____~~ [B]C. After loan funds have been completely disbursed, the school district shall complete and provide to SEP annual reports due at the beginning of the calendar quarter in which the anniversary of the loan ~~[disbursement occurs]~~ repayment period began. This report shall include the following:

1. A description of the performance of the building and of the performance of the measures included in the energy efficiency project;
2. A description of any notable problems that have occurred with the building or the project;

3. A description of any notable changes to the building or to its operations that would cause a significant change in its energy consumption;

~~[4. Copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;~~

~~_____~~ 5]4. Documentation of ~~[energy consumed by the]~~ building energy consumption and cost in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

~~[C]D.~~ If a school[s] district fails to submit the annual reports described in subsection (~~[B]C~~) above, the Board may bar the school district from eligibility for future loans from the Fund

~~[D]E.~~ Approximately one year after project completion, SEP staff will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by SEP staff during the repayment period. Loan recipients will assist SEP with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, schools, loans

Date of Enactment or Last Substantive Amendment: ~~[August 31, 2007]~~ March 24, 2009

Authorizing, and Implemented or Interpreted Law: 53A-20c-102



Natural Resources, Parks and
Recreation
R651-633-2
General Closures or Restrictions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 32339
FILED: 01/29/2009, 12:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to eliminate Subsection R651-633-2(4), Jordan River, as the state no longer owns it. This amendment will also take off unnecessary terms and define others for a clearer understanding of this rule.

SUMMARY OF THE RULE OR CHANGE: Jordan River is no longer a state park and will be removed from this rule; also elimination of "to protect nesting raptors." This is to be consistent with other closures. This amendment also updates areas of the contract requiring additional or new information.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** When the park closed, the operating budget for Jordan River State Park was taken as part of the budget cut. The operating budget was \$120,000.

❖ **LOCAL GOVERNMENTS:** There will be no aggregate cost or savings to local government, since this is entered to update information for state parks.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** No businesses will be affected as there is nothing changing other than taking out what is necessary to make this rule information updated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or compliance costs as there are no persons affected by this change. It is to update this rule to comply with accurate information for State Parks.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses. Michael R. 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Mark Forbes, Deputy Director (Legislation)

R651. Natural Resources, Parks and Recreation.

R651-633. Special Closures or Restrictions.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

~~[(4) Jordan River State Park - Possession or consumption of any alcoholic beverage is prohibited;~~

~~—(5)](4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;~~

~~[(6)](5) Palisade State Park - Cliff diving is prohibited;~~

~~[(7)](6) Red Fleet State Park - Cliff diving/jumping is prohibited;~~
and

~~[(8)](7) Snow Canyon State Park -~~

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March 15 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March 15 to October 31 by permit or guided walk, the canyon is open from November 1 to March 14.

(d) Black Rocks Canyon is closed annually from March 15 to June 30,

(e) West Canyon climbing routes are closed annually from February 1 to June 1~~[to protect nesting raptors].~~

(f) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

(g) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks

Date of Enactment or Last Substantive Amendment: ~~[August 21, 2006]~~**March 24, 2009**

Notice of Continuation: October 30, 2008

Authorizing, and Implemented or Interpreted Law: 63-11-17~~[(2)(b)]~~



Natural Resources, Parks and Recreation

R651-636

Procedures for Application to Receive Funds From the Zion National Park Restricted Account

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 32338

FILED: 01/29/2009, 12:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to put into rule the provisions of H.B. 348 (2008 General Session) that authorizes a Zion National Park special group license plate. This creates a Zion National Park special group license plate for Zion National Park support programs through the Division of State Parks and Recreation. The bill grants the Division of State Parks and Recreation rulemaking authority to make rules establishing a procedure for an organization to apply for funds in the Zion National Park Support Programs Restricted Account. (DAR NOTE: H.B. 348 (2008) is found at Chapter 201, Laws of Utah 2008, and was effective 10/01/2008.)

SUMMARY OF THE RULE OR CHANGE: H.B. 348 took effect 10/1/2008. Because Utah State Parks and Recreation is involved with this bill and the support programs through the division, a rule is being established that will define the process and procedures for the public.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: An annual \$25 donation is made by applicants to the Division of State Parks and Recreation for Zion National Park support programs. This is a new rule, therefore, no amount can be determined at this time.

❖ LOCAL GOVERNMENTS: This is a state involved program with a federal park, therefore, no anticipated cost or savings for local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No effect on small businesses, and applicants will purchase a new license plate for an annual fee of \$25.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance cost as only applicants who choose to have the new Zion National park Special Group License Plate will pay \$25 when they apply for the plate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact by this rule on businesses. Michael R. 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: Mark Forbes, Deputy Director (Legislation)

R651. Natural Resources. Parks and Recreation.
R651-636. Procedures for Application to Receive Funds From the Zion National Park Restricted Account.
R651-636-1. Rulemaking Authority.

