

UTAH STATE BULLETIN

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <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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TABLE OF CONTENTS

SPECIAL NOTICES	1
Health	
Health Care Financing, Coverage and Reimbursement Policy Notice for July 2010 Medicaid Rate Changes.....	1
NOTICES OF PROPOSED RULES	3
Commerce	
Administration	
No. 33667 (Amendment): R151-46b-5 General Provisions.....	4
Occupational and Professional Licensing	
No. 33679 (Amendment): R156-80 Medical Language Interpreter Act Rule.....	5
Real Estate	
No. 33666 (Amendment): R162-2c Utah Residential Mortgage Practices and Licensing Rules.....	6
Securities	
No. 33657 (Amendment): R164-14 Exemptions.....	17
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 33689 (Amendment): R414-320 Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.....	24
Health Systems Improvement, Primary Care and Rural Health	
No. 33690 (Amendment): R434-40 Utah Health Care Workforce Financial Assistance Program Rules.....	29
Human Services	
Administration	
No. 33662 (New Rule): R495-883 Children in Care Support Services.....	34
Recovery Services	
No. 33660 (Amendment): R527-40 Retained Support.....	36
No. 33659 (Repeal): R527-550 Assessment.....	38
Judicial Performance Evaluation Commission	
Administration	
No. 33668 (Amendment): R597-1 General Provisions.....	39
Natural Resources	
Oil, Gas and Mining; Coal	
No. 33669 (Amendment): R645-100-200 Definitions.....	40
No. 33670 (Amendment): R645-103-200 Areas Designated by Act of Congress.....	43
No. 33671 (Amendment): R645-201-300 Major Coal Exploration Permits.....	46
No. 33672 (Amendment): R645-300-100 Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.....	49
No. 33673 (Amendment): R645-301-100 General Contents.....	52
No. 33674 (Amendment): R645-301-400 Land Use and Air Quality.....	56
Tax Commission	
Auditing	
No. 33693 (Amendment): R865-6F-27 Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.....	58
No. 33696 (Amendment): R865-9I-2 Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.....	59
No. 33694 (Amendment): R865-9I-42 Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413.....	61
No. 33691 (Amendment): R865-20T-13 Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.....	62

TABLE OF CONTENTS

Property Tax
No. 33692 (Amendment): R884-24P-24 Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.....62
No. 33695 (Amendment): R884-24P-62 Valuation of State Assessed Unitary Properties to Utah Code Ann. Section 59-2-201.....64

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION.....69

Agriculture and Food
Plant Industry
No. 33677: R68-12 Quarantine Pertaining to Mint Wilt.....69

Environmental Quality
Solid and Hazardous Waste
No. 33681: R315-16 Standards for Universal Waste Management.....69
No. 33682: R315-102 Penalty Policy.....70

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 33680: R414-19A Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility.....71

Insurance
Administration
No. 33678: R590-171 Surplus Lines Procedures Rule.....71
No. 33661: R590-199 Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.....72

Labor Commission
Antidiscrimination and Labor, Antidiscrimination
No. 33685: R606-3 Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies.....72
No. 33687: R606-4 Advertising.....73
No. 33686: R606-5 Employment Agencies.....73
No. 33688: R606-6 Regulation of Practice and Procedure on Employer Reports and Records.....74

Natural Resources
Wildlife Resources
No. 33676: R657-55 Wildlife Convention Permits.....75

Transportation
Motor Carrier, Ports of Entry
No. 33675: R912-6 Ports-of-Entry By-Pass Permit Provisions.....75

NOTICES OF RULE EFFECTIVE DATES.....77

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT).....79**

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for July 2010 Medicaid Rate Changes

Effective July 1, 2010, Utah Medicaid will adjust its rates consistent with legislative intent and appropriations. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, as well as potential adjustments to existing codes. Nursing home rate changes will include adjustments to the flat rate, fair rental value and case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

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 May 15, 2010, 12:00 a.m., and June 01, 2010, 11:59 p.m. are included in this, the June 15, 2010 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 July 15, 2010. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through October 13, 2010, 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 OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** 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; 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

Commerce, Administration
R151-46b-5
 General Provisions

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33667
 FILED: 05/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing clarifies the method of computation of deadlines to account for the State's four-day work week schedule.

SUMMARY OF THE RULE OR CHANGE: This filing clarifies that deadlines falling on Fridays are extended as provided in the rule, which is the practice the Department has followed since the State went to the four-day work week.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no impact to the state budget from this filing, which clarifies the method of computing deadlines.
- ◆ **LOCAL GOVERNMENTS:** None--Local governments do not administer the filing deadlines at this Department, and rarely do they appear in Department proceedings. Even if they did so, this rule simply clarifies the computation of deadlines.
- ◆ **SMALL BUSINESSES:** None--Even if small businesses are involved in Department proceedings, this rule simply clarifies the computation of deadlines.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This filing is for clarification purposes and will not affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This filing is for clarification purposes and if anything, it will result in cost savings to affected persons, whose filing deadlines are extended to the next open business day.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the summary above, no fiscal impact to businesses is anticipated from this clarifying rule filing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-5. General Provisions.

(1) Purpose.

These rules are intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Friday, Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Friday, Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Fridays, Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period. No additional time is provided if service is accomplished by facsimile or other electronic means.

(b) Subject to the provisions of Subsections R151-46b-5(5)(b) and -9(9)(c)(ii), for good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon written application from either party.

(5) Extension of Time; Continuance of Hearing.

(a) When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(i) whether there is good cause for granting the extension or continuance;

(ii) the number of extensions or continuances the requesting party has already received;

(iii) whether the extension or continuance will work a significant hardship upon the other party;

(iv) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(v) whether the other party objects to the extension or continuance.

(b)(i) Notwithstanding the provisions of Subsection R151-46b-5(2) or any other provision of these rules, and except as provided in Subsection (5)(b)(ii), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(ii) Notwithstanding the provisions of Subsection (5)(b)(i), an extension of a time period or a continuance may exceed the time restriction outlined in Subsection (5)(b)(i) only if:

(A)(I) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(II) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds that the withdrawal was for the purpose of delaying the hearing; or

(III) a parallel criminal proceedings exists based on facts at issue in the administrative proceeding; and

(B) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(iii) The failure of the presiding officer to comply with the requirements of this Subsection

(5)(b) is not a basis for dismissal of the matter.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [January 7,] 2010

Notice of Continuation: May 3, 2006

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Occupational and Professional Licensing **R156-80**

Medical Language Interpreter Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33679

FILED: 05/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 232, which was passed during the 2010 Legislative Session, recodified the Medical Language Interpreter Act and moved it from Title 58, Chapter 80, to Chapter 80a. Also, amendments to the Act provided for a two-year renewal cycle for medical language interpreters. (DAR NOTE: H.B. 232 (2010) is found at Chapter 127, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Statutory references have been updated from 80 to 80a throughout the rule. Also added new Section R156-80a-304 which defines renewal cycle and procedures applicable to medical language interpreters.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-80a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to certified medical language interpreters and applicants for certification in that classification. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to certified medical language interpreters and applicants for certification in that classification. Certified individuals and applicants for certification may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to certified medical language interpreters and applicants for certification in that classification. If an individual chooses to become certified as a medical language interpreter, they will now also pay a renewal fee of \$25 every 2 years. The Division is not able to

determine how many persons will apply for certification as a medical language interpreter. The Division currently has 12 individuals who are certified as a medical language interpreter which results in an aggregate cost of \$300 every 2 years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to certified medical language interpreters and applicants for certification in that classification. If an individual chooses to become certified as a medical language interpreter, they will now also pay a renewal fee of \$25 every 2 years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing conforms the rule to recent statutory changes, adding provisions regarding the renewal of a certification and renumbering provisions. No fiscal impact to businesses is anticipated beyond those addressed by the Legislature in passing the statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/16/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-80a. Medical Language Interpreter Act Rule.

R156-80a-101. Title.

This rule is known as the "Medical Language Interpreter Act Rule".

R156-80a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 80a.

R156-80a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Section R156-1 is as described in Section R156-1-107.

R156-80a-203a. Qualifications for Certification - Examination Requirements.

(1) In accordance with Subsections 58-1-203(1)(b), 58-1-301(3) and 58-80a-~~203~~303(2), an applicant for certification under Section 58-80a-~~204~~301 shall:

(a) complete and pass the Bridging the Gap (BTG) Interpreter Training Program with a minimum passing score established by CCHCP;

(b) complete and pass pre and post test examinations administered by trainers and organizations approved pursuant to Subsection (1); and

(c) submit to the Division a certificate of completion documenting that the applicant has met the requirements in Subsections ~~(2)~~(1)(a) and (b).

(2) Trainers and organizations that administer pre and post examinations to medical language interpreter applicants shall be approved by the Cross Cultural Health Care Program (CCHCP).

R156-80a-304. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 80a is established by rule in Subsection R156-1-308a(1).

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

KEY: licensing, medical language interpreter, certified medical language interpreter

Date of Enactment or Last Substantive Amendment: ~~August 24, 2009~~2010

Authorizing, and Implemented or Interpreted Law: ~~58-80a-101; 58-1-106(1)(a); 58-1-202(1)(a)~~

Commerce, Real Estate
R162-2c
Utah Residential Mortgage Practices
and Licensing Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33666

FILED: 05/25/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The ongoing implementation of the S.A.F.E. (Secure and Fair Enforcement for Mortgage Licensing) Act through the Nationwide Mortgage Licensing System (NMLS)

has revealed that some of the Division's mortgage rules require amendment in order to align Utah's procedures and requirements with the nationwide system. These amendments are proposed for that purpose.

SUMMARY OF THE RULE OR CHANGE: The changes are: 1) definitions are amended to include the term "branch lending manager". Under NMLS, each branch must identify an individual to oversee operations. The requirement that this individual be licensed as a PLM (Principal Lending Manager) is already in place. The Division simply proposes to refer to this individual as a branch lending manager (BLM). The term "branch lender manager" is thereafter incorporated throughout the rules governing licensing and unprofessional conduct; 2) definitions are amended to remove the term "credit hour equivalent". Under NMLS, the Division no longer approves continuing education courses, so there is no need for the state to provide a system whereby college credit hours are converted into continuing education credit hours; 3) definitions are amended to include the term "other trade name". NMLS uses this term rather than "dba" or "assumed business name". The term is thereafter substituted in instances where the rules referenced dbas or assumed business names; 4) definitions are amended to include the term "relevant information". NMLS requires an applicant to submit all relevant information regarding answers to disclosure questions. The Division feels that the term needs to be defined; 5) licensing procedures are amended to require an applicant to obtain a unique identifier through NMLS. Requirements are included to govern branch offices, branch lending managers, and use of other trade names. Additional changes in language and terminology are proposed to track more closely with the language used by the NMLS. These changes are not substantive; 6) prelicensing instructors who apply to renew their certification do not have to evidence having completed 12 hours of live education courses taken in real estate financing related subjects. This requirement exceeds NMLS standards, and the Division does not consider it necessary; 7) license renewal requirements are reworded slightly to make them easier to understand. The procedures for renewing the registration of a branch office and another trade name are clarified. These changes are nonsubstantive; 8) a new subsection is proposed that would require an entity to enter into the nationwide database any change in branch offices or other trade names registered under the entity license; 9) a new subsection is proposed to clarify that a licensee may operate under the name of the entity by which the licensee is sponsored as well as under any branch or other trade name registered under the entity license; and 10) a new provision is proposed to establish that the PLM of an entity is responsible to actively supervise the branch lending manager assigned to oversee a branch.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None of the proposed rule changes establish a new program that the state must implement or impose a substantive requirement that the state must enforce. The Division anticipates no effect on the state budget.
- ◆ **LOCAL GOVERNMENTS:** Where local government is not required to comply with, implement, or enforce Division rules, the Division anticipates no effect on the finances of local government.
- ◆ **SMALL BUSINESSES:** Businesses operating branch offices will need to take appropriate steps to assign a branch lending manager to oversee each branch office. The requirement that this person be licensed as a PLM is already in place. As such, there are no new costs associated with this rule amendment. The other changes proposed are nonsubstantive changes to language and do not require specific compliance beyond what is already imposed on affected persons.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None of these amendments require affected persons to take any action (such as completing additional education) that would impose new costs beyond what they are already paying to become licensed through the Division and NMLS. The Division anticipates no financial consequences to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments are essentially nonsubstantive language changes and do not require specific compliance beyond what is currently imposed on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing makes minor amendments to further conform the rule to the nationwide database requirements. Any fiscal impact from adherence to the nationwide database was previously addressed by the Legislature in adopting the nationwide database process, and these amendments are for clarification purposes.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-2c. Utah Residential Mortgage Practices and Licensing Rules.

R162-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) "Branch lending manager" means the person assigned to oversee a branch office. As of November 1, 2010:

(a) ~~[A] a branch office [applying for a license or] registering in the nationwide database [prior to November 1, 2010 may identify either a mortgage loan originator] or renewing its registration shall identify an ALM to serve as the branch lending manager[-]; and~~

~~(b) [As of November 1, 2010, a branch office applying for an initial license or renewing an existing license shall identify an ALM to serve as the branch manager] the individual identified by the branch office must be qualified for licensure as a PLM.~~

(3) The acronym "BLM" stands for branch lending manager.

~~[(3)](4)~~ "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

~~[(4)](5)~~ "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

~~[(5) "Credit hour equivalent" means the conversion of college course hours to continuing education hours as follows:~~

~~(a) One college quarter hour credit may be considered as equivalent to up to 10 classroom hours of education.~~

~~(b) One college semester hour credit may be considered as equivalent to up to 15 classroom hours of education.~~

~~]~~(6) "Control person" means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:

(a) a manager;

(b) a managing partner;

(c) a director;

(d) an executive officer; or

(e) an individual who performs a function similar to an individual listed in this Subsection (6).

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan

originator, principal lending manager, branch lending manager, or associate lending manager.

(8) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(9) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(10) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or ~~[dba]~~other trade name that is registered with the Division of Corporations and Commercial Code.

(11) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(12) "Other trade name" means any assumed business name under which an entity does business.

~~[(12)](13)~~ The acronym "PLM" stands for principal lending manager.

~~[(13)](14)~~ "Qualifying individual" means the PLM, managing principal, or qualified person who is identified ~~[within] on the MU1 form in~~ the nationwide database as the ~~[managing principal or qualified]~~ person in charge of an entity.

(15) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

~~[(14)](16)~~ "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

~~[(15)](17)~~ "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

~~[(16)](18)~~ "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage ~~[Loan Originator]~~ loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) obtain a unique identifier through the nationwide database;

~~_____ [(iii)](iv)~~ successfully complete, within the 12-month period prior to the date of application, 60 hours of pre-licensing education as follows:

(A) 40 hours of Utah-specific education; and

(B) 20 hours as approved by the nationwide database according to the nationwide database outline for national course curriculum;

~~[(iv)](v)~~ take and pass [a multiple choice examination]the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) ~~[consisting]consist~~ of a national [portion]component and a Utah-specific [portion]state component;

~~[(v)]~~ obtain a unique identifier through the nationwide database;

~~_____](vi)~~ [select the "mortgage loan originator" license type within the nationwide database and complete the corresponding MU4 form]request licensure as a mortgage loan originator through the nationwide database;

~~[(vii)]~~ identify within the nationwide database the applicant's sponsoring mortgage entity;

~~_____ (viii)](vii)~~ [submit to a background check as conducted]authorize a criminal background check and submit fingerprints through the nationwide database;

~~[(ix)](viii)~~ provide to the division all [court documents related to any past criminal proceeding]relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form; and

~~[(x)]~~ provide to the division complete documentation of any past action taken against the applicant by a regulatory agency; and

~~_____ (xi)](ix)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii)(A) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific [portion of the licensing]state examination component;

(iv) provide to the division all [court documents related to any past criminal proceeding]relevant information regarding "yes"

answers to disclosure questions found within the application submitted on the MU4 form;

~~[(v)]~~ provide to the division complete documentation of any action taken against the applicant by a regulatory agency;

~~_____ (vi)]~~ identify within the nationwide database the applicant's sponsoring mortgage entity;

~~_____ (vii)](v)~~ request licensure as a mortgage loan originator through the nationwide database; [and]

~~_____ (vi)]~~ authorize a criminal background check through the nationwide database; and

~~_____ [(viii)](vii)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Principal ~~[Lending Manager]~~ lending manager. To obtain a Utah license to practice as a PLM, an individual shall:

(a) qualify as a mortgage loan originator through the nationwide database;

(b) evidence good moral character pursuant to R162-2c-202(1);

(c) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(d) obtain approval from the division to take the Utah-specific PLM prelicensing education by evidencing that the applicant has, within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator;

(e) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;

(f)(i) if currently licensed in Utah as a mortgage loan originator, take and pass a principal lending manager examination as approved by the commission; or

(ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:

(A) the Utah-specific ~~[portion of the mortgage loan originator licensing]state examination component; and~~

(B) a principal lending manager examination as approved by the commission;

(g) provide to the division all [court documents related to any criminal proceeding not disclosed through a previous application or renewal]relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

~~[(h)]~~ provide to the division complete documentation of any action taken against the applicant by a regulatory agency and not disclosed through a previous application or renewal;

~~_____ (i)](h)~~ register in the nationwide database by[:

~~_____ (i)]~~ selecting the "principal lending manager" license type and completing the associated MU4 form; and

~~[(ii)]~~ completing an MU2 form to register as the qualifying individual for the entity; and

~~_____ (i)](i)~~ pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Associate ~~[Lending Manager]~~ lending manager. To obtain a Utah license to practice as an ALM, an individual shall:

(a) comply with this Subsection (2)(a) through ~~[(h)](g);~~

(b) register in the nationwide database by[:

~~_____ (i)]~~ selecting the "associate lending manager" license type and completing the associated MU4 form; and

~~[(ii) if the applicant will serve as a branch manager, completing an MU2 form to identify the applicant as a control person for the branch office; and~~

~~_____](c) pay all fees through the nationwide database as required by the division and by the nationwide database.~~

(4) Mortgage ~~[Entity]entity~~. To obtain a Utah license to operate as a mortgage entity, a person shall:

(a) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

(b) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

(c) register any ~~[assumed business name or dba]other trade name~~ with the Division of Corporations and Commercial Code;

(d) register the entity in the nationwide database by:

(i) submitting an MU1 form that includes:

(A) all required identifying information;

(B) the name of the PLM who will serve as the entity's qualifying individual;

(C) the name of any individuals who may serve as control persons;~~and~~

(D) the entity's registered agent; and

(E) any other trade name under which the entity will operate; and

~~_____](ii) [create]creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;~~

(e) register any branch office operating from a different location than the entity;

~~_____](f) pay all fees through the nationwide database as required by the division and by the nationwide database;~~

~~[(f)](g) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;~~

~~[(g)](h) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;~~

~~[(h)](i) provide to the division complete documentation of any action taken by a regulatory agency against:~~

(i) the entity itself; or

(ii) any control person; and

(iii) not disclosed through a previous application or renewal; and

~~[(i)](j) provide to the division a [corporate resolution or equivalent document]notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.~~

(5) Branch ~~[Office]office~~.

~~(a) To [obtain a Utah license to operate]register a branch office with the division, a person shall[register the branch office in the national database by]:~~

(i) obtain a Utah entity license for the entity under which the branch office will be registered;

~~_____](ii) [submitting]submit to the nationwide database an MU3 form that includes:~~

~~[(i)](A) all required identifying information; and~~

~~[(ii)](A) if registering prior to November 1, 2010, the name of the mortgage loan originator or ALM who will serve as the branch manager; or~~

~~_____](B) if registering on or after November 1, 2010, the name of the ALM who will serve as the branch lending manager;~~

~~[(b)](iii) [creating]create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and~~

~~[(c)](iv) [paying]pay all fees through the nationwide database as required by the division and by the nationwide database.~~

(b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (5).

~~_____](6) Licenses not transferable.~~

(a) A licensee shall not transfer the licensee's license to any other person.

(b) A licensee shall not allow any other person to work under the licensee's license.

(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(7) Expiration of test results.

(a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

(b) Scores for the PLM exam shall be valid for 90 days.

(8) Incomplete PLM or ALM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(9) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(10) Other ~~[business]trade~~ names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under [a dba]another trade name shall [obtain a separate entity license for the dba]register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, and address of the physical facility;

(B) name, phone number, and address of any school director;

(C) name, phone number, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school; and

(B) description of the school's physical facilities;

(iv) list of courses offered;

(v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(vii) proof that each instructor:

(A) has been certified by the division;

(B) is qualified as a guest lecturer; or

(C) is exempt from certification under Subsection 203(5)

(f);

(viii) schedule of courses offered, including the days, times, and locations of classes;

(ix) statement of attendance requirements as provided to students;

(x) refund policy as provided to students;

(xi) disclaimer as provided to students; and

(xii) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific [~~Course Certification~~]course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal.

(a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.

(b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.

(c)(i) A division-approved continuing education course shall expire on whichever of the following occurs first:

(A) the expiration date printed on the certificate; or

(B) December 31, 2010.

(ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date[;]:

(A) complete a renewal form as provided by the division; and

(B) pay a nonrefundable renewal fee.

(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.

(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.

(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.

(e) As of January 1, 2011, any course offered for continuing education shall be approved through the nationwide database.

(4) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection [(e)](f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application and with a minimum score of 85%, the state portion of the national licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:

(A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;

(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or

(C) a combination of experience and education acceptable to the division; and

(ii) ability to effectively communicate the subject matter, as evidenced by:

(A) a state teaching certificate;

(B) successful completion of college courses acceptable to the division in the field of education;

(C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for preclicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

~~[(C) evidence of having successfully completed 12 hours of live education courses taken in real estate financing related subjects; and~~

~~(D)](C) a renewal fee as required by the division.~~

(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or

(B)(I) written explanation for why the instructor has not taught a class in the subject area within the past year; and

(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and

(C) a renewal fee as required by the division.

(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.

(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.

(v) As of January 1, 2011, any instructor proposing to teach a continuing education course shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor may reinstate an expired certification within 30 days of expiration by:

(A) complying with Subsection (g) as applicable to the type of course taught; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:

(A) complying with Subsection (g) as applicable to the type of course taught;

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal.

(1) Renewal period.

(a) Any person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(b) Any person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(2) Qualification for ~~[Renewal]~~renewal.

(a) Character.

(i) Individuals and control persons applying for a renewed license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or
 (B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Continuing education.

(i) Beginning January 1, 2011, an individual who holds an active license as of October 31 of the calendar year shall complete, within the renewal period ending December 31 of the same calendar year,[-

~~(A)]~~ eight hours of non-duplicative continuing education;

~~(A)]~~ approved through the nationwide database; and

(B) [~~within the renewal period ending December 31 of the same calendar year; and~~

~~(C)]~~consisting of:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending);

(III) two hours non-traditional; and

(IV) one hour elective.

(ii) An individual who obtains a license on or after November 1 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(iii) Continuing education courses shall be completed within the renewal period.

(iv) Continuing education courses shall be non-duplicative of courses taken in the preceding renewal period.

(3) Renewal procedures for the renewal period ending December 31, 2010. In order to renew by December 31, 2010:

(a) an individual licensee shall:

(i) evidence having completed a minimum of:

(A) 20 hours of prelicensing education as approved by:

(I) the division; or

(II) the nationwide database; or

(B) 28 hours of division-approved continuing education in the two previous renewal cycles;

(ii) evidence having taken and passed a Utah licensing examination as approved by the commission;

(iii) register in the nationwide database by May 31, 2010;

(iv) evidence having completed, since the date of last renewal, continuing education:

(A)(I) totaling 14 hours if licensed as of October 1, 2009;

or
 (II) totaling eight hours if licensed on or after October 1, 2009;

(B) approved by either the division or the nationwide database; and

(C) non-duplicative of any hours required to satisfy the registration education requirement under this Subsection (3)(a)(i);

(v) take and pass the national [~~portion~~]component of the licensing examination as approved by the nationwide database;

(vi) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(vii) submit through the nationwide database:

(A) a request for renewal; and

(B) all fees as required by the division and by the nationwide database.

(b) an entity [~~or dba~~]licensee shall:

(i) register in the nationwide database by May 31, 2010;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) submit through the nationwide database a request for renewal;[-and]

(iv) renew the registration of any branch office or other trade name registered under the license of the entity; and

~~_____ [(iv)](v)~~ pay through the nationwide database all renewal fees required by the division and by the nationwide database.

~~_____ [(e) a branch office licensee shall:~~

~~(i) comply with this Subsection (3)(b); and~~

~~_____ (ii) if registered in the nationwide database with a mortgage loan originator as the branch manager, identify an ALM who will serve as the branch manager.~~

~~_____](4) Renewal procedures for the renewal period ending December 31, 2011. In order to renew by December 31, 2011,~~

~~(a) an individual licensee shall:~~

~~(i) evidence having completed, since the date of last renewal, continuing education:~~

~~(A) as required by Subsection (2)(c);~~

~~(B) non-duplicative of any continuing education hours taken in the previous renewal cycle; and~~

~~(C) approved by the nationwide database;~~

~~(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and~~

~~(iii) submit through the nationwide database:~~

~~(A) a request for renewal; and~~

~~(B) all fees as required by the division and by the nationwide database.~~

~~(b) an entity[~~, branch office, or dba~~] licensee shall:~~

~~(i) submit through the nationwide database a request for renewal;~~

~~(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;~~

~~[-and]~~ (iii) renew the registration of any branch office or other trade name registered under the entity license; and

~~_____ [(iii)](iv)~~ pay through the nationwide database all renewal fees required by the division and by the nationwide database.

~~(5) Reinstatement.~~

~~(a) To reinstate an expired license, a person shall, by February 28 of the calendar year following the date on which the license expired:~~

~~(i) comply with all requirements for an on-time renewal; and~~

~~(ii) pay through the nationwide database all late fees and other fees as required by the division and the nationwide database.~~

~~(b) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.~~

~~(c) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.~~

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

- (i) name of licensee;
- (ii) contact information for licensee, including:
 - (A) mailing address;
 - (B) telephone number(s); and
 - (C) e-mail address(es);
- (iii) sponsoring entity; and
- (iv) license status (sponsored or non-sponsored); and
- (b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

- (i) name of licensee;
- (ii) contact information for licensee, including:
 - (A) mailing address;
 - (B) telephone number(s);
 - (C) fax number(s); and
 - (D) e-mail address(es);
- (iii) sponsorship information;
- (iv) control person(s);
- (v) qualifying individual; ~~and~~
- (vi) license status (sponsored or non-sponsored); and
- (vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

- (a) the entity;
- (b) a branch office registered under the license of the entity; or
- (c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

- (a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and
- (b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

R162-2c-301. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

- (i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;
- (ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
- (B) inspection fees;
- (C) credit reporting fees; and
- (D) insurance premiums;
- (iv) turn all records over to the sponsoring entity for proper retention and disposal;
- (v) comply with a division request for information within 10 business days of the date of the request; and
- (vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

- (i) charge for services not actually performed;
- (ii) require a borrower to pay more for third party services than the actual cost of those services;
- (iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;
- (iv) alter an appraisal of real property; or
- (v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2, including:

- (A) providing a buyer or seller of real estate with a comparative market analysis;
- (B) assisting a buyer or seller to determine the offering price or sales price of real estate;
- (C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
- (D) advertising the sale of real estate by use of any advertising medium;
- (E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
- (F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

- (i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;
- (ii) owns real property that the mortgage loan originator offers "for sale by owner"; or
- (iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:
 - (A) the owner's contact information;
 - (B) the owner's role;
 - (C) the mortgage loan originator's contact information;

and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) PLM.

(a) Affirmative duties. A PLM who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A PLM shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators.

(b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:

(i) actively supervise any such ALM; and

(ii) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators and unlicensed staff.

(c) A PLM who manages an entity that operates a branch office shall:

(i) actively supervise the BLM who manages the branch office; and

(ii) remain personally responsible and accountable for adequate supervision of:

(A) mortgage loan originators sponsored by the branch office;

(B) unlicensed staff working at the branch office; and

(C) operations and transactions conducted by the branch office.

[(e)](d) Prohibited conduct. A PLM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A PLM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

[(d)](e) [An ALM who acts as a branch manager] A BLM:

(i) shall be subject to the same affirmative duties as a PLM; and

(ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage [Entity]entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting [Unprofessional Conduct]unprofessional conduct.

(a) The division shall report in the nationwide database any disciplinary action taken against a licensee for unprofessional conduct.

(b) The division may report in the nationwide database a complaint that the division has assigned for investigation.

(c) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(x) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught;

(ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: [April 12,] 2010

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)

Commerce, Securities R164-14 Exemptions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33657

FILED: 05/18/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment's purpose is to: 1) update both

the title headings of and the statutory references contained within Section R164-14-1 et seq. to reflect legislative changes; and 2) update the names of stock exchanges qualifying for the Exchange Traded Securities exemption.

SUMMARY OF THE RULE OR CHANGE: This amendment updates the various rules governing securities exemptions found in Section R164-14-1 et seq. These changes are necessitated by the enactment of H.B. 78 (2009). Most notably, the Division's discretionary transactional exemption formerly found at Subsection 61-1-14(2)(s) has been relocated to Subsection 61-1-14(2)(v). The wording of the exemption remains unchanged. Additionally, the rule enumerating those securities exchanges that qualify for the Exchange Traded Exemption (relocated from Subsection 61-1-14(1)(g) to Subsection 61-1-14(1)(e) by H.B. 78 is being amended to reflect changes in the names and federal covered security statuses of the relevant exchanges. (DAR NOTE: H.B. 78 (2009) is found at Chapter 351, Laws of Utah 2009, and was effective 05/12/2009.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 61-1-1 through 61-1-29

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No effect--No additional budgetary appropriations will be required.
- ◆ **LOCAL GOVERNMENTS:** No effect--Local governments do not regulate in this area.
- ◆ **SMALL BUSINESSES:** No effect--Substantive compliance requirements will remain the same.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect--Substantive compliance requirements will remain the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No increase in compliance costs will be incurred as a result of this amendment. Apart from taking note of minor changes in references, no additional compliance burdens will be placed on any affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact is anticipated on business. This amendment's purpose is simply to update the rule to reflect both statutory changes and changes in the names and federal covered security statuses of securities exchanges.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/02/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-14. Exemptions.

R164-14-1[g]e. Exchange Listing Exemption.