UCA, Section 63-11-67(6c), states that in accordance with Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, the division may make rules providing procedures and requirements for an organization to apply to the division to receive a distribution, under Subsection (5).

R651-636-2. Restricted Account.

This rule, as stated in H.B. 348, which enacted 63-11-17 Utah Code Annotated 1953, (2008 General Session), and that supports the Zion National Park Support Programs Restricted Account, provides procedures and process to obtain a special license, and indicates those who may be issued a special group license plate and the categories which apply.

R651-636-3. Application Process.

In order to receive funds from the Zions National Park Restricted Account, an applicant must be listed in a category found in Section 41-1a-422. The division shall receive and distribute voluntary contributions collected under Section 41-1a-422 in accordance with Section 63-11-67.

R651-636-4. Distribution Requests.

All distribution requests shall include the following documentation:

1. A signed and approved Zion National Park Donation Request form.
2. A signed copy of any agreement(s) and/or amendment(s) to agreements with Zions National Park.
3. In conjunction with Zions National Park and the Utah Department of Natural Resources (DNR), an audit review of each project may be requested and performed by DNR or Utah State Parks and Recreation staff.

R651-636-5. Application Review and Approval.

The Division of State Parks and Recreation will review and approve applications for disbursement of funds from the Restricted Account that is set up for receiving donations from those who are granted a Zion National Park Special Group License Plate.

KEY: parks

Date of Enactment or Last Substantive Amendment: March 24, 2009

Authorizing and Implemented or Interpreted Law: 63-11-67; 41-1a-422



Natural Resources, Wildlife Resources
R657-5
 Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32337

FILED: 01/29/2009, 12:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the rule: 1) require an authorization to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season; 2) allow a nonresident to apply for all limited entry and once-in-a-lifetime species; 3) add the requirements for a management buck deer designation; 4) increase youth permit percentage from 15 to 20; 5) allow applicants to obtain a preference point for general season deer if they are unsuccessful on the first hunt choice but successful on hunt choice 2-5; 6) remove the statewide designation during the first two weeks of the general season buck deer archery hunt and require a hunter to choose a region; 7) streamline the process for withdrawing and resubmitting an online hunt application; 8) change the amount of time a hunter has to submit the head of a management bull elk to a division office for inspection; and 9) 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: These amendments can be implemented with relatively few programming changes and thus 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.
- ❖ LOCAL GOVERNMENTS: Since these amendments will impact individual hunters and not the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. 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 amendment allows a nonresident to purchase bonus points for all limited-entry and once-in-a-lifetime big game species and therefore could have the potential to generate a cost or savings impact to them. All other amendments listed would not have the potential to 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 residents. Nonresidents wishing to apply for additional bonus points could see an increased cost to hunt big game in Utah, however since hunting in Utah is a voluntary activity there would be no additional costs for those not wishing to participate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule have a potential to 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

- (a) lawfully harvested big game;
- (b) antlers or horns lawfully obtained as provided in Section R657-5-21; or
- (c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns ~~only at any time.~~ An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) ~~[No permit, license or Certificate or Registration is required]~~ A person must complete a wildlife harassment and habitat

destruction prevention course annually to obtain the required authorization to gather shed antlers ~~and shed horns~~ during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) a person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(2)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

(3) Applications are available through the division's Internet address.

(4) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(5) A nonresident may apply in the big game drawing for the following permits:

(a) ~~only one~~ any of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) ~~only one~~ any once-in-a-lifetime permit.

(6) A resident or nonresident may apply in the big game drawing for:

(a)(i) a ~~statewide~~ general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

(7) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(8)(a) Applications must be submitted online by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9) 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.

(10) 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 Subsections R657-5-27(4).

(11) To apply for a resident permit, a person must be a resident at the time of purchase.

(12) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime[~~and~~], Management Bull Elk, Management Buck Deer Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime[~~and~~], Management Bull Elk, Management Buck Deer Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) People may not apply together for management bull elk permits or management buck deer permits in the big game drawing as provided in R657-5-71(2)(b).

(c) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(d) Up to ten people may apply together for general deer permits in the big game drawing.

(e) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of a group.

(2)(a) Applicants must indicate the hunters in the group by marking the appropriate box on the application form.

(b) If the appropriate box is not marked indicating the hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Residents and nonresidents may apply together.