- (A) Authority and Purpose
- (1) The Division enacts this rule under authority granted by Subsection 61-1-14(1)(~~g~~)(e) and Section 61-1-24.
- (2) The rule identifies additional exchanges for which the exemption under Subsection 61-1-14(1)(~~g~~)(e) is available.
- (3) The rule also states the procedure whereby confirmation of the availability of the exemption can be obtained.
- (B) Definitions
- (1) "Confirmation" means written confirmation of the exemption from registration from the Division.
- (2) "Division" means the Division of Securities, Utah Department of Commerce.
- (3) "Exchange Tiers" means the different levels, groups or markets within an exchange or medium, whereby each level requires substantively different, as opposed to alternate and comparable, listing and maintenance criteria.
- (4) "Exemption" means the exemption provided in Subsection 61-1-14(1)(~~g~~)(e).
- (C) Recognized exchanges
- (1) ~~As specifically provided in Subsection 61-1-14(1)(g),~~ a security listed on one of the following exchanges or mediums is exempt from registration:
- (1)(a) New York Stock Exchange
- (1)(b) ~~[American Stock Exchange]~~NYSE Amex Equities
- (1)(c) ~~[National Association of Securities Dealers Automated Quotation System ("NASDAQ").]~~NASDAQ Global
- (1)(d) NASDAQ Global Select
- (1)(e) NASDAQ Capital Market
- (1)(f) Chicago Board Options Exchange
- (1)(g) Philadelphia Stock Exchange.
- ~~[(2) In addition, a security listed on one of the following exchanges or mediums is exempt from registration:~~
- ~~(2)(a) Chicago Board Options Exchange~~
- ~~(2)(b) Pacific Stock Exchange~~
- ~~(2)(c) Philadelphia Stock Exchange~~
- ~~][(3)(2) A security listed on one of the following exchanges or mediums is exempt from registration for the limited purpose of nonissuer transactions effected by or through a licensed broker-dealer:~~
- ~~(2)(a) Chicago Stock Exchange~~
- ~~(2)(b) Philadelphia Stock Exchange/Tier II~~
- ~~[(3)(a) Boston Stock Exchange~~

- ~~_____ (3)(b) Chicago Stock Exchange~~
- ~~_____ (3)(c) NASDAQ Small Cap Market~~
- ~~_____ (3)(d) Pacific Stock Exchange/Tier H~~
- ~~_____ (3)(e) Philadelphia Stock Exchange/Tier H~~
-] (D) Listed securities
 - (1) As to securities listed with a recognized exchange or medium, the exemption is self-executing.
 - (2) If desired, any person may request confirmation of the exemption in the manner described below.
 - (E) Securities approved for listing
 - (1) A security which is "approved for listing upon notice of issuance" on a recognized exchange or medium enumerated in Subparagraph (C)(1) [~~or (2)~~] of this rule qualifies for the exemption. The exemption is self-executing.
 - (2) If desired, any person may request confirmation of the exemption in the manner described below.
 - (F) Senior or substantially equal rank securities
 - (1) An unlisted security of the same issuer which is of senior or substantially equal rank to the security listed on a recognized exchange or medium enumerated in Subparagraph (C) (1) [~~or (2)~~] of this rule qualifies for the exemption. The exemption is self-executing.
 - (2) If desired, any person may request confirmation of the exemption in the manner described below.
 - (G) Delisted or suspended securities
 - (1) If a listed security becomes delisted or suspended, the exemption is not available to the security or a senior or substantially equal rank security for the period during which the security is delisted or suspended.
 - (H) Requests for confirmation
 - (1) A confirmation from the Division may be requested by any person.
 - (2) The request for confirmation must include documentary proof of the listing or approval for listing upon notice of issuance with the recognized exchange or medium which is relied upon as the basis for the exemption.
 - (3) The required documentary proof must indicate, where applicable, that the listing is current and must include:
 - (3)(a) a signed copy of the listing agreement;
 - (3)(b) a copy of the receipt for payment; or
 - (3)(c) a signed copy of a letter from the recognized exchange or medium with which the security is listed which acknowledges listing and the effective date thereof, or acknowledges approval for listing upon notice of issuance.
 - (4) Each request for confirmation must include a filing fee as specified in the Division's fee schedule.
 - (5) In response to a complete request for confirmation, the Division will issue a letter confirming the availability of the exemption.
 - (6) The Division will issue a copy of the letter confirming the availability of the exemption to any person so requesting in writing or in person for the cost of the photocopying.
 - (I) Exchange tiers
 - (1) Except as provided in Subparagraph (I)(2) of this rule, where a recognized exchange or medium has more than one tier, the exemption applies only to the highest tier.
 - (2) The exemption applies to a lower tier of a recognized exchange or medium if the lower tier is specifically named in this rule.

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R164-14-2[s]y. MJDS - Secondary Trading Exemption.

- (A) Authority and purpose
 - (1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)[~~(s)~~](v) and Section 61-1-24.
 - (2) This rule provides a secondary trading exemption for securities offered by Canadian issuers which have been offered in the United States pursuant to MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC.
- (B) Definitions
 - (1) "Division" means the Division of Securities, Utah Department of Commerce.
 - (2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.
 - (3) "SEC" means the United States Securities and Exchange Commission.
- (C) Exemption
 - (1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in any class of a Canadian issuer's security which has been offered pursuant to Section 61-1-9 and MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC and the Division.
 - (2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-21[s]y. Solicitations of Interest Exemption.

- (A) Authority and purpose
 - (1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)[~~(s)~~](v) and Section 61-1-24.
 - (2) The rule enables an issuer to solicit indications of interest in a future offering of securities by the issuer to determine the likelihood of success of the offering before incurring costs associated with registering the offering.
 - (3) All communications made in reliance on this rule are subject to the anti-fraud provisions of Section 61-1-1.
 - (4) The Division may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.
 - (5) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 61-1-22. Likewise any misrepresentation or omission may give rise to civil liability. Under the Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."
- (B) Definitions
 - (1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.
 - (2) "Director" means the director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Requirements

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from Section 61-1-7, if all of the following conditions are satisfied:

(1)(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(1)(b) The issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described;

(1)(c) The offerer intends to register the security in this state and conduct its offering pursuant to either SEC Regulation A, Conditional Small Issues Exemption, 17 CFR 230.251 through 17 CFR 230.263 (1995), SEC Rule 504, Exemption for Limited Offerings and Sales of Securities Not Exceeding \$1,000,000, 17 CFR 230.504 (1995), or SEC Rule 147, "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11), 17 CFR 230.147 (1995), which are incorporated by reference;

(1)(d) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the Division, Form 14-21s, Solicitation of Interest Form, any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published, and a fee as specified in the Division's fee schedule;

(1)(e) Five (5) business days prior to usage, the offerer files with the Division any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(1)(f) No Solicitation of Interest Form, script, advertisement or other material can be used to solicit indications of interest unless approved by the Division;

(1)(g) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days from the communication;

(1)(h) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(1)(i) No sale is made until seven (7) calendar days after delivery to the purchaser of a final prospectus or in those instances in which delivery of a preliminary prospectus is allowed, a preliminary prospectus; and

(1)(j) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(1)(j)(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form;

(1)(j)(ii) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(1)(j)(iii) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the SEC within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(1)(j)(iv) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(1)(j)(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(2) The prohibitions listed in Subparagraph (C)(1)(j) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing the party is licensed in this state and the SEC Form BD - Uniform Application for Broker-Dealer Registration, filed with this state discloses the order, conviction, judgment or decree relating to the person. No person disqualified under subparagraph (C)(1)(j) may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by subparagraph (C)(1)(j) is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(3)(a) A failure to comply with any condition of Subparagraph (C)(1) will not result in the loss of the exemption from the requirements of Section 61-1-7 for any offer to a particular individual or entity if the offerer shows:

(3)(a)(i) the failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(3)(a)(ii) the failure to comply was insignificant with respect to the offering as a whole; and

(3)(a)(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1).

(3)(b) Where an exemption is established only through reliance on Subparagraph (C)(3)(a), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under Section 61-1-20 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Section 61-1-7, but shall be a violation of the Act, be actionable by the Director under Section 61-1-20, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4)(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(4)(a)(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(4)(a)(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(4)(a)(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4)(a)(iv) THIS OFFER IS BEING MADE PURSUANT TO THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION IF MADE PURSUANT TO REGULATION A, AND IS REGISTERED IN THIS STATE;

(4)(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule; and

(4)(c) A preliminary prospectus, or its equivalent, may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(5) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(6) Offers made in reliance on this rule will not result in a violation of Section 61-1-7 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Subsections 61-1-14(2)(i), 61-1-14(2)(n) or 61-1-14(2)(q) until six

(6) months after the last communication with a prospective investor made pursuant to this rule.

R164-14-23[s]y. Foreign Securities - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)[~~(s)~~](v) and Section 61-1-24.

(2) This rule provides an exemption for secondary market transactions in securities offered by foreign issuers satisfying the requirements of this rule.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in an outstanding security issued by any corporation organized under the laws of a foreign country with which the United States currently maintains diplomatic relations (or an American Depository Receipt relating to such a security), provided either:

(1)(a) the security appears in the most recent Federal Reserve Board List of Foreign Margin Stocks;

(1)(b) the issuer is currently required to file with the Securities and Exchange Commission information and reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 and is not delinquent in such filing; or

(1)(c) the issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 and all of the following conditions are met:

(1)(c)(i) the issuer, including any predecessors, has been in continuous operation for at least 5 years and is a going concern actually engaged in business and neither in the organization stage nor in bankruptcy or receivership;

(1)(c)(ii) the number of shares outstanding is at least 2,500,000 and the number of shareholders is at least 5,000;

(1)(c)(iii) the market value of the outstanding shares, other than debt securities and preferred stock, is at least U.S. \$100 million;

(1)(c)(iv) the issuer, as of the date of its most recent financial statement, which may not be more than 18 months old and which has been audited in accordance with the generally accepted accounting principles of its country of domicile, has net tangible assets of at least U.S. \$100 million;

(1)(c)(v) the issuer had net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either

(1)(c)(v)(aa) at least U.S. \$50 million in total for its last three fiscal years, or

(1)(c)(v)(bb) at least U.S. \$20 million in each of its last two fiscal years; and

(1)(c)(vi) if the security is a debt security or preferred stock, the issuer has not during the past 5 years, or during the period of its existence if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-24[s]v. Internet Solicitations Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(~~(s)~~)(v) and Section 61-1-24.

(2) This rule provides an exemption for offers effected through the Internet which do not result in sales in Utah.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Offer" means a communication, regarding the offering of securities within the meaning of Subsection ~~61-1-13(2)(b)~~61-1-13(1)(bb)(ii), made on the Internet and directed generally to anyone who has access to the Internet, including persons in Utah.

(C) Exemption

(1) The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

(1)(a) an offer is not specifically directed to any person in Utah;

(1)(b) the Internet Offer indicates that the securities are not being offered to and sales will not be effected with persons in Utah; and

(1)(c) no sales of the issuer's securities are made in Utah as a result of the Internet Offer.

R164-14-25[s]v. Accredited Investor Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(~~(s)~~)(v) and Section 61-1-24.

(2) This rule provides an exemption for offers and sales to accredited investors. The rule also permits a limited use advertisement.

(B) Definitions

(1) "Accredited Investor" means an accredited investor as defined in 17 CFR 230.501(a) which is incorporated by reference.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exemption" means the exemption provided in Subsection 61-1-14(2)(~~(s)~~)(v).

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors pursuant to Section 61-1-14(2)(~~(s)~~)(v) in connection with any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule.

(D) Purchaser qualifications

Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(E) Issuer Limitations

The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a

merger or acquisition with an unidentified company or companies, or other entity or person.

(F) Investment Intent

The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Sections ~~61-1-8,~~61-1-9, or 6-1-10 or to an accredited investor pursuant to an exemption under Section 61-1-14.

(G) Disqualifications

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (G)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (G).

(H) General Announcement

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Division:

(2)(a) The name, address and telephone number of the issuer of the securities;

(2)(b) The name, a brief description and price (if known) of any security to be issued;

(2)(c) A brief description of the business of the issuer in 25 words or less;

(2)(d) The type, number and aggregate amount of securities being offered;

(2)(e) The name, address and telephone number of the person to contact for additional information; and

(2)(f) A statement that:

(2)(f)(i) sales will only be made to accredited investors;

(2)(f)(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(2)(f)(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(I) Additional Information

The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (H), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(J) Telephone Solicitations

No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(K) Effect of dissemination of general announcement to nonaccredited investors

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(L) Filing Requirements

The issuer shall file with the Division, within 15 days after the first sale in Utah:

(1) one manually signed Form 14-25s, Accredited Investor Exemption Uniform Notice of Transaction Form;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a copy of the general announcement; and

(4) a fee as specified in the Division's fee schedule.

R164-14-26[s]v. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(~~s~~)(v) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(~~2~~)(1)(b).

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27[s]v. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(~~s~~)(v) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation

Date of Enactment or Last Substantive Amendment: [~~March 20, 2000~~]**2010**

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-7; 61-1-8; 61-1-9; 61-1-10; 61-1-20; 61-1-22; 61-1-24

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-320
Medicaid Health Insurance Flexibility
and Accountability Demonstration
Waiver**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33689

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change ensures the public funds that subsidize the purchase of health insurance plans are used only for plans that meet the requirements of state and federal law, which restrict the use of public funds to cover abortion services. This change is necessary to comply with restrictions on the use of state and federal funds for abortion, as stated in Executive Order No. 13535, 75 Fed. Reg. 15599 (03/24/2010).

SUMMARY OF THE RULE OR CHANGE: Subsidies through Utah's Premium Partnership for Health Insurance (UPP) will not be paid to individuals who enroll in health plans that cover abortion services beyond the limited circumstances required under state and federal law. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 33529 in the April 15, 2010, Bulletin and was effective 04/01/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 105-78 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 433.138(b), published by Office of the Federal Register, 10/01/2009
- ◆ Updates 20 CFR 416, Subpart K, Appendix, published by Office of the Federal Register, 04/01/2009
- ◆ Updates 42 CFR 435.911, published by Office of the Federal Register, 10/01/2009
- ◆ Updates 42 CFR 435.912, published by Office of the Federal Register, 10/01/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This change may result in minimal savings to the state budget. The Department, however, cannot quantify these savings because there is no data to estimate how many families may choose to drop their coverage if they become ineligible for UPP.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide UPP services to clients.
- ◆ **SMALL BUSINESSES:** This change may result in a minimal reduction in health care premium costs if families drop their health insurance at work. The Department, however, cannot quantify this cost reduction because there is no data to estimate how many families may choose to drop their coverage if they become ineligible for UPP.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This change may result in a minimal loss in revenue to health plans if families drop their health insurance at work. The Department, however, cannot quantify this loss in revenue

because there is no data to estimate how many families may choose to drop their coverage if they become ineligible for UPP.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be a limited loss of income for a health plan and increased out-of-pocket expenses for an individual or family. The Department, however, cannot quantify these losses and expenses because there is no data to estimate how many families may choose to drop their coverage if they become ineligible for UPP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Changes in federal law and executive orders require this rule change to assure compliance with federal and state law.

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 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 NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

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

R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-1. Authority.

This rule is authorized by Title 26, Chapter 18 and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.

(3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Consolidated Omnibus Budget Reconciliation Act" or "COBRA"~~[(COBRA)]~~ continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. To receive UPP reimbursement, the COBRA health plan must be a UPP Qualified Health Plan.~~[Coverage must include at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations. Lifetime maximum benefits must be at least \$1,000,000, the deductible can be no more than \$2,500 per individual, and the plan must pay at least 70% of an inpatient stay after the deductible.]~~

(7) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(7)8 "Department" means the Utah Department of Health.