(4)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(5) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime[~~and~~], Management Bull Elk, Management Buck Deer Drawings, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

~~[(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once In A Lifetime Proclamation of the Wildlife Board for taking big game.]~~

~~[(b)]~~ Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) ~~Fifteen~~ Twenty percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing 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.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime, Management Bull Elk and Management [Bull Elk]Buck Deer Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and Utah hunting or combination license fees are nonrefundable.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck~~[-of]~~, cooperative wildlife management unit buck deer, or management buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck~~[-of]~~, cooperative wildlife management unit buck, or management buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited entry permits in the big ~~[game]~~game drawing or moose in the antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game ~~[of]~~drawing or moose in the antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry, management buck deer, and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry, management bull elk, and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; (iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A ~~[person]~~resident may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, management and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

~~(4)(a) A person~~ A nonresident may apply for a bonus point for:

(a) any of the following species:

(i) buck deer - premium limited entry, limited entry and management unit;

(ii) bull elk - limited entry and management unit; or

(iii) buck pronghorn - limited entry;

(iv) antlerless moose, and

(b) any once-in-a-lifetime.

~~(5)(a) A resident~~ may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A ~~[person]~~resident may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A ~~[person]~~resident may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

~~(d) A person~~ (6)(a) An applicant may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(b) An applicant may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

~~(e)(c) A person~~ An applicant may only apply for bonus points ~~[in]~~during the big game and antlerless ~~[drawings]~~drawing application periods.

~~(f)(d)~~ Group applications will not be accepted when applying for bonus points.

~~(5)(7)(a)~~ Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

~~(6)(8)(a)~~ Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

~~(7)(9)~~ Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

~~(8)(10)~~ Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

~~(9)(11)~~ Bonus points are not transferable.

~~(10)(12)~~ Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(~~11~~12)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-5-37B. Preference Point System.

(1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid unsuccessful application of the first-choice hunt when applying for a general buck deer~~[-]~~ permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, or doe pronghorn permit; or

(~~iii~~iii) each valid application when applying only for a preference point in the big game or antlerless drawing.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.

(4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game and antlerless drawing.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.

(c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer [~~statewide~~] within [~~a~~the general hunt area ~~published~~] specified on the permit for the time specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt by region the [~~statewide~~] general archery, [~~or by region~~] the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the [~~statewide~~] general archery deer season and the extended archery season as provided Section R657-5-38(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the ~~statewide~~ general archery deer season and the extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the

~~statewide~~ general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management buck deer, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

[R657-5-62. Application Withdrawal or Amendment.]R657-5-62. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct applications.

(2)(a) An applicant may withdraw their application [for premium limited entry, limited entry, cooperative wildlife management unit, once in a lifetime and management bull elk, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received]from the permit drawing by the date published in the [Bucks, Bulls and Once In A Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once In A Lifetime]respective [P]proclamation of the Wildlife Board[for taking big game].

(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 big game.

~~—(e)—~~ Handling fees and hunting or combination license fees will not be refunded.

~~(2)(3)(a)~~ An applicant may amend their application for the ~~[premium limited entry, limited entry, cooperative wildlife management unit and once in a lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received]~~ permit drawing by resubmitting an application by the date published in the ~~[Bucks, Bulls and Once In A Lifetime]~~ respective ~~[P]~~ proclamation ~~[or Antlerless Addendum to the Bucks, Bulls and Once In A Lifetime Proclamation]~~ of the Wildlife Board ~~[for taking big game.~~

~~(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 big game.

~~(c)~~ The applicant must identify in their statement the requested amendment to their application.

~~(d)~~ Handling fees will not be refunded.

~~(e)~~ An amendment may cause rejection if the amendment causes an error on the application].

R657-5-71. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management bull elk permits.

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing.

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within ~~72~~48 hours ~~[of leaving]~~ after the ~~[hunting area]~~ date of kill.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

R657-5-73. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management buck deer archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management buck deer permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management buck deer permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management buck deer permits.

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management buck deer permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management buck deer permit in the big game drawing.

(5) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(8) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-48(3).

KEY: wildlife, game laws, big game seasons

Date of Enactment or Last Substantive Amendment: ~~February 7, 2008~~ **2009**

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6



Natural Resources, Wildlife Resources

R657-33-19

Exporting Bear from Utah

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32319

FILED: 01/20/2009, 07:54

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 remove the wording indicating that a valid license be on a person to export a legally taken bear; only a valid permit is required.

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 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: 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-33. Taking Bear.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid ~~license and~~ permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

KEY: wildlife, bear, game laws

Date of Enactment or Last Substantive Change: ~~March 10, 2008~~ **2009**

Notice of Continuation: December 11, 2007

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2



Tax Commission, Auditing
R865-4D-2
Refund Procedures for Undyed Diesel
Fuel Used Off-Highway or to Operate a
Power Take-Off Unit, and Sales Tax
Liability Pursuant to Utah Code Ann.
Sections 59-13-301 and 59-13-304

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32334

FILED: 01/29/2009, 12:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 106 (2008 General Session) imposed a special fuels tax on compressed natural gas (CNG) effective 01/01/2009. (DAR NOTE: H.B. 106 (2008) is found at Chapter 153, Laws of Utah 2008, and was effective 01/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment broadens the section to bring in CNG, since that fuel is subject to a special fuels tax; and includes definition and refund language that was previously in Section R865-4D-24, which is being removed. (DAR NOTE: The proposed amendment to Section R865-4D-24 is under DAR No. 32336 in this issue, February 15, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-13-301 and 59-13-304

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impact was taken into account in H.B. 106 (2008).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impact was taken into account in H.B. 106 (2008).
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any fiscal impact was taken into account in H.B. 106 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Sellers of CNG will now be required to collect a special fuels tax on that fuel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. All possible impacts should have been taken into account in H.B. 106 (2008). 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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-4D. Special Fuel Tax.

R865-4D-2. Refund Procedures for ~~Undyed Diesel~~ Special Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304.

(1)(a) "Off-highway," for purposes of determining whether special fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

(b) "Off-highway" does not include:

(i) a parking lot that the public may use; or

(ii) the curbside of a highway.

[(+)](2) Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating ~~undyed diesel~~ special fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

[(2)](3) Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total ~~undyed diesel~~ special fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

(a) concrete mixer trucks - 20 percent;

(b) garbage trucks with trash compactor - 20 percent;

(c) vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:

(i) 3/4 gallon per 1000 gallons pumped; or

(ii) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.

(d) Any other method of calculating the amount of ~~undyed diesel~~ special fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

[(3)](4) Allowances provided for in Subsections [(+)](2) and [(2)](3) will be recognized only if adequate records are maintained to support the amount claimed.

[(+)](5) In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in

Subsection ~~(2)~~ will be refunded to the extent total gallons allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

~~(5)~~(6) ~~Undyed diesel~~ Special fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

(7) The following documentation must accompany a refund request for special fuel tax paid on special fuel used in a vehicle off-highway:

(a) evidence that clearly indicates that the special fuel was used in a vehicle off-highway;

(b) the specific address of the off-highway use with a detailed description of the off-highway nature of the location;

(c) the amount of time in which the vehicle used the fuel off-highway;

(d) the amount of fuel the vehicle used off-highway; and

(e) the make and model, weight, and miles per gallon of the vehicle used off-highway.

~~(6)~~(8) ~~Diesel~~ Special fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

KEY: taxation, fuel, special fuel

Date of Enactment or Last Substantive Amendment: ~~January 1, 2009~~

Notice of Continuation: February 26, 2007

Authorizing, and Implemented or Interpreted Law: 59-13-301; 59-13-304



Tax Commission, Auditing R865-4D-6

Invoices pursuant to Utah Code Ann.
Sections 59-13-301 and 59-13-313

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32335

FILED: 01/29/2009, 12:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 106 (2008 General Session) imposed a special fuels tax on compressed natural gas (CNG) and repealed the clean special fuel certificate effective 01/01/2009. (DAR NOTE: H.B. 106 (2008) is found at Chapter 153, Laws of Utah 2008, and was effective 01/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that referred to a tax on CNG in the form of a clean special fuel certificate since: 1) CNG is now subject to a special fuels tax; and 2) there is no longer a clean special fuel certificate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-13-301 and 59-13-313

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any fiscal impact was taken into account in H.B. 106 (2008).
- ❖ LOCAL GOVERNMENTS: None--Any fiscal impact was taken into account in H.B. 106 (2008).
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any fiscal impact was taken into account in H.B. 106 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Retailers will no longer need to retain a clean special fuel certificate number.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. 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 clec@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-4D. Special Fuel Tax.

R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;
3. date of sale;
4. name and address of purchaser;
5. fuel type;
6. number of gallons sold;
7. unit number or other vehicle identification if delivered into a motor vehicle;
8. type of container delivered into if not a motor vehicle;
9. invoice number; and
10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

- a) name and address of the retail dealer;
- b) date of sale;
- c) amount of propane sold; and
- d) purchaser's name.