(8)9 "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(9)10 "Employer-sponsored health plan" means a health insurance plan offered through an employer. To receive UPP reimbursement, ~~[where:~~

~~_____ (a-) the employer must contribute[s] at least 50 [percent] % of the cost of the health insurance premium of the employee and offer a UPP Qualified Health Plan.];~~

~~_____ (b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;~~

~~_____ (c) lifetime maximum benefits are at least \$1,000,000;~~

~~_____ (d) the deductible is no more than \$2,500 per individual; and~~

~~_____ (e) the plan pays at least 70% of an inpatient stay after the deductible.]~~

(10)11 "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11)12 "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12)13 "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment" means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "UPP Qualified Health Plan" means a health plan, which meets all of the following requirements:

(a) Health plan coverage includes:

(i) physician visits;

(ii) hospital inpatient services;

(iii) pharmacy services;

(iv) well child visits; and

(v) children's immunizations.

(b) Lifetime maximum benefits must be at least \$1,000,000.

(c) The deductible may not exceed \$2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

([19]20) "Utah's Premium Partnership for Health Insurance" or "UPP"([UPP] program) provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

([20]21) "Verification[s]" means the proof[s] needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) Adults with children living in the home;

(b) Adults without children living in the home;

(c) Adults enrolled in the PCN program;

(d) Children enrolled in the CHIP program;

(e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office and on the Internet.

(7) An individual must repay any benefits received under the UPP program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan or COBRA continuation coverage.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee leaves the household or dies.

(f) An enrollee or the household moves out of state.

(g) Change of address of an enrollee or the household.

(h) An enrollee enters a public institution or an institution for mental diseases.

(i) An enrollee's subsidy for COBRA continuation coverage provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, Stat. 123 115 ends.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or they may choose direct coverage through ~~[the Children's Health Insurance Program]~~ CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of Sections R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Applicants and enrollees for the UPP program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the UPP program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in ~~the~~ UPP ~~program~~ if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of Section R414-320-16. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in ~~the~~ UPP ~~program~~.

R414-320-5. Verification and Information Exchange.

(1) The applicant and enrollee must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department safeguards information about applicants and enrollees.

(4) There are no provisions for taxpayers to see any information from client records.

(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The Department may only release information ~~may be released only~~ to an agency with comparable rules for safeguarding records. The information that the Department releases cannot include information obtained through an income match system.

R414-320-6. Residents of Institutions.

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 200[7]9 ed., which is incorporated by reference.

(2) An ~~individual~~ applicant who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(a) An applicant who is covered by COBRA continuation coverage may be eligible for UPP enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in ~~the~~ UPP ~~program~~ or may choose direct coverage through ~~the Primary Care Network program~~ PCN if enrollment has not been stopped under the provisions of Section R414-310-16.

~~(c) If the cost of the employer-sponsored coverage is greater than or equal to 5% of the household's gross income, [A] a child may choose enrollment in UPP or direct coverage [under the] through CHIP. [program if the cost of the employer-sponsored coverage is equal to or more than 5% of the household's gross income.]~~

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) The individual must enroll in a UPP Qualified Health Plan either with an employer-sponsored health plan or a COBRA continuation health plan.

~~([8]9)~~ Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

~~([9]10)~~ The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

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R414-320-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 200[7] ed., which are incorporated by reference.

(2) When an individual applies for UPP, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the UPP program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet enrollment eligibility criteria at a time when the Department has not already stopped enrollment under provisions of Section R414-320-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) The applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) The applicant died; or

(c) The applicant cannot be located; or

(d) The applicant has not responded to requests for information within the 30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.

(b) ~~[The case will be closed at the end of the recertification month if]~~ If the enrollee does not complete the recertification process and provide required verifications by the end

of the recertification month, the Department will close the case at the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office as defined in Subsection R414-308-3(2)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance or COBRA continuation coverage and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium. The applicant must enroll in the employer-sponsored health insurance or COBRA continuation coverage no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in Section R414-320-13.

(5) If the enrollee does not complete the recertification as described in Section R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with Section R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

- (a) The individual turns age 65;
- (b) The individual becomes entitled to receive Medicare, or becomes covered by VA Health Insurance;
- (c) The individual dies;
- (d) The individual moves out of state or cannot be located;
- (e) The individual enters a public institution or an Institute for Mental Disease.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily, the individual does not enroll in COBRA continuation coverage, and the individual notifies the local office within ten calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsored health insurance or COBRA continuation coverage and move to direct coverage under ~~[the Children's Health Insurance Program]~~CHIP at any time during the certification period without any waiting period.

(9) An individual enrolled in ~~[the Primary Care Network]~~PCN or ~~[the Children's Health Insurance Program]~~CHIP who enrolls in an employer-sponsored plan or COBRA continuation coverage may switch to the UPP program if the individual reports to the local office within ten calendar days of enrolling in an employer-sponsored plan or COBRA continuation coverage and before coverage begins.

(10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or ~~[the Children's Health Insurance Program]~~CHIP, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a UPP case closes because the enrollee is eligible for another Medicaid program or ~~[the Children's Health Insurance Program]~~for CHIP, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under Section R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

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KEY: CHIP, Medicaid, PCN, UPP
Date of Enactment or Last Substantive Amendment: [February 16,] 2010
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

**Health, Health Systems Improvement,
 Primary Care and Rural Health
 R434-40
 Utah Health Care Workforce Financial
 Assistance Program Rules**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 33690
 FILED: 06/01/2010**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A number of changes were passed through the 2009 General Session of the Utah State Legislature that require this amendment to the rule. S.B. 111 was the bill that made the changes. The changes are needed to update the rule to add geriatric professionals that were added to the Act, Title 26, Chapter 46. (DAR NOTE: S.B. 111 (2009) is found at Chapter 97, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The amendment includes: changing the wording in several sections of the rule to include the geriatric professional, further defining what determines a geriatric professional, licensure requirements for the new geriatric professionals to assure they meet the intent of the Act, further explaining what types of eligible bona fide loans are covered by the program, adding and including criteria that meets the eligibility and selection criteria for geriatric professionals. The amendment also deletes criteria that no longer assist in determining and selecting the best qualified candidates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-46-101(1) and Subsection 26-46-103(1)

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The changes will impose minor additional costs and duties to state government. Additional responsibilities will initially be required to complete the

geriatric professional applications, update the other health care professional applications, and to update the employment site applications to include any necessary geriatric criteria not listed in the current applications. These costs will be covered during the first year and may extend through the second year until the geriatric professional criteria has been tested to assure it will work. These costs will be administrative costs to the program.

◆ LOCAL GOVERNMENTS: There are no expected costs to local governments, other than the time it would take for them to fill out and complete the competitive employment site application.

◆ SMALL BUSINESSES: There are not expected costs to small businesses, other than the time it would take for them to fill out and complete the competitive employment site application.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are not expected costs to persons other than small businesses, businesses, or local government entities other than the time it would take for them to fill out and complete the competitive employment site application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no new compliance costs. Additional small businesses will be eligible to apply to this Program and seek educational loan repayment for their geriatric professionals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change allows businesses to apply for educational loan repayment for a new group of geriatric professionals. Participation is voluntary and should have a net positive fiscal impact on affected businesses when the small application cost is compared to the benefit of educational loan repayment.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Erin Olsen by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/02/2010

THIS RULE MAY BECOME EFFECTIVE ON: 08/09/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R434. Health, Health Systems Improvement, Primary Care and Rural Health.

R434-40. Utah Health Care Workforce Financial Assistance Program Rules.

R434-40-1. Purpose.

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, Utah Code, Title 26, Chapter 46; which governs the award of grant funds to geriatric professionals and health care professionals to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become nurse educators~~[health care professionals]~~ in exchange for serving for a specified period of time in a underserved area of the state.

R434-40-2. Authority.

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

R434-40-3. Definitions.

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.

(4) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

(5) "Department" means the Utah Department of Health.

(6) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(7) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(8) "Geriatric" means individuals 65 years old and older.

(9) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcribed program of an accredited academic institution;

b. graduate degree in gerontology.

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include, but is not limited to, internship, practicum, preceptorship, residency, or fellowship.

~~(8)~~(10) "Grant" means a grant of funds under a grant agreement.

~~(9)~~(11) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.

~~(10)~~(12) "Mental health therapist" means an individual licensed under:

(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or

(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.

~~(11)~~(13) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

~~(12)~~(14) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(15) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(16) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(17) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

~~(13)~~(18) "Physician" means an individual ~~[who is]~~ licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~(14)~~(19) "Physician assistant" means an individual ~~[who is]~~ licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

~~(15)~~(20) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for geriatric professional and health care professionals licensure and as required by this rule.

~~(16)~~(21) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

~~(17)~~(22) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for a specified period of time at an approved site that is a Utah nursing school or training institution.

~~(18)~~(23) "Service obligation" means professional service rendered at an approved site for a minimum of two years in exchange for a scholarship or loan repayment grant.

R434-40-4. Geriatric Professionals and Health Care Professionals Loan Repayment Grants -- Terms and Service.

(1) To increase the number of geriatric professionals and health care professionals in underserved areas of the state, the Department may provide loan repayment grants to geriatric professional and health care professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by a geriatric professional and health care professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a geriatric professional and health care professional to practice in his field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the geriatric professional and health care professional under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant monies under the act until the recipient has performed at least ~~three~~six months of service at the approved site.

R434-40-5. Health Care Professionals Scholarship Grants -- Terms and Service.

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

R434-40-6. Loan Repayment Grant Administration.

(1) The Department may award loan repayment grants to repay loans taken for geriatric professionals' and health care professionals' educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds him to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in his health care specialty in Utah before his first day of service under the grant agreement.

(9) Prior to beginning to fulfill his service obligation, a loan repayment grant recipient must obtain approval from the Department, of the site where he may complete his service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

R434-40-7. Scholarship Grant Administration.

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in his grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department prior to beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department prior to changing the approved site where he fulfills his service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

R434-40-8. Eligible Bona Fide Loans.

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying geriatric professional or health care professional degree approved by the Department.

(2) A bona fide loan includes the following:

~~[(+)](a)~~ a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

~~[(2)](b)~~ a governmental loan made by a federal, state, county, or city agency;

~~[(3)](c)~~ a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

~~[(4)](d)~~ a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

R434-40-9. Full-Time Equivalency Provisions for Recipients.

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2) A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.

(3) A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

- (c) the percentage of the population under 18 years of age;
 - (d) the distance to the nearest geriatric professionals or health care professionals and barriers to reaching the geriatric professionals or health care professionals;
 - (e) ability of the site to provide support facilities and services for the requested geriatric professional or health care professional;
 - (f) financial stability of the site; and
 - (g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;
 - (h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.
- (3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:
- (a) a demonstrated shortage of nursing educator faculty;
 - (b) number of and degrees sought by students;
 - (c) number of students denied for each degree sought;
 - (d) residency of students;
 - (e) ability of the nursing school to provide support facilities and services for the requested position to be trained;
 - (f) faculty to student ratio, including ratios of clinical and classroom instructors;
 - (g) average class sizes for each of the degrees offered by the school;
 - (h) school plans to expand enrollment;
 - (i) diversity of students;
 - (j) current and projected staffing for the type of instructor requested;
 - (k) sources and stability of funding to hire and support the prospective instructor; and
 - (l) distance to the next closest nursing school.
- (4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:
- (a) a majority of practicing health care professionals;
 - (b) county and civic leaders;
 - (c) hospital administrators;
 - (d) business leaders, local chamber of commerce, citizens; and
 - (e) local health departments.
- (5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a shortage of health care professional(s) and that are requesting one of the following medical specialties:
- (a) family practice;
 - (b) internal medicine;
 - (c) obstetrics/gynecology; and
 - (d) pediatrics.
- (6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.
- (7) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

R434-40-11. Loan Repayment Grant Eligibility and Selection.

- (1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:
- (a) the extent to which an applicant's training in a health care specialty is needed at an approved site;
 - (b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:
 - (i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;
 - (ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;
 - (iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;
 - (iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to serve in an underserved area;
 - (v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates; ~~and~~
 - ~~—————(vi) the length of the applicant's proposed service obligation, with greater consideration given to applicants who agree to serve for longer periods of time.~~
- ~~—————](c) the applicant's:~~
- (i) academic standing;
 - (ii) prior professional or personal experience serving in an underserved area;
 - (iii) board certification or eligibility;
 - (iv) postgraduate training achievements;
 - (v) peer recommendations;
 - (vi) other facts that the applicant can demonstrate to the Department that establishes his professional competence or conduct;
- (d) the applicant's financial need;
 - (e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;
 - (f) the applicant's willingness to provide care regardless of a patient's ability to pay;
 - (g) the applicant's ability and willingness to provide care; and
 - (h) the applicant's achieving an early match with an approved site.
- (3) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.
- (4) The Department may consider only grant applicants who apply within one year of the applicant's ~~[anticipated date of becoming licensed or certified as a health care professional in the state]~~beginning employment at an approved eligible site.
- ~~—————(5) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may consider the applicant's scores on standardized tests that are required to become licensed or certified to practice in Utah.]~~

R434-40-12. Scholarship Grant Eligibility and Selection.

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes his commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application;

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.

(1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of the act.

(3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.

(6) A scholarship grant recipient must:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to R434-40-16;

(b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire him.

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site.

(d) obtain an unrestricted license to practice in Utah prior to beginning to fulfill the service obligation at the approved site.

(e) obtain approval from the Department prior to beginning to fulfill his service obligation at an approved site.

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training.

(g) obtain Department approval prior to changing the approved site where he fulfills his service obligation.

.....

KEY: medically underserved, grants, scholarships
Date of Enactment or Last Substantive Amendment:
[December 23, 2003]2010
Notice of Continuation: December 3, 2008
Authorizing, and Implemented or Interpreted Law: 26-4-102

Human Services, Administration
R495-883
Children in Care Support Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33662

FILED: 05/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide information on the services provided by the Office of Recovery Services (ORS) when a child is placed in the care and custody of the state. Many of the provisions being placed in this rule were previously located in Rule R527-550. They are being relocated to the Department of Human Services section of Administrative Rules because the topic affects multiple offices within the Department of Human Services, not just ORS. The rule explains that ORS has the authority to enforce child support based on an existing order in accordance with Section 78B-12-108 for a child in care or if an order does not exist, ORS has the authority to establish a child support obligation in accordance with the child support guidelines per Sections 78B-12-301 and 78B-12-302. The rule clarifies that if a child goes back to the home and then returns to the custody of the state. ORS has the authority to enforce the existing administrative order. Terms are defined that are

specific to this rule. The rule describes that child support will not be prorated for partial months and that it is due on the first day of the month. Finally, the rule clarifies how ORS will enact the provisions found in Section 62A-11-307.2 passed in H.B. 235 during the 2010 legislative session stating that if a child is in the custodial parent's home for more than seven consecutive days, child support services for that month shall not be collected on behalf of the Division of Child and Family Services. (DAR NOTE: H.B. 235 (2010) is found at Chapter 65, Laws of Utah 2010, and was effective 05/11/2010. The proposed repeal of Rule R527-550 is under DAR No. 33659 in this issue, June 15, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Section R495-883-1 contains two subsections. The first subsection states the legal authority that has been granted to ORS/CSS to create rules. The second subsection contains a statement describing the purpose of this specific rule. Section R495-883-2 contains terms and definitions that are specific to this rule. Section R495-883-3 defines how a child support order will be enforced for a child that has been placed in the care and custody of the state, if an order already exists. It provides information on how a child support amount will be determined if an order does not exist and when a review of the order may be done when a child is in the custody of the state. Parts of this section were previously listed in Rule R527-550, which is in the process of being repealed. They are being relocated to the Department of Human Services section of Administrative Rules because the topic affects multiple offices within the Department of Human Services, not just ORS. Subsection R495-883-4 addresses the procedures for suspending or ending child support services (pursuant to Section 62A-11-307.2 passed during the 2010 legislative session in H.B. 235) when a child in care temporarily leaves the custody of the state and returns or stays in the home of the custodial parent for more than seven consecutive days while in the custody of the Department of Child and Family Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-117 and Section 62A-11-104 and Section 62A-11-107 and Section 62A-11-301 and Section 62A-11-320.5 and Section 62A-11-320.6 and Section 78A-6-1106 and Section 78B-12-101 and Section 78B-12-106 and Section 78B-12-108 and Section 78B-12-301 and Section 78B-12-302

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated savings to the state budget due to this administrative rule. There may be minimal costs associated with the time required for workers at the Department of Child and Family Services and workers at ORS to communicate and verify when a child stays at a custodial parent's home lasting more than seven consecutive days; however, any other costs or savings to the state budget would be due to the underlying statute's requirements.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because administrative rules

of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.

◆ **SMALL BUSINESSES:** The procedures contained in this rule do not affect small businesses; therefore, there are no anticipated costs or savings for small business due to this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to other persons due to the procedures contained in this administrative rule. Any costs or savings to other persons would be due to the underlying statute's requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons due to the procedures contained in this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not addressed in the proposed rule, and it is not anticipated this rule will create any fiscal impact on them.

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

HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R495. Human Services, Administration.

R495-883. Children in Care Support Services.

R495-883-1. Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

(2) The purpose of this rule is to provide definitions of terms used in this rule and information about child support services for children in care or custody of the State of Utah.

R495-883-2. Definitions.

Terms used in this rule are defined as:

(1) Child Support Services -- efforts to enforce and collect the child support amount due for a calendar month.

(2) Custodial Parent -- one of the financially obligated parents of a child placed in the care or custody of the state.

(3) Third Party Payments -- entitlement benefits (SSA, SSI), insurance benefits, trust fund benefits, paid in behalf of the child.

R495-883-3. Child Support Services for Children in Care.

(1) ORS shall collect child support and Third Party Payments in behalf of children placed in the custody of the State of Utah in accordance with Section 78A-6-1106, 78B-12-101 et seq., 62A-1-117, 62A-11-301 et seq., and Federal Regulations 45 CFR 300 through 307.

(2) If a current child support order exists, ORS may collect and enforce the support based on the existing order in accordance with Section 78B-12-108.

(3) ORS may conduct a review of circumstances to determine if an existing order is in compliance with the child support guidelines and if the case meets the review criteria in accordance with Sections 62A-11-320.5 and 62A-11-320.6. If the order is not in compliance with the child support guidelines but still meets the review criteria, an administrative order may be issued, under the administrative adjudication process as provided in rule R497-100-1 et seq., while the child is under the jurisdiction of the juvenile court and in a placement other than with his parents.

(4) If a current child support order does not exist, the monthly child support obligation will be determined in accordance with the child support guidelines enacted in Sections 78B-12-301 and 78B-12-302.

(5) Child Support Services are due and payable on the first day of the month. Child support shall not be prorated for partial months.

R495-883-4. Child Support Services During Trial Placements or Temporary Lapses in State Custody.

(1) If an administrative order for child support is issued at the time the child is placed in custody:

(a) the child returns home; and

(b) the child is subsequently returned to state custody. ORS may collect and enforce child support based on the existing administrative order in accordance with Section 78A-6-1106.

(2) Child Support Services shall not be provided on behalf of the Division of Child and Family Services when a child in custody returns to the home of a custodial parent for more than seven consecutive days.

(a) The more than seven consecutive days at the home of a custodial parent may span two or more calendar months. If the more than seven consecutive days span over more than one calendar month, child support services shall not be provided for any of the affected months.

(b) The child support debt will be retroactively adjusted to remove the child support amount due for each calendar month affected by the more than seven consecutive day stay and child support services to collect any child support due for the affected calendar month(s) will not be provided.

(c) Adjustments for this purpose cannot be made to a child support case by ORS until information verifying the date, duration and location of the more than seven consecutive day stay is received from the Division of Child and Family Services.

(d) ORS shall complete the adjustment to the child support debt within ten business days of receiving the necessary verification from the Division of Child and Family Services.

(e) If the child support amount has been collected from the custodial parent prior to ORS receiving the necessary verification from the Division of Child and Family Services, the amount collected will be first applied to other debts owed to the state for times that the child has been in care or custody of the state. If no other child in care debts exists, the amount will be refunded to the custodial parent.

(f) If the consecutive day stay becomes a permanent placement in the custodial parent's home according to information received from the Division of Child and Family Services, ORS will provide continuing child support services, if appropriate, as of the date of the permanent placement as required by 45 CFR 302.33.

KEY: child support, foster care, youth corrections

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 45 CFR 300 - 307; 62A-1-117; 62A-11-104; 62A-11-107; 62A-11-301; 62A-11-320.5; 62A-11-320.6; 78A-6-1106; 78B-12-101; 78B-12-106; 78B-12-108; 78B-12-301; 78B-12-302

Human Services, Recovery Services
R527-40
Retained Support

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33660

FILED: 05/19/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to add information on how public assistance overpayments and retained support shall be collected from an individual who is and is not receiving public assistance. These procedures were previously listed in Rule R527-550 but are being moved to Rule R527-40 where the content is more appropriate. (DAR NOTE: The proposed repeal of Rule R527-550 is under DAR No. 33659 in this issue, June 15, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Section R527-40-3 was added to the rule to provide information as to how the Office of Recovery Services collects public assistance overpayments and retained support payments that have been kept by the custodial parent when money was owed to the state. Section R527-40-3 describes how payments are collected when an individual is receiving public assistance versus when an individual is receiving no assistance. This section was previously contained in Rule R527-550, which is in the process of being repealed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111 and Section 62A-11-107 and

Section 62A-11-304.1 and Section 62A-11-307.1 and Section 62A-11-307.2

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state because the changes to the rule do not affect the current procedures, the procedures are being removed from Rule R527-550 and merged with Rule R527-40 where the subject is more appropriate.
- ◆ LOCAL GOVERNMENTS: There is no anticipated change in cost or savings due to this amendment since administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.
- ◆ SMALL BUSINESSES: There will be no financial impact for small businesses due to the amendment of this rule since the procedures listed in the amendment were previously found in Rule R527-550 and do not apply to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings for other persons due to the amendment of this rule since the procedures listed in the amendment were previously found in Rule R527-550.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no change in compliance costs due to this amendment since procedures are not changing with the amendment. Procedures being added to Rule R527-40 with this amendment were previously contained in Rule R527-550, which is being repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not addressed in the rule or in the proposed changes, and it is not anticipated that the changes will create any fiscal impact on them.

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

HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.

R527-40. Retained Support.

R527-40-1. Authority and Purpose.

[1-](1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

[2-](2) The purpose of this rule is to define "retained support" in regards to a child support case, and to provide details as to how the amount owed is calculated once a retained support case has been opened for an obligee who has retained payments that were assigned to the state.

R527-40-2. Retained Support.

[4-](1) The term Retained Support refers to a situation in which an obligee who has assigned support rights to the state has received child support but failed to forward the payment(s) to ORS.

[2-](2) The agent will refer the case to the appropriate child support team with the evidence to support the referral.

[3-](3) In computing the amount owed, the obligee will be given credit for the \$50 pass-through payment for any months prior to March, 1997, in which support was retained by the client. For example, if the obligee received and kept a support payment of \$200 in February, 1997, the referral will be made as a \$150 debt. For support payments retained on or after March 1, 1997, no credit shall be given because there will be no pass-through payments for support payments made after February 28, 1997.

R527-40-3. Recoupment of Public Assistance Overpayments/Retained Support.

- (1) Obligor not receiving assistance.
 - (a) The obligor will be asked to complete an income asset affidavit.
 - (b) The total liability shall be reviewed with the obligor.
 - (c) The obligor will be requested to pay the total obligation in full.
 - (d) If total payment is not possible, the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.
- (2) Obligor receiving assistance.
 - (a) Payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent in accordance with rule or federal regulation.
 - (b) ORS shall be responsible for reviewing all requests for Food Stamp retroactive benefits to determine if an offset is to be made. A determination of the amount due the recipient shall be made within five (5) days from the date the request is received by ORS.

KEY: child support, public assistance overpayments

Date of Enactment or Last Substantive Amendment: ~~June 15, 2009~~ 2010

Notice of Continuation: January 4, 2010

Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-304.1; 62A-11-307.1(3); 62A-11-307.2(3)

Human Services, Recovery Services **R527-550** Assessment

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 33659
FILED: 05/19/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is to repeal the existing rule. Section R527-550-1 is being integrated into Rule R495-883 since the topic affects more than one office within the Department of Human Services. In addition, Section R527-550-3 is being incorporated into Rule R527-40 since the topics are related. This rule is no longer needed due to the incorporation of all provisions into other rules. (DAR NOTE: The proposed new Rule R495-883 is under DAR No. 33662 and the proposed amendment to Rule R527-40 is under DAR No. 33660 in this issue, June 16, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-117 and Section 62A-11-104 and Section 62A-11-107 and Section 62A-11-111 and Section 62A-11-301 and Section 62A-11-320.5 and Section 62A-11-320.6 and Section 78A-6-1106 and Section 78B-12-101 and Section 78B-12-106 and Section 78B-12-108 and Section 78B-12-201 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated change in cost or savings due to the repeal of the rule since elements of the rule will be added to the amendment of Rule R527-40 and to the new Rule R495-883.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated change in cost or savings due to the repeal of this rule since administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.
- ◆ **SMALL BUSINESSES:** There is no anticipated change in cost or savings for small businesses due to the repeal of this rule since elements of the rule will be merged with Rule R527-40 and Rule R495-883.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated change in cost or savings for other persons due to the repeal of this rule since elements of the rule will be merged with Rule R527-40 and Rule R495-883.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no change in compliance costs with the repeal of this

rule since sections of the rule are being incorporated with Rule 527-40 and Rule R495-883.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this rule on businesses will not change when it is repealed because portions of this rule are being incorporated with Rule R527-40 and Rule R495-883.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.

[R527-550. Assessment.

~~R527-550-1. Children Placed in the Custody of the State.~~

~~1. ORS shall collect child support and Third Party Payments in behalf of children placed in the custody of the state in accordance with Section 78A-6-1106, 78B-12-101 et seq., 62A-1-117, 62A-11-301 et seq., and Federal regulations 45 CFR 300 through 307.~~

~~2. The monthly child support obligation will be determined in accordance with the child support guidelines enacted in Section 78B-12-201 et seq. If a current child support order exists, ORS may collect and enforce the support based on the existing order in accordance with Section 78B-12-108. ORS may conduct a review of the existing support order and the parent's current financial circumstances to determine if the order is in compliance with the child support guidelines and if the case meets the review criteria in accordance with Sections 62A-11-320.5 and 62A-11-320.6. If the order is not in compliance with the child support guidelines but still meets the review criteria, an administrative order may be issued, under the administrative adjudication process as provided in rule R497-100-1 et seq., while the child is under the jurisdiction of the juvenile court and in a placement other than with his parents.~~

~~3. If an administrative order for support is issued at the time the child is placed in custody; and,~~

~~a. the child returns home; and,~~

~~b. the child is subsequently returned to state custody, ORS may collect and enforce child support based on the existing administrative order in accordance with Section 78-3a-906.~~

~~4. Third party payments are defined, but not limited to, entitlement benefits (SSA, SSI), insurance benefits, trust funds benefits, paid in behalf of the child.~~

~~5. Child support is due and payable on the first day of the month. Child support shall not be pro-rated for partial months.~~

~~**R527-550-3. Public Assistance Overpayments/Retained Support.**~~

~~A. Obligor not on Assistance:~~

~~1. The obligor will be asked to complete an income asset affidavit.~~

~~2. The total liability shall be reviewed with the obligor.~~

~~3. The obligor will be requested to pay the total obligation in full.~~

~~4. If total payment is not possible, the type of debt, the anticipated length of time to repay the debt, total income, assets and expenses of the obligor's household, and any anticipated changes in the household circumstances will be reviewed.~~

~~5. This information will be used to determine a monthly repayment amount. When feasible, the monthly repayment amount shall be no less than 10% of the household income and liquid resources.~~

~~B. Obligor on Assistance~~

~~1. Payment may be made by assistance recoupment. The recoupment may be voluntary or may be recouped without consent in accordance with rule or federal regulations.~~

~~2. The amount of the recoupment may be set through agreement or determined in accordance with federal regulations (7 CFR 273.18 or rule (R986-213-306).~~

~~ORS shall be responsible for reviewing all requests for Food Stamp retroactive benefits to determine if an offset is to be made. A determination of the amount due the recipient shall be made within five (5) days from the date the request is received by ORS.~~

~~**KEY: child support, foster care, youth corrections, public assistance overpayments**~~

~~**Date of Enactment or Last Substantive Amendment: December 17, 2003**~~

~~**Notice of Continuation: October 24, 2007**~~

~~**Authorizing, and Implemented or Interpreted Law: 62A-1-117; 62A-11-104; 62A-11-107; 62A-11-111; 62A-11-301; 62A-11-320.5; 62A-11-320.6; 78A-6-1106; 78B-12-101; 78B-12-106; 78B-12-108; 78B-12-201 et seq.]**~~

**Judicial Performance Evaluation
Commission, Administration
R597-1
General Provisions**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 33668
FILED: 05/26/2010**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide clarification for the definition of "closed"; to eliminate references to witnesses because of a statutory change; and to eliminate as unnecessary the definitions of "raw data" and "summary data".

SUMMARY OF THE RULE OR CHANGE: The definition of a "closed" case differentiates between when a case is closed in district or justice court and when it is closed in juvenile court. The definition of "closed" no longer references witnesses because they have been statutorily eliminated from the statute. The definitions of raw and summary data are superfluous and have also been eliminated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the rule only clarifies the definition of "closed" case and eliminates superfluous language, there is no anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because the commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** Because the commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because the commission has no authority with respect to small businesses, businesses, or local government entities, there is no anticipated cost or savings to these entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The commission assumes all compliance costs. Any affected persons do not assume compliance costs of the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the commission does not regulate business, there is no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING

420 N STATE ST
 SENATE BUILDING B-330
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: V. Lowry Snow, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-1. General Provisions.

R597-1-1. Purpose and Intent.

(1) The commission adopts these rules to describe how it intends to conduct judicial performance evaluations.

(2) The purpose of this rule is to ensure that:

(a) voters have information about the judges standing for retention election;

(b) judges have notice of the standards against which they will be evaluated; and

(c) the commission has the time necessary to fully develop the program mandated by Utah Code Ann. 78A-12-101 et seq.

(3) These rules are subject to modification pending the outcome of the 2009 pilot programs.

R597-1-2. Definitions.

(1) Closed case.

(a) For purposes of administering a survey to a litigant, a case is "closed":

(i) in a ~~trial~~ district or justice court, on the date on which the court enters an order from which an appeal of right may be taken;

(ii) in a juvenile court, on the date on which the court enters a disposition;

~~(iii) in an appellate court, on the date on which the remittitur is issued.~~

(b) For purposes of administering a survey to a juror, a case is "closed" when the verdict is rendered or the jury is dismissed.