E. A retail dealer that sells propane~~[-, compressed natural gas,]~~ or electricity exempt from sales tax shall retain the following information for each exempt sale:

- 1. the make, year, and license number of the vehicle;
- 2. the name and address of the purchaser; and
- 3. the quantity (e.g., number of gallons) sold~~[-, and~~
- ~~4. the clean special fuel certificate number].~~

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that the dyed diesel fuel will be used for purposes other than to operate a motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

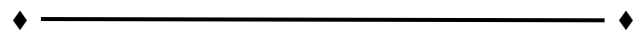
G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

KEY: taxation, fuel, special fuel

Date of Enactment or Last Substantive Amendment: [January 1, 2009

Notice of Continuation: February 26, 2007

Authorizing, and Implemented or Interpreted Law: 59-13-301; 59-13-313



Tax Commission, Auditing
R865-4D-24
Off Highway Use of Undyed Diesel Fuel
Pursuant to Utah Code Ann. Section
59-13-301

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32336

FILED: 01/29/2009, 12:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is removed but the language of the section has been added to Section R865-4D-2 since all of this language should be

together. (DAR NOTE: The proposed amendment to Section R865-4D-2 is under DAR No. 32334 in this issue, February 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This section is removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-13-301 and 59-13-304

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The language of this section has been removed to another section.

❖ LOCAL GOVERNMENTS: None--The language of this section has been removed to another section.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The language of this section has been removed to another section.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The removed language has been inserted into another section.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The removed language has been incorporated into Section R865-4D-2. 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 clec@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 03/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.

R865-4D. Special Fuel Tax.

~~[R865-4D-24. Off Highway Use of Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.~~

~~— A.1. "Off highway," for purposes of determining whether undyed diesel fuel is used in a vehicle off highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.~~

~~— 2. "Off highway" does not include:~~

- ~~— a) a parking lot that the public may use; or~~
- ~~— b) the curbside of a highway.~~

~~— B. The following documentation must accompany a refund request for special fuel tax paid on undyed diesel fuel used in a vehicle off highway:~~

~~— 1. evidence that clearly indicates that the undyed diesel fuel was used in a vehicle off highway;~~

~~— 2. the specific address of the off highway use with a detailed description of the off highway nature of the location;~~

~~— 3. the amount of time in which the vehicle used the fuel off highway;~~

~~— 4. the amount of fuel the vehicle used off highway; and~~

~~— 5. the make and model, weight, and miles per gallon of the vehicle used off highway.~~

]KEY: taxation, fuel, special fuel

Date of Enactment or Last Substantive Amendment: [~~January 1~~], 2009

Notice of Continuation: February 26, 2007

Authorizing, and Implemented or Interpreted Law: 59-13-301

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End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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 Section 63G-3-305.

Administrative Services, Purchasing and General Services

R33-6

Modification and Termination of Contracts for Supplies and Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32344
FILED: 01/29/2009, 17:27

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 63G-6-601 requires contract clauses and provisions covering subjects addressed in Sections R33-6-101 through R33-6-109.

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 Utah Procurement Code continues to require this rule per Section 63G-6-601. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
Room 3150 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:

Nancy Orton or Kent Beers at the above address, by phone at 801-538-3148 or 801-538-3143, by FAX at 801-538-3882 or 801-538-3882, or by Internet E-mail at nancyo@utah.gov or kbeers@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 01/29/2009



Administrative Services, Purchasing and General Services

R33-7

Cost Principles

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32345
FILED: 01/29/2009, 17:39

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 63G-6-415 requires rules and regulations to determine allowable incurred costs covering subjects addressed in Sections R33-7-101 through R33-7-110.

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 Utah Procurement Code continues to require this rule per Section 63G-6-415. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 Room 3150 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:

Kent Beers or Nancy Orton at the above address, by phone at 801-538-3143 or 801-538-3148, by FAX at 801-538-3882 or 801-538-3882, or by Internet E-mail at kbeers@utah.gov or nancyo@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 01/29/2009



Administrative Services, Purchasing
 and General Services

R33-9

Insurance Procurement

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR File No.: 32346
 FILED: 01/29/2009, 17:59

**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 63G-6-401(8) allows for a multi-step bid process when it is impractical to prepare a purchase description to support an award based on price only.

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 is necessary to allow an alternate method to procure Insurance consistent with industry standards per Section 63G-6-401. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 Room 3150 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:

Kent Beers or Nancy Orton at the above address, by phone at 801-538-3143 or 801-538-3148, by FAX at 801-538-3882 or 801-538-3882, or by Internet E-mail at kbeers@utah.gov or nancyo@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 01/29/2009



Health, Health Care Financing,
 Coverage and Reimbursement Policy

R414-9

Federally Qualified Health Centers

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR File No.: 32325
 FILED: 01/26/2009, 16:25

**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 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. In addition, 42 CFR 405.2462 establishes payment requirements for federally qualified health centers that provide services to Medicaid clients.