~~(c) For purposes of administering a survey to a witness, a case is "closed" when the witness is excused.~~

~~(2) Evaluation cycle. "Evaluation cycle" means a time period during which a judge is evaluated. Judges not on the supreme court are subject to two evaluations cycles over a six-year judicial term. Justices of the supreme court are subject to three evaluation cycles over a ten-year judicial term.~~

(3) ~~[Raw data. "Raw data" means factual information that has been gathered for evaluative purposes but not analyzed or interpreted.]~~

~~(4) Summary data. "Summary data" means information that has been processed and condensed into a form that is usable by the general public.~~

~~(5) Survey. "Survey" means the aggregate of questionnaires, each targeting a separate classification of survey respondents, which together are used to assess judicial performance.~~

~~(6) Surveyor. "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding judicial performance.~~

KEY: performance evaluations, judicial performance evaluations, judiciary, judges

Date of Enactment or Last Substantive Amendment: ~~[May 1, 2009]~~2010

Authorizing, and Implemented or Interpreted Law: 78A-12

Natural Resources; Oil, Gas And
 Mining; Coal
R645-100-200
 Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33669

FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides definitions of terms used in the Title R645 rules of the Coal Regulatory Program. The term "valid existing rights" is being amended at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment includes a change to the term "valid existing rights" in the Coal Regulatory Program rules, in accordance with federal regulation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment changes the definition of valid existing rights, which does not have a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

♦ **SMALL BUSINESSES:** There are not anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment only changes the definition of valid existing rights, which does not have an anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the Title R645 rules. No compliance costs are expected from this rule amendment because the amendment only provides for one definition change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-100. Administrative: Introduction.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

.....

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and

reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground Development Waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

"Undeveloped Rangeland" means, for purposes of ALLUVIAL VALLEY FLOORS, lands where the use is not specifically controlled and managed.

"Unwarranted Failure to Comply" means the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means ~~[(a) for haul roads] (i) a recorded right of way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977, or (ii) any other road in existence as of August 3, 1977; (b) a person possesses valid existing rights if the person proposing to conduct coal mining and reclamation operations can demonstrate that property rights to the coal had been acquired prior to August 3, 1977 and that the coal is both needed for, and immediately adjacent to, an ongoing coal mining and reclamation operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the coal mining and reclamation operation as a whole economically viable; (c) where an area comes under the protection of 40-10-24 of the Act after August 3, 1977, valid existing rights will be found if on the date the protection comes into existence, a validly authorized coal mining and reclamation operation exists on that area; and (d) interpretation of the terms of the document relied upon to establish the rights to which the standard of portions (a) and (c) of this definition applies will be based either upon applicable Utah statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable Utah law exists, upon the usage and custom at the time and place it came into existence; [a set of circumstances under which a person may, subject to regulatory authority approval, conduct coal mining and reclamation operations on lands where Subsection 40-10-24(4) of~~

the Act and R645-103-224 would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of R645-103-224 and Subsection 40-10-24(4) of the Act. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the Federal Act and the State Program.

(a) Property rights demonstration. Except as provided in paragraph (c) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of coal mining and reclamation operations intended. This right must exist at the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Applicable Utah statutory or case law will govern interpretation of documents relied upon to establish property rights, unless Federal law provides otherwise. If no applicable Utah law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

(b) Except as provided in paragraph (c) of this definition, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

(i) Good faith/all permits standard. All permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. At a minimum, an application must have been submitted for any permit required under R645-201, R645-301 or R645-302; or

(ii) Needed for and adjacent standard. The land is needed for and immediately adjacent to a coal mining and reclamation operation for which all permits and other authorizations required to conduct coal mining and reclamation operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act when the Division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the Division may consider factors such as:

(A) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act depends upon use of that land for coal mining and reclamation operations;

(B) The extent to which plans used to obtain financing for the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(C) The extent to which investments in the operation before the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act rely upon use of that land for coal mining and reclamation operations;

(D) Whether the land lies within the area identified on the life-of-mine map submitted under R645-301-521.141 before the land came under the protection of R645-103-224.

(c) Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by R645-103-224 or Subsection 40-10-24(4) of the Act must demonstrate that one or more of the following circumstances exist if the road is included within the definition of coal mining and reclamation operations:

(i) The road existed when the land upon which it is located came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and the person has a legal right to use the road for coal mining and reclamation operations;

(ii) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for coal mining and reclamation operations;

(iii) A valid permit for use or construction of a road in that location for coal mining and reclamation operations existed when the land came under the protection of R645-103-224 or Subsection 40-10-24(4) of the Act; or

(iv) Valid existing rights exist under paragraphs (a) and (b) of this definition.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation, Failure, or Refusal" means for the purposes of R645-402, (1) A violation of a condition of a permit issued under the State Program, or (2) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Water Supply", "State-appropriated Water", and "State-appropriated Water Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

"Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willfully" means for the purposes of R645-402, that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

"Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [~~March 26, 2008~~2010

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

**Natural Resources; Oil, Gas And
Mining; Coal
R645-103-200
Areas Designated by Act of Congress**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33670

FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures to determine whether proposed coal mining can be authorized in consideration of prohibitions in federal and state statutes. The rule is being changed at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment provides clarifying text on when coal mining may not be conducted or may with the exceptions such as valid existing rights and existing operations, and clarifies the procedures for such determinations. These amendments are in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6 and Subsection 40-10-24(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. While the amendment clarifies procedures for valid existing rights determinations, no measurable impact is expected to the state cost in such determinations.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule change.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the Title R645 rules. While the amendment clarifies procedures of the Division and the applicant for valid existing rights determinations, no measurable impact on compliance costs is expected for coal mine operators.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL

ROOM 1210

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-103. Areas Unsuitable for Coal Mining and Reclamation Operations.

R645-103-200. Areas Designated by Act of Congress.

210. Scope. The rules in R645-103-200 establish the procedures to be used by the Division to determine whether a proposed coal mining and reclamation operation can be authorized in light of the mandatory prohibitions set forth in the Act and Federal Act.

220. Federal Lands. The authority to make determinations of unsuitability on federal lands is reserved to the Secretary pursuant to Section 523(a) of the Federal Act.

221. Valid ~~[and—]~~Existing Rights (VER). VER determinations on federal lands will be performed in a manner consistent with the terms of a cooperative agreement between the Secretary and Utah pursuant to section 523(c) of the Federal Act.

222. VER determinations on nonfederal lands which affect adjacent federal lands will be performed in a manner consistent with the terms of the cooperative agreement referenced in R645-103-221.

223. On federal lands within the boundaries of a national forest the Division will be responsible for coordination with the Secretaries of Interior and Agriculture, as appropriate, to ensure that mining is permissible under 30 CFR 761.11(b) and Section 522(e) (2) of the Federal Act.

224. Coal mining and reclamation operations may not be conducted on the following lands unless there are VER, as determined under R645-103-231.100, or qualify for the exception for existing operations under R645-103-225:

224.100. Any lands within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or National Recreation Areas designated by Act of Congress;

224.200. Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and;

224.210. Any surface operations and impacts will be incident to an underground coal mine; or

224.220. With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Federal Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq.;

224.300. Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in R645-103-236, the Division and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation;

224.400. Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply;

224.410. Where a mine access or haul road joins a public road, or

224.420. When, as provided in R645-103-234, the Division (or the appropriate public road authority designated by the Division) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the coal mining and reclamation operation, after:

224.421. Providing public notice and opportunity for a public hearing; and

224.422. Finding in writing that the interests of the affected public and landowners will be protected;

224.500. Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

224.510. The owner of the dwelling has provided a written waiver consenting to coal mining and reclamation operations within the protected zone, as provided in R645-103-235; or

224.520. The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling;

224.600. Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park; or

224.700. Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

225. VER determinations for land are not required where an existing operation meets the requirements of 30 CFR 761.12.

230. Procedures.

231. Upon receipt of an administratively complete application for a permit to conduct coal mining and reclamation operations, or an administratively complete application for a revision of the boundaries of a permit to conduct coal mining and reclamation operations, the Division will review the application to determine whether the proposed coal mining and reclamation [operations are limited or prohibited under 40-10-24(4) of the Act or 30 CFR 761.11(a) and (b) on the lands which would be disturbed by the proposed operations]operation would be located on any lands protected under R645-103-224.

231.100. The Division will follow 30 CFR 761.16 for determining state/federal responsibility for determinations, establishing application requirements, evaluation procedures and decision-making criteria for VER determinations, providing for public participation and notification of affected parties, and establishing requirements for the availability of records.

232. [Where the proposed operations would be located on any lands listed in Section 40-10-24(4)(a) and (d) or 30 CFR 761.11, the]The Division will reject [the application if the applicant has no valid existing rights for the area, or if the activity did not exist on August 3, 1977.]any portion of the application that would locate coal mining and reclamation operations on land protected under R645-103-224 unless:

232.100. The site qualifies for the exception for existing operations under R645-103-225;

232.200. A person has VER for the land, as determined under R645-103-231-100;

232.300. The applicant obtains a waiver or exception from the prohibitions of R645-103-224 in accordance with R645-103-237, R645-103-234, and R645-103-235; or

232.400. For lands protected by R645-103-224.300, both the Division and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with R645-103-236.

233. If the Division is unable to determine whether the proposed activities are located within the boundaries of any of the lands listed in [40-10-24(4)(a) or 30 CFR 761.11(a) and (b)]R645-103-224.100 or [closer than the limits provided in 40-10-24(4)(d) of the Act, the]within the specified distance from a structure or feature listed in R645-103-224.600 or

R645-103-224.700. the Division must request that the federal, Utah, or local governmental agency with jurisdiction over the protected land, structure, or feature verify the location. The Division will transmit a copy of the relevant portions of the permit application to the appropriate federal, Utah, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. [The National Park Service or the U.S. Fish and Wildlife Service will be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and will have 30 days from receipt of the notification in which to respond.] The Division, upon request by the appropriate agency, will grant an extension to the 30-day period of an additional 30 days. However, the Division's request for location verification must specify that the Division will not necessarily consider a response received after the 30-day period or the extended period granted. If no response is received within the 30-day period, or within the extended period granted, the Division may make the necessary determination based on the information it has available.

234. [Where the coal mining and reclamation operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in 40-10-24(4)(c), or where the applicant proposes to relocate or close any public road, the Division or public road authority designated by the Division will:

234.100. Require the applicant to obtain necessary approvals from the authority with the jurisdiction over the public road;

234.200. Provide an opportunity for a public hearing in the locality of the proposed coal mining and reclamation operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

234.300. If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two weeks prior to the hearing; and

234.400. Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed coal mining and reclamation operation. No mining will be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the Division or public road authority determines that the interests of the public and affected landowners will be protected.]Procedures for relocating or closing a public road or waiving the prohibition on coal mining and reclamation operations within the buffer zone of a public road.

234.100. This section does not apply to:

234.110. Lands for which a person has VER, as determined under R645-103-231.100;

234.120. Lands within the scope of the exception for existing operations in R645-103-225; or

234.130. Access or haul roads that join a public road, as described in R645-103-224.410.

234.200. The applicant must obtain any necessary approvals from the authority with jurisdiction over the road if the applicant proposes to:

234.210. Relocate a public road;

234.220. Close a public road; or

234.230. Conduct coal mining and reclamation operations within 100 feet, measured horizontally, of the outside right-of-way line of a public road.

234.300. Before approving an action proposed under R645-103-234.200, the Division, or a public road authority that it designates, must determine that the interests of the public and affected landowners will be protected. Before making this determination, the Division must:

234.310. Provide a public comment period and opportunity to request a public hearing in the locality of the proposed operation;

234.320. If a public hearing is requested, publish appropriate advance notice at least two weeks before the hearing in a newspaper of general circulation in the affected locality; and

234.330. Based upon information received from the public, make a written finding as to whether the interests of the public and affected landowners will be protected. If a hearing was held, the Division must make this finding within 30 days after the hearing. If no hearing was held, the Division must make this finding within 30 days after the end of the public comment period.

235. Procedures for waiving the prohibition on coal mining and reclamation operations within the buffer zone of an occupied dwelling.

235.100. This section does not apply to:

235.110. Lands for which a person has VER, as determined under R645-103-231.100;

235.120. Lands within the scope of the exception for existing operations in R645-103-225; or

235.130. Access or haul roads that connect with an existing public road on the side of the public road opposite the dwelling, as provided in R645-103-224.520.

235.200. Where the proposed coal mining and reclamation operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant will submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver will act as consent to [such activities]coal mining and reclamation operations within a closer distance of the dwelling as specified.

235.[100]300. Where the applicant for a permit has obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to [mine]conduct operations within 300 feet of such dwelling, a new waiver will not be required.

235.[200]400. Where the applicant for a permit had obtained a valid waiver from the owner of an occupied dwelling, that waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

235.[300]500. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to Utah laws, or if [the] coal mining and reclamation operations [has proceeded to within]have entered the 300-foot [limit prior to]zone before the date of purchase.

236. Where the Division determines that the proposed coal mining and reclamation operation will adversely affect any publicly owned park or any place included in the National Register

of Historic Places, the Division will transmit to the federal, Utah, or local agency with jurisdiction over the publicly owned park or National Register place, a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the activity, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Division, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days, or the extended period granted, will constitute an approval of the proposed permit. A permit for the coal mining and reclamation operation will not be issued unless jointly approved by all agencies. The procedures for joint approval will not apply to lands for which a person has VER as determined under R645-103-231.100 and lands within the scope of the exception for existing operations in R645-103-225.

237. If the applicant intends to rely upon the exception provided in R645-103-224.200 to conduct coal mining and reclamation operations on federal lands within a national forest, the applicant must request that the Division obtain the Secretarial findings required by R645-103-224.200. The applicant may submit a request to the Division before preparing and submitting an application for a permit or boundary revision on Federal lands in national forests. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in 30 CFR 761.5. The applicant must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. The Division may request that the permit applicant provide additional information that the Division determines is necessary in order to make the required findings. When a proposed coal mining and reclamation operation or proposed boundary revision for an existing coal mining and reclamation operation includes federal lands within a national forest, the Division may not issue the permit or approve the boundary revision before the Secretary makes the findings required by R645-103-224.200.

[237]238. If the Division determines that the proposed coal mining and reclamation operation is not prohibited under Section 40-10-24 of the Act and R645-103-200, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400.

[238]239. A determination by the Division that a person holds or does not hold valid existing rights [~~or that coal mining and reclamation operations did or did not exist on the date of enactment~~] will be subject to administrative and judicial review under R645-300-200.

240. Interpretative Rule. As set forth in the interpretative rule found at 30 CFR 761.200, subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 701(28) of the Federal Act and Subsection 40-10-3(20) of the Act and therefore is not prohibited in areas protected under Section 522(e) of the Federal Act.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [1994]2010

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas And Mining; Coal **R645-201-300** Major Coal Exploration Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33671

FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the requirements for coal exploration permit applications including public noticing and agency approval procedures. The rule is being changed at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment requires an exploration permit applicant to document their consultation with the owner of a feature with protection considerations and also requires the Division to allow opportunity for such owner to provide comments. These amendments are in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6 and Section 40-10-8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. While the amendment requires the Division to provide a person with opportunity for comment, no measurable impact is expected to the state cost in such matter.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. While the amendment requires an exploration permit applicant to document their consultation with a particular owner, no measurable impact is expected to the small business costs in such efforts.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or

savings. These regulations impact the Division and coal mining companies including coal exploration in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the R645 rules. While the amendment requires an exploration permit applicant to document their consultation with a particular owner, no measurable cost impact is expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-201. Coal Exploration: Requirements for Exploration Approval.

R645-201-300. Major Coal Exploration Permits.

310. Any person who intends to conduct coal exploration in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for coal mining and reclamation operations under R645-103, will, prior to conducting the exploration, submit an application for a Major Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information:

321. The name, address, and telephone number of the applicant;

322. The name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration; and

323. An exploration and reclamation operations plan, including:

323.100. A narrative description of the proposed exploration area, cross-referenced to the map required under R645-201-325, including information on surface topography; geology, surface water, and other physical features; vegetative cover; the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.); districts, sites, buildings, structures or objects listed on or eligible for listing on the National Register of Historic Places; known archeological resources located within the proposed exploration area; and other information which the Division may require regarding known or unknown historic or archeological resources;

323.200. A narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;

323.300. An estimated timetable for conducting and completing each phase of the exploration and reclamation;

323.400. A description of the measures to be used to comply with the applicable requirements of R645-202;

323.500. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount removed; and

323.600. A statement of why more than 250 tons of coal are necessary for exploration.

324. The name and address of the owner(s) of record of the surface land and of the subsurface mineral estate of the area to be explored;

325. A map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation. The map will specifically show existing underground openings, roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; historic, cultural, topographic, and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

326. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation; and

327. A detailed estimate of the cost of reclamation for the proposed exploration, with supporting calculations for the estimate. Estimates should be based on rates given in acceptable "cost, performance and escalation index" handbooks. The exploration reclamation estimate should include appropriate calculations and costs for:

- 327.100. Demolition;
- 327.200. Structural removal;
- 327.300. Backfilling and/or regrading;
- 327.400. Recontouring;
- 327.500. Seedbed preparation;
- 327.600. Seeding;
- 327.700. Mulching and/or fertilizing;
- 327.800. Contingency factor; and
- 327.900. Escalation factor.

328. For any lands listed in R645-103-224, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for coal mining and reclamation operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of R645-103-224, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of R645-103-224.

330. Public Notice and Comment for an application for a Major Coal Exploration Permit.

331. Completeness Determination. Within 30 days of receipt of an application, excluding applicant response time, the Division will determine whether an application is administratively complete. The division will notify the applicant, in writing, upon determining the application to be administratively complete.

332. Public notice of the application will be provided as follows:

332.100. The applicant will publish once a week for four consecutive weeks, subsequent to the Division's completeness determination, a public notice of the filing of an administratively complete application with the Division in a newspaper of general circulation in the county of the proposed exploration area; and

332.200. The public notice will state the name and business address of the person seeking approval, the date of filing of the application, the Division address where written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration.

333. Public Comment. Any person with an interest which is or may be adversely affected will have the right to file written comments with the Division on the application within 30 days after the last date of publication.

340. Approval or Disapproval of an Application for a Major Coal Exploration Permit.

341. The Division will act upon an administratively complete application for a Major Coal Exploration Permit and any written comments within 60 days, weather permitting. The approval of a Major Coal Exploration Permit may be based only on a complete and accurate application.

342. The Division will approve a complete and accurate application for a Major Coal Exploration Permit filed in accordance with R645-201-300 if it finds, in writing, that the exploration and reclamation described in the application will:

342.100. Be conducted in accordance with R645-201-300, R645-202, and any other applicable provisions of the State Program;

342.200. Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species;

342.300. Not adversely affect any cultural or historical resources listed on ~~or eligible for listing on,~~ the National Register of Historic Places, pursuant to the National Historic Preservation Act, ~~as amended~~ (16 U.S.C. Sec. 470 et seq. ~~1976 Supp. V~~), unless the proposed exploration has been approved by both the Division and the agency with jurisdiction over ~~such matters~~ the resources to be affected; ~~and~~

342.400. Terms of approval issued by the Division will contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the Act, R645-201-300, R645-202, and any other applicable provisions of the State Program ~~;~~ and

342.500. With respect to exploration activities on any lands protected under R645-103-224, minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for coal mining and reclamation operations. Before making this finding, the Division must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of R645-103-224, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of R645-103-224, to comment on whether the finding is appropriate.

350. Notice and Hearing on an Application for a Major Coal Exploration Permit.

351. The Division will notify the applicant and the appropriate local government officials, and other commenters, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant will include a statement of the reason, for disapproval. The Division will provide public notice of approval or disapproval of each application, by publication in a newspaper of general circulation in the general vicinity of the proposed operations.

352. Any person with interests which are or may be adversely affected by a decision of the Division pursuant to R645-201-351, will have the opportunity for administrative and judicial review as are set forth in R645-300-200.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~1994~~2010

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas And Mining; Coal
R645-300-100
Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

NOTICE OF PROPOSED RULE (Amendment)
DAR FILE NO.: 33672
FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for review, public participation, and approval or disapproval of coal mine permit applications and the amendment primarily pertains to permits for proposed re-mining operations.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies the permit application information for a proposed re-mining operation and makes other small wording changes to coincide with the federal counterpart.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6 and Subsection 40-10-10(2)

ANTICIPATED COST OR SAVINGS TO: THE STATE BUDGET: There are no anticipated costs or savings to the state budget. LOCAL GOVERNMENTS: No local government costs or savings are anticipated. SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business. PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the Title R645

rules. While the amendment clarifies the permit application information for a proposed re-mining operation prior to approval, the additional information in the permit was already considered in prior applications, but now will be documented in the application. Therefore, no measurable impact is expected to coal re-mining applicants for compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: NATURAL RESOURCES OIL, GAS AND MINING; COAL ROOM 1210 1594 W NORTH TEMPLE SALT LAKE CITY, UT 84116-3154 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal. R645-300. Coal Mine Permitting: Administrative Procedures. R645-300-100. Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.

The rules in R645-300-100 present the procedures to carry out the entitled activities.

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132. Review of Compliance. 132.100. The Division will review available information on state and federal failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued under section 518 of the federal Act, SMCRA-derived laws of other states, and section 40-10-20 of the Act, bond forfeitures where violations on which the forfeitures are based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of the Act, derivative laws of other states

and federal air and water protection laws, rules and regulations incurred at any coal mining and reclamation operations connected with the applicant. The Division will then make a finding that neither the applicant, nor any person who owns or controls the applicant, nor any person owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in R645-300-132. If such a finding cannot be made, the Division will require the applicant, before issuance of the permit, to either:

132.110. Submit to the Division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

132.120. Establish for the Division that the applicant or any person owned or controlled by the applicant or any person who owns or controls the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under R645-300-220 either denies a stay applied for in the appeal or affirms the violation, then the applicant will within 30 days submit the proof required under R645-300-132.110.

132.200. Any permit that is issued on the basis of proof submitted under R645-300-132.110 or pending the outcome of an appeal described in R645-300-132.120 will be issued conditionally.

132.300. If the Division makes a finding that the applicant, or anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application will not be granted. Before such a finding becomes final, the applicant or operator will be afforded an opportunity for an adjudicatory hearing on the determination as provided for in R645-300-210.

133. Written Findings for Permit Application Approval. No permit application or application for a ~~[permit change]~~ significant revision of a permit will be approved unless the application affirmatively demonstrates and the Division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

133.100. The application is complete and accurate and the applicant has complied with all the requirements of the Federal Act and the State Program;

133.200. The proposed permit area is:

133.210. Not within an area under study or administrative proceedings under a petition, filed pursuant to R645-103-400 or 30 CFR 769, to have an area designated as unsuitable for coal mining and reclamation operations, unless the applicant demonstrates that before January 4, 1977, substantial legal and financial commitments were made in relation to the operation covered by the permit application; or

133.220. Not within an area designated as unsuitable for ~~[mining]~~ coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400 or 30 CFR 769 or within an area subject to the prohibitions ~~[or limitations]~~ of R645-103-~~230~~ 224;

133.300. For coal mining and reclamation operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Division the documentation required under R645-301-114.200;

133.400. The Division has made an assessment of the probable cumulative impacts of all anticipated coal mining and reclamation operations on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

133.500. The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

133.600. The Division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Division has determined that no additional protection measures are necessary; and

133.700. The applicant has:

133.710. Demonstrated that reclamation as required by the Federal Act and the State Program can be accomplished ~~[according to information given]~~ under the reclamation plan contained in the permit application.

133.720. Demonstrated that any existing structure will comply with the applicable performance standards of R645-301 and R645-302.

133.730. Paid all reclamation fees from previous and existing coal mining and reclamation operations as required by 30 CFR Part 870.

133.740. Satisfied the applicable requirements of R645-302.

133.750. If applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of R645-301-353.400.

133.800. For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of R645-301-553.500, the site of the operation is a previously mined area as defined in R645-100-200.

133.900. For permits to be issued for proposed remining operations as defined in R645-100-200 and reclaimed in accordance with R645-301-553, the permit application must contain the following information:

133.910. Lands eligible for remining;

133.920. An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

133.930. Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the State Program can be accomplished.

133.1000. The applicant is eligible to receive a permit, based on the reviews under R645-300-100 through R645-300-132.300.

134. Performance Bond Submittal. If the Division decides to approve the application, it will require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of R645-301-800.

140. Permit Conditions. Each permit issued by the Division will be subject to the following conditions:

141. The permittee will conduct coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to R645-301-800.

142. The permittee will conduct all coal mining and reclamation operations only as described in the approved application, except to the extent that the Division otherwise directs in the permit.

143. The permittee will comply with the terms and conditions of the permit, all applicable performance standards and requirements of the State Program.

144. Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee will allow the authorized representatives of the Division to:

144.100. Have the right of entry provided for in R645-400-110 and R645-400-220.

144.200. Be accompanied by private persons for the purpose of conducting an inspection in accordance with R645-400-100 and R645-400-200 when the inspection is in response to an alleged violation reported to the Division by the private person.

145. The permittee will take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

145.100. Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

145.200. Immediate implementation of measures necessary to comply; and

145.300. Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

146. As applicable, the permittee will comply with R645-301 and R645-302 for compliance, modification, or abandonment of existing structures.

147. The operator will pay all reclamation fees required by 30 CFR Part 870 for coal produced under the permit, for sale, transfer or use.

148. Within 30 days after a cessation order is issued under R645-400-310, except where a stay of the cessation order is granted and remains in effect, the permittee will either submit the following information current to when the order was issued or inform the Division in writing that there has been no change since the immediately preceding submittal of such information:

148.100. Any new information needed to correct or update the information previously submitted to the Division by the permittee under R645-301-112.300.

148.200. If not previously submitted, the information required from a permit applicant by R645-301-112.300.

150. Permit Issuance and Right of Renewal.

151. Decision. If the application is approved, the permit will be issued upon submittal of a performance bond in accordance with R645-301-800. If the application is disapproved, specific

reasons therefore will be set forth in the notification required by R645-300-152.

152. Notification. The Division will issue written notification of the decision to the following persons and entities:

152.100. The applicant, each person who files comments or objections to the permit application, and each party to an informal conference;

152.200. The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land; and

152.300. The Office.

153. Permit Term. Each permit will be issued for a fixed term of five years or less, unless the requirements of R645-301-116 are met.

154. Right of Renewal. Permit application approval will apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with R645-300-151 will carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with R645-303-230.

155. Initiation of Operations.

155.100. A permit will terminate if the permittee has not begun the coal mining and reclamation operation covered by the permit within three years of the issuance of the permit.

155.200. The Division may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if:

155.210. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

155.220. There are conditions beyond the control and without the fault or negligence of the permittee.

155.300. With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee will be deemed to have commenced coal mining and reclamation operations at the time that the construction of the synthetic fuel or generating facility is initiated.

155.400. Extensions of time granted by the Division under R645-300-155 will be specifically set forth in the permit, and notice of the extension will be made public by the Division.

160. Improvidently Issued Permits: Review Procedures.

161. Permit review. When the Division has reason to believe that it improvidently issued a coal mining and reclamation permit it will review the circumstances under which the permit was issued, using the criteria in R645-300-162. Where the Division finds that the permit was improvidently issued, it shall comply with R645-300-163.

162. Review criteria. The Division will find that a coal mining and reclamation permit was improvidently issued if:

162.100. Under the violations review criteria of the regulatory program at the time the permit was issued;

162.110. The Division should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

162.120. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the

satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

162.200. The violation, penalty or fee;

162.210. Remains unabated or delinquent; and

162.220. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

162.300. Where the permittee was linked to the violation, penalty or fee through ownership or control, under the violations review criteria of the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link was severed the permittee continues to be responsible for the violation, penalty or fee.

163. Remedial Measures.

When the Division, under R645-300-162 finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued it will use one or more of the following remedial measures:

163.100. Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

163.200. Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

163.300. Suspend the permit until the violation is abated or the penalty or fee is paid; or

163.400. Rescind the permit under R645-300-164.

164. Improvidently Issued Permits: Rescission procedures. When the Division under R645-300-163 elects to rescind an improvidently issued permit it will serve on the permittee a notice of proposed suspension and rescission which includes the reasons for the finding of the regulatory authority under R645-300-162 and states that:

164.100. Automatic suspension and rescissions. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the permittee submits proof, and the regulatory authority finds, that;

164.110. The finding of the Division under R645-300-162 was erroneous;

164.120. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

164.130. The violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

164.140. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

164.200. Cessation of operations. After permit suspension or rescission, the permittee shall cease all coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the Division; and

164.300. Right to appeal. The permittee may file an appeal for administrative review of the notice under R645-300-200.

170. Final Compliance Review

After an application is approved, but before the permit is issued, the Division will reconsider its decision to approve the application based on the compliance review required by rule R645-300-132.100 and in light of any new information submitted under R645-301-112.900 and R645-301-113.400.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [March 26, 2008]2010

Author of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Natural Resources; Oil, Gas And Mining; Coal **R645-301-100** General Contents

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33673

FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule identifies general content that is required in coal mine permit applications. The amendment corrects the cross-reference to rules for mining in proximity to a road or dwelling. The rule is being changed at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment updates the cross-reference to rules for conducting coal mining operations near a dwelling or public road. The amendment is in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6 and Subsection 40-10-10(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the amendments are to two rule cross-references which have no state fiscal impact.

◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because coal mining in Utah normally is not conducted by a small business.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the Title R645 rules. The coal mine applicant now must meet the permit requirements of two amended state rule cross-references versus the prior range of rules, in accordance with federal regulations on this topic. Thus, no measurable impact is expected for coal mine operators on compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 OIL, GAS AND MINING; COAL
 ROOM 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-301. Coal Mine Permitting; Permit Application Requirements.
R645-301-100. General Contents.

The rules in R645-301-100 present the requirements for the entitled information which should be included in each permit application.

110. Minimum Requirements for Legal, Financial, Compliance and Related Information.

111. Introduction.

111.100. Objectives. The objectives of R645-301-100 are to insure that all relevant information on the ownership and control of persons who conduct coal mining and reclamation operations, the ownership and control of the property to be affected by the operation, the compliance status and history of those persons, and other important information is provided in the application to the Division.

111.200. Responsibility. It is the responsibility of the permit applicant to provide to the Division all of the information required by R645-301-100.

111.300. Applicability. The requirements of R645-301-100 apply to any person who applies for a permit to conduct coal mining and reclamation operations.

111.400. The applicant shall submit the information required by R645-301-112 and R645-301-113 in a format prescribed by OSM rules governing the Applicant Violator System information needs.

112. Identification of Interests. An application will contain the following:

112.100. A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

112.200. The name, address, telephone number and, as applicable, social security number and employer identification number of the:

112.210. Applicant;

112.220. Applicant's resident agent; and

112.230. Person who will pay the abandoned mine land reclamation fee.

112.300. For each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 of this chapter, as applicable:

112.310. The person's name, address, social security number and employer identification number;

112.320. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

112.330. The title of the person's position, date position was assumed, and when submitted under R645-300-147, date of departure from the position;

112.340. Each additional name and identifying number, including employer identification number, Federal or State permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a coal mining and reclamation operation in the United States within five years preceding the date of the application; and

112.350. The application number or other identifier of, and the regulatory authority for, any other pending coal mine operation permit application filed by the person in any State in the United States.