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 did not receive any written or oral comments.

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 it establishes Medicaid payment methodologies for federally qualified health centers that provide services to Medicaid clients. Therefore, this rule should be continued.

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:
Kimi McNutt at the above address, by phone at 801-538-6381,
by FAX at 801-538-6099, or by Internet E-mail at
KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/26/2009

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-58
Children's Organ Transplants

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 32324
FILED: 01/26/2009, 16:23

**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 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law, and Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules. In addition, this rule is authorized under Title 26, Chapter 18a, which lists criteria for

children's organ transplants and outlines the responsibilities of the Kurt Oscarson Children's Organ Transplant Coordinating Committee.

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 did not receive any written or oral comments 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 should be continued because it sets forth criteria to determine eligibility for and the awarding of financial assistance to children who need organ transplants.

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:
Kimi McNutt at the above address, by phone at 801-538-6381,
by FAX at 801-538-6099, or by Internet E-mail at
KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 01/26/2009

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End of the Five-Year Notices of Review and Statements of Continuation 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 63G-3-301(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

No. 32187 (AMD): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

Published: December 15, 2008

Effective: January 22, 2009

Crime Victim Reparations

Administration

No. 32180 (AMD): R270-1-14. Essential Personal Property.

Published: December 15, 2008

Effective: January 21, 2009

No. 31950 (AMD): R270-1-19. Medical Awards.

Published: October 1, 2008

Effective: January 21, 2009

No. 31950 (CPR): R270-1-19. Medical Awards.

Published: December 15, 2008

Effective: January 21, 2009

Environmental Quality

Drinking Water

No. 32028 (AMD): R309-700. Financial Assistance: State Drinking Water Project Revolving Loan Program.

Published: November 1, 2008

Effective: January 28, 2009

No. 32029 (AMD): R309-705. Financial Assistance: Federal Drinking Water Project Revolving Loan Program.

Published: November 1, 2008

Effective: January 28, 2009

Health

Children's Health Insurance Program

No. 32185 (AMD): R382-10. Eligibility.

Published: December 15, 2008

Effective: January 22, 2009

Health Care Financing, Coverage and Reimbursement Policy

No. 32184 (AMD): R414-308. Application, Eligibility Determinations and Improper Medical Assistance.

Published: December 15, 2008

Effective: January 26, 2009

No. 32186 (AMD): R414-310. Medicaid Primary Care Network Demonstration Waiver.

Published: December 15, 2008

Effective: January 22, 2009

Human Services

Administration

No. 32154 (NEW): R495-888. Department of Human Services Related Parties Conflict Investigation Procedure.

Published: December 15, 2008

Effective: January 21, 2009

Administration, Administrative Hearings

No. 32181 (AMD): R497-100. Adjudicative Proceedings.

Published: December 15, 2008

Effective: January 21, 2009

Child and Family Services

No. 32182 (NEW): R512-309. Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care.

Published: December 15, 2008

Effective: January 21, 2009

Substance Abuse and Mental Health

No. 32183 (AMD): R523-1-5. Fee for Service.

Published: December 15, 2008

Effective: January 22, 2009

Recovery Services

No. 32159 (R&R): R527-5. Release of Information.

Published: December 15, 2008

Effective: January 21, 2009

Insurance

Title and Escrow Commission

No. 32167 (NEW): R592-13. Minimum Charges for Escrow Services.

Published: December 15, 2008

Effective: January 22, 2009

Public Safety

Peace Officer Standards and Training

No. 32132 (AMD): R728-402. Application Procedures to Attend a Basic Peace Officer Training Program.

Published: December 1, 2008

Effective: February 5, 2009

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, 2009, including notices of effective date received through February 2, 2009, the effective dates of which are no later than February 15, 2009. 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
Administrative Services					
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies and Services (5YR EXTENSION)	31983	NSC	01/29/2009	Not Printed
R33-6	Modification and Termination of Contracts for Supplies and Services	32344	5YR	01/29/2009	2009-4/56
R33-7	Cost Principles	32345	5YR	01/29/2009	2009-4/56
R33-7	Cost Principles (5YR EXTENSION)	31984	NSC	01/29/2009	Not Printed
R33-9	Insurance Procurement	32346	5YR	01/29/2009	2009-4/57
R33-9	Insurance Procurement (5YR EXTENSION)	31985	NSC	01/29/2009	Not Printed
Agriculture and Food					
<u>Regulatory Services</u>					
R70-630	Water Vending Machine	32289	5YR	01/08/2009	2009-3/83

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Alcoholic Beverage Control					
<u>Administration</u>					
R81-1	Scope, Definitions, and General Provisions	32222	NSC	01/22/2009	Not Printed
Career Service Review Board					
<u>Administration</u>					
R137-1-2	Definitions	32286	EMR	01/08/2009	2009-3/77
R137-1-22	The Board's Appellate/Step 6 Procedures	32288	EMR	01/08/2009	2009-3/79
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-40-302d	Time Limitation for TRT applicants	32236	NSC	01/22/2009	Not Printed
R156-44a	Nurse Midwife Practice Act Rules	32356	5YR	02/05/2009	Not Printed
R156-46a-302c	Qualifications for Licensure - Examination Requirements	32235	NSC	01/22/2009	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	32001	AMD	01/01/2009	2008-21/9
R156-61	Psychologist Licensing Act Rule	32366	5YR	02/10/2009	Not Printed
<u>Real Estate</u>					
R162-2-2	Licensing Procedure	32115	AMD	01/08/2009	2008-22/19
R162-103	Appraisal Education Requirements	31998	AMD	01/01/2009	2008-21/23
<u>Securities</u>					
R164-15-2	Notice Filings for Rule 506 Offerings	32039	AMD	01/12/2009	2008-21/28
Community and Culture					
<u>Arts and Museums, Museum Services</u>					
R210-100	Certified Local Museum Designation	32108	NEW	01/01/2009	2008-22/21
<u>History</u>					
R212-1	Adjudicative Proceedings	32243	NSC	01/22/2009	Not Printed
R212-6	State Register for Historic Resources and Archaeological Sites	32244	NSC	01/22/2009	Not Printed
<u>Library</u>					
R223-1	Adjudicative Procedures	32295	NSC	02/05/2009	Not Printed
Crime Victim Reparations					
<u>Administration</u>					
R270-1-14	Essential Personal Property	32180	AMD	01/21/2009	2008-24/3
R270-1-19	Medical Awards	31950	AMD	01/21/2009	2008-19/13
R270-1-19	Medical Awards	31950	CPR	01/21/2009	2008-24/37
R270-2	Crime Victim Reparations Adjudicative Proceedings	32196	NSC	01/12/2009	Not Printed
R270-3	ADA Complaint Procedure	32197	NSC	01/12/2009	Not Printed
Education					
<u>Administration</u>					
R277-109-1	Definitions	32139	AMD	01/07/2009	2008-23/2
R277-110-1	Definitions	32140	AMD	01/07/2009	2008-23/2
R277-437	Student Enrollment Options	32265	5YR	01/05/2009	2009-3/83
R277-464-4	Oversight Monitoring, Evaluation and Reports	32219	NSC	01/22/2009	Not Printed
R277-486	Professional Staff Cost Program	32266	5YR	01/05/2009	2009-3/84

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-494-3	Requirements for Payment and Participation Integral to the Schedule	32220	NSC	01/22/2009	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	32141	NEW	01/07/2009	2008-23/3
R277-502	Educator Licensing and Data Retention	32142	AMD	01/07/2009	2008-23/5
R277-518	Applied Technology Education Licenses	32143	AMD	01/07/2009	2008-23/7
R277-520-1	Definitions	32144	AMD	01/07/2009	2008-23/9
R277-524	Paraprofessional Qualifications	32267	5YR	01/05/2009	2009-3/84
R277-527	International Guest Teachers	32145	NEW	01/07/2009	2008-23/11
R277-527-3	Utah State Board of Education/USOE Responsibilities	32285	NSC	02/05/2009	Not Printed
R277-609-1	Definitions	32221	NSC	01/22/2009	Not Printed
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	32268	5YR	01/05/2009	2009-3/85
R277-735	Corrections Education Programs	32269	5YR	01/05/2009	2009-3/85
R277-911	Secondary Career and Technical Education	32146	AMD	01/07/2009	2008-23/12
<u>Rehabilitation</u>					
R280-201	USOR ADA Complaint Procedure	32270	5YR	01/05/2009	2009-3/86
R280-202	USOE Procedures for Individuals with the Most Severe Disabilities	32271	5YR	01/05/2009	2009-3/86
Environmental Quality					
<u>Air Quality</u>					
R307-121	General Requirements: Clean Fuel Vehicle Tax Credits	31928	AMD	01/01/2009	2008-19/25
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	32275	5YR	01/06/2009	2009-3/86
R307-150	Emission Inventories	32353	5YR	02/05/2009	Not Printed
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	32354	5YR	02/05/2009	Not Printed
R307-405-2	Applicability	32042	AMD	02/05/2009	2008-21/33
<u>Drinking Water</u>					
R309-700	Financial Assistance: State Drinking Water Project Revolving Loan Program	32028	AMD	01/28/2009	2008-21/34
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	32029	AMD	01/28/2009	2008-21/40
<u>Radiation Control</u>					
R313-21	General Licenses	32050	CPR	02/11/2009	2008-24/38
R313-21	General Licenses	32050	AMD	02/11/2009	2008-21/47
R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	32206	AMD	02/12/2009	2009-1/27
R313-32	Medical Use of Radioactive Material	32207	AMD	02/12/2009	2009-1/30
<u>Solid and Hazardous Waste</u>					
R315-1-1	Definitions	32137	AMD	01/15/2009	2008-23/17
R315-2	General Requirements - Identification and Listing of Hazardous Waste	32138	AMD	01/15/2009	2008-23/19
R315-15-13	Registration and Permitting of Used Oil Handlers	32231	NSC	01/22/2009	Not Printed
<u>Water Quality</u>					
R317-2	Standards of Quality for Waters of the State	31650	CPR	01/12/2009	2008-23/28
R317-2	Standards of Quality for Waters of the State	31650	AMD	01/12/2009	2008-14/30

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Health					
<u>Administration</u>					
R380-70	Standards for Electronic Exchange of Clinical Health Information	31980	NEW	02/04/2009	2008-20/12
<u>Children's Health Insurance Program</u>					
R382-10	Eligibility	32185	AMD	01/22/2009	2008-24/7
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1-5	Incorporations by Reference	32102	AMD	01/01/2009	2008-22/22
R414-9	Federally Qualified Health Centers	32325	5YR	01/26/2009	2009-4/57
R414-58	Children's Organ Transplants	32324	5YR	01/26/2009	2009-4/58
R414-99	Chiropractic Services	32352	5YR	02/04/2009	Not Printed
R414-301-4	Safeguarding Information	32252	NSC	01/22/2009	Not Printed
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	32184	AMD	01/26/2009	2008-24/9
R414-310	Medicaid Primary Care Network Demonstration Waiver	32186	AMD	01/22/2009	2008-24/13
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	32187	AMD	01/22/2009	2008-24/15
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-7-5	Penalty for Violation of Rule	32279	NSC	02/05/2009	Not Printed
R426-8-4	Application and Award Formula	31919	AMD	01/13/2009	2008-18/29
R426-13-1300	Penalties	32280	NSC	02/05/2009	Not Printed
R426-14-600	Penalties	32281	NSC	02/05/2009	Not Printed
R426-15-700	Penalties	32282	NSC	02/05/2009	Not Printed
<u>Center for Health Data, Health Care Statistics</u>					
R428-12	Health Data Authority Survey of Enrollees in Health Maintenance Organizations and Preferred Provider Organizations	32118	AMD	01/08/2009	2008-23/21
<u>Health Systems Improvement, Child Care Licensing</u>					
R430-6	Background Screening	31820	CPR	02/16/2009	2009-1/51
<u>Epidemiology and Laboratory Services, Laboratory Improvement</u>					
R444-14	Rule for the Certification of Environmental Laboratories	31910	AMD	01/12/2009	2008-18/42
Housing Corporation (Utah)					
<u>Administration</u>					
R460-7-2	Definitions	32211	NSC	01/12/2009	Not Printed
Human Services					
<u>Administration</u>					
R495-888	Department of Human Services Related Parties Conflict Investigation Procedure	32154	NEW	01/21/2009	2008-24/18
<u>Administration, Administrative Hearings</u>					
R497-100	Adjudicative Proceedings	32181	AMD	01/21/2009	2008-24/21
<u>Administration, Administrative Services, Licensing</u>					
R501-1	General Provisions	32190	NSC	01/12/2009	Not Printed
R501-4-7	Administrative Hearing	32191	NSC	01/12/2009	Not Printed
R501-12-8	Safety	32192	NSC	01/12/2009	Not Printed
R501-14	Background Screening	32193	NSC	01/12/2009	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Child and Family Services</u>					
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	32182	NEW	01/21/2009	2008-24/24
<u>Substance Abuse and Mental Health</u>					
R523-1-5	Fee for Service	32183	AMD	01/22/2009	2008-24/26
<u>Recovery Services</u>					
R527-5	Release of Information	32159	R&R	01/21/2009	2008-24/27
<u>Services for People with Disabilities</u>					
R539-5-8	Limitation	32308	EMR	01/15/2009	2009-3/81
Insurance					
<u>Title and Escrow Commission</u>					
R592-13	Minimum Charges for Escrow Services	32167	NEW	01/22/2009	2008-24/31
Labor Commission					
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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	

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<u>ADA*</u>					
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	32146	R277-911	AMD	01/07/2009	2008-23/12
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