112.400. For any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in R645-100-200 the operation's:

112.410. Name, address, identifying numbers, including employer identification number, Federal or State permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

112.420. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

112.500. The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

112.600. The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area;

112.700. The MSHA numbers for all mine-associated structures that require MSHA approval; and

112.800. A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by R645-301-112.800 which is not on public file pursuant to Utah law will be held in confidence by the Division as provided under R645-300-124.320.

112.900. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

113. Violation Information. An application will contain the following:

113.100. A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

113.110. Had a federal or state permit to conduct coal mining and reclamation operations suspended or revoked in the five years preceding the date of submission of the application; or

113.120. Forfeited a performance bond or similar security deposited in lieu of bond;

113.200. A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to under R645-301-113.110 and R645-301-113.120 has occurred, including:

113.210. Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

113.220. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

113.230. The current status of the permit, bond, or similar security involved;

113.240. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

113.250. The current status of the proceedings; and

113.300. For any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any derivative State reclamation law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any coal mining and reclamation operation, a list of all violation notices received by the

applicant during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

113.310. Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

113.320. A brief description of the violation alleged in the notice;

113.330. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in R645-301-113.300 to obtain administrative or judicial review of the violation;

113.340. The current status of the proceedings and of the violation notice; and

113.350. The actions, if any, taken by any person identified in R645-301-113.300 to abate the violation.

113.400. After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under R645-301-113.

114. Right-of-Entry Information.

114.100. An application will contain a description of the documents upon which the applicant bases their legal right to enter and begin coal mining and reclamation operations in the permit area and will state whether that right is the subject of pending litigation. The description will identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

114.200. Where the private mineral estate to be mined has been severed from the private surface estate, an applicant will also submit:

114.210. A copy of the written consent of the surface owner for the extraction of coal by certain coal mining and reclamation operations;

114.220. A copy of the conveyance that expressly grants or reserves the right to extract coal by certain coal mining and reclamation operations; or

114.230. If the conveyance does not expressly grant the right to extract the coal by certain coal mining and reclamation operations, documentation that under applicable Utah law, the applicant has the legal authority to extract the coal by those operations.

114.300. Nothing given under R645-301-114.100 through R645-301-114.200 will be construed to provide the Division with the authority to adjudicate property rights disputes.

115. Status of Unsuitability Claims.

115.100. An application will contain available information as to whether the proposed permit area is within an area designated as unsuitable for coal mining and reclamation operations or is within an area under study for designation in an administrative

proceeding under R645-103-300, R645-103-400, or 30 CFR Part 769.

115.200. An application in which the applicant claims the exemption described in R645-103-333 will contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed coal mining and reclamation operations.

115.300. An application [~~in which the applicant~~that proposes to conduct coal mining and reclamation operations within 300 feet of an occupied dwelling or within 100 feet of a public road [~~will contain the necessary information and~~must meet the requirements of ~~[R645-103-230 through R645-103-238] R645-103-234 or R645-103-235, respectively.~~

116. Permit Term.

116.100. Each permit application will state the anticipated or actual starting and termination date of each phase of the coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

116.200. If the applicant requires an initial permit term in excess of five years in order to obtain necessary financing for equipment and the opening of the operation, the application will:

116.210. Be complete and accurate covering the specified longer term; and

116.220. Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

117. Insurance, Proof of Publication and Facilities or Structures Used in Common.

117.100. A permit application will contain either a certificate of liability insurance or evidence of self-insurance in compliance with R645-301-800.

117.200. A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the Division will be filed with the Division and will be made a part of the application not later than 4 weeks after the last date of publication as required by R645-300-121.100.

117.300. The plans of a facility or structure that is to be shared by two or more separately permitted coal mining and reclamation operations may be included in one permit application and referenced in the other applications. In accordance with R645-301-800, each permittee will bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application will include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement will demonstrate to the satisfaction of the Division that all responsibilities under the R645 Rules for the facility or structure will be met.

118. Filing Fee. Each permit application to conduct coal mining and reclamation operations pursuant to the State Program will be accompanied by a fee of \$5.00.

120. Permit Application Format and Contents.

121. The permit application will:

121.100. Contain current information, as required by R645-200, R645-300, R645-301 and R645-302.

121.200. Be clear and concise; and

121.300. Be filed in the format required by the Division.

122. If used in the permit application, referenced materials will either be provided to the Division by the applicant or be readily available to the Division. If provided, relevant portions of referenced published materials will be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

123. Applications for permits; permit changes; permit renewals; or transfers, sales or assignments of permit rights will contain the notarized signature of a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

130. Reporting of Technical Data.

131. All technical data submitted in the permit application will be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

132. Technical analyses will be planned by or under the direction of a professional qualified in the subject to be analyzed.

140. Maps and Plans.

141. Maps submitted with permit applications will be presented in a consolidated format, to the extent possible, and will include all the types of information that are set forth on U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area will be at a scale of 1:6,000 or larger. Maps of the adjacent area will clearly show the lands and waters within those areas and be at a scale determined by the Division, but in no event smaller than 1:24,000.

142. All maps and plans submitted with the permit application will distinguish among each of the phases during which coal mining and reclamation operations were or will be conducted at any place within the life of operations. At a minimum, distinctions will be clearly shown among those portions of the life of operations in which coal mining and reclamation operations occurred:

142.100 Prior to August 3, 1977;

142.200 After August 3, 1977, and prior to either:

142.210. May 3, 1978; or

142.220 In the case of an applicant or operator which obtained a small operator's exemption in accordance with the Interim Program rules (MC Rules), January 1, 1979;

142.300 After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the State Program; and

142.400 After the estimated date of issuance of a permit by the Division under the State Program.

150. Completeness. An application for a permit to conduct coal mining and reclamation operations will be complete and will include at a minimum information required under R645-301 and, if applicable, R645-302.

160. Permit change, renewal, transfer, sale and assignment.

Procedures to change, renew, transfer, assign, or sell existing coal mining and reclamation permit rights are presented at R645-303.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: [~~March 26, 2008~~2010]

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

**Natural Resources; Oil, Gas And
Mining; Coal
R645-301-400
Land Use and Air Quality**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33674

FILED: 05/26/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the coal mining permit application requirements related to land use and air quality. The amendment only adds an informational rule cross-reference so the applicant can quickly identify the rule applicable to valid existing rights determinations. The rule is being changed at the request of the Office of Surface Mining to be as effective as federal regulation, in order to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This rule amendment adds an informational rule cross-reference so the coal mining applicant can easily identify the rule applicable to valid existing rights determinations. These amendments are in accordance with Office of Surface Mining regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-10-6 and Subsection 40-10-10(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget, since the added rule cross-reference benefits the coal mining applicant with no impact to the state.
- ◆ **LOCAL GOVERNMENTS:** No local government costs or savings are anticipated. Local government is not impacted by this rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses since this change is only an informational rule cross-reference.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not anticipated to incur costs or

savings. These regulations impact the Division and coal mining companies in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Coal mine operators within Utah are regulated via the Title R645 rules. The amendment adds a rule cross-reference to benefit the coal mining applicant so no compliance costs are expected for coal mine operators from this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No measurable fiscal impact upon businesses is expected from this rule change.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/23/2010 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/28/2010

AUTHORIZED BY: John Baza, Director

R645. Natural Resources; Oil, Gas and Mining; Coal.

R645-301. Coal Mine Permitting: Permit Application Requirements.

R645-301-400. Land Use and Air Quality.

The rules in R645-301-400 present the requirements for information related to Land Use and Air Quality which are to be included in each permit application.

410. Land Use. Each permit application will include a descriptions of the premining and proposed postmining land use(s).

411. Environmental Description.

411.100. Premining Land-Use Information. The application will contain a statement of the condition and capability of the land which will be affected by coal mining and reclamation operations within the proposed permit area, including:

411.110. A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within five years before the

anticipated date of beginning the proposed operations, the historic use of the land will also be described;

411.120. A narrative of land capability which analyzes the land-use description in conjunction with other environmental resources information required under R645-301-411.100, and R645-301 and R645-302. The narrative will provide analyses of the capability of the land before any coal mining and reclamation operations to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the area proposed to be affected by coal mining and reclamation operations; and

411.130. A description of the existing land uses and land-use classifications under local law, if any, of the proposed permit and adjacent areas.

411.140. Cultural and Historic Resources Information. The application will contain maps as described under R645-301-411.141 and a supporting narrative which describe the nature of cultural and historic resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas. The description will be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historic, and cultural preservation agencies.

411.141. Cultural and Historic Resources Maps. These maps will clearly show:

411.141.1. The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas;

411.141.2. Each cemetery that is located in or within 100 feet of the proposed permit area; and

411.141.3. Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act.

411.142. Coordination with the State Historic Preservation Officer (SHPO). The narrative presented under R645-301-411.140 will also describe coordination efforts with and present evidence of clearances by the SHPO. For any publicly owned parks or places listed on the National Register of Historic Places that may be adversely affected by the proposed coal mining and reclamation operations, each plan will describe the measures to be used:

411.142.1. To prevent adverse impacts; or

411.142.2. If valid existing rights exist, as determined under R645-103-231, or joint agency approval is to be obtained under R645-103-236, to minimize adverse impacts.

411.143. The Division may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the national Register of Historic Places through:

411.143.1. Collection of additional information;

411.143.2. Conducting field investigations; or

411.143.3. Other appropriate analyses.

411.144. The Division may require the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate

mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

411.200. Previous Mining Activity. The application will state whether the proposed permit area has been previously mined, and, if so, the following information, if available:

411.210. The type of mining method used;

411.220. The coal seams or other mineral strata mined;

411.230. The extent of coal or other minerals removed;

411.240. The approximate dates of past mining; and

411.250. The uses of the land preceding mining.

412. Reclamation Plan.

412.100. Postmining Land-Use Plan. Each application will contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land-use policies and plans. The plan will explain:

412.110. How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

412.120. For the purposes of SURFACE COAL MINING AND RECLAMATION ACTIVITIES, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

412.130. Where a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900; and

412.140. The consideration which has been given to making all of the proposed coal mining and reclamation operations consistent with surface owner plans and applicable Utah and local land-use plans and programs.

412.200. Land Owner or Surface Manager Comments. The description will be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and Utah and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

412.300. Suitability and Compatibility. Assure that final fills containing excess spoil are suitable for reclamation and revegetation and are compatible with the natural surroundings and the approved postmining land use.

413. Performance Standards.

413.100. Postmining Land Use. All disturbed areas will be restored in a timely manner to conditions that are capable of supporting:

413.110. The uses they were capable of supporting before any mining; or

413.120. Higher or better uses.

413.200. Determining Premining Uses of Land.

413.210. The premining uses of land to which the postmining land use is compared will be those uses which the land previously supported, if the land has not been previously mined and has been properly managed.

413.220. The postmining land use for land that has been previously mined and not reclaimed will be judged on the basis of the land use that existed prior to any mining: provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use will be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

413.300. Criteria for Alternative Postmining Land Uses. Higher or better uses may be approved by the Division as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

413.310. There is a reasonable likelihood for achievement of the use;

413.320. The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution; and

413.330. The use will not:

413.331. Be impractical or unreasonable;

413.332. Be inconsistent with applicable land-use policies or plans;

413.333. Involve unreasonable delay in implementation; or

413.334. Cause or contribute to violation of federal, Utah, or local law.

414. Interpretation of R645-301-412 and R645-301-413.100 through R645-301-413.334, R645-302-270, R645-302-271.100 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900 for the purposes of UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES, Reclamation Plan: Postmining Land Use. The requirements of R645-301-412-130, for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of R645-303-220 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land-use capability as required by R645-301-413.100. An application for a permit revision of this type:

414.100. Must be submitted in accordance with the filing deadlines of R645-303-220;

414.200. Will constitute a significant alteration from the mining operations contemplated by the original permit; and

414.300. Will be subject to the requirements of R645-300-120 through R645-300-155 and R645-300-200.

420. Air Quality.

421. Coal mining and reclamation operations will be conducted in compliance with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and any other applicable Utah or federal statutes and regulations containing air quality standards.

422. The application will contain a description of coordination and compliance efforts which have been undertaken by the applicant with the Utah Bureau of Air Quality.

423. For all SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates exceeding 1,000,000 tons of coal per year, the application will contain an air pollution control plan which includes the following:

423.100 An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under R645-301-423.200 to comply with federal and Utah air quality standards; and

423.200 A plan for fugitive dust control practices as required under R645-301-244.100 and R645-301-244.300.

424. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons of coal per year or less, will include a plan for fugitive dust control practices as required under R645-301-244 and R645-301-244.300.

425. All plans for SURFACE COAL MINING AND RECLAMATION ACTIVITIES with projected production rates of 1,000,000 tons or less will include an air quality monitoring program, if required by the division, to provide sufficient data to judge the effectiveness of the fugitive dust control plan required under R645-301-424.

KEY: reclamation, coal mines

Date of Enactment or Last Substantive Amendment: ~~March 26, 2008~~ 2010

Notice of Continuation: March 7, 2007

Authorizing, and Implemented or Interpreted Law: 40-10-1 et seq.

Tax Commission, Auditing
R865-6F-27
Order of Credits Applied Against Utah
Corporate Franchise Tax Due Pursuant
to Utah Code Ann. Sections 9-2-413,
59-6-102, 59-7-601 through 59-7-614,
and 59-13-202

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33693

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates statutory citations and recognizes the addition of new corporate tax credits.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the statutory references to corporate tax credits to include renumbering of existing credits, and additional credits added since the rule was last updated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-202 and Section 59-13-301 and Section 59-6-102 and Title 59, Chapter 7 and Title 63M, Chapter 1

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--All corporate tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ LOCAL GOVERNMENTS: None--All corporate tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ SMALL BUSINESSES: None--All corporate tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--All corporate tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment updates the rule to include all credits authorized by the Legislature and reflects Tax Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None.

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:
 ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections ~~9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202, and 59-13-301, and Title 59, Chapter 7, and Title 63M, Chapter 1.~~

[A.—]Taxpayers shall deduct credits authorized by ~~Sections 9-2-413, Section 59-6-102, 59-7-601 through 59-7-614, and Section 59-13-202, Section 59-13-301, Title 59, Chapter 7, and Title 63M, Chapter 1~~ against Utah corporate franchise tax due in the following order:

- ~~1.~~(1) nonrefundable credits;
- ~~2.~~(2) nonrefundable credits with a carryforward;
- ~~3.~~(3) refundable credits.

KEY: taxation, franchises, historic preservation, trucking industries

Date of Enactment or Last Substantive Amendment: ~~September 17, 2009~~2010

Notice of Continuation: March 8, 2007

Authorizing, and Implemented or Interpreted Law: 9-2-401 through 9-2-415; 59-6-102; 59-7-601 through 59-7-614; 59-7; 59-13-202; 59-13-301; 63-38f-401 through 63-38f-414; 63M-1

Tax Commission, Auditing
R865-9I-2
Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 33696
 FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is necessary to implement S.B. 29 (2010). This bill requires Tax Commission rulemaking to define a day spent in the state. (DAR NOTE: S.B. 29 (2010) is found at Chapter 202, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language pertaining to permanent place of abode since that is no longer a criterion for statutory residency; and defines a day in the state as a day in which an individual spends more time in this state than in any other state.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any impacts were taken into account in S.B. 29 (2010).
- ◆ LOCAL GOVERNMENTS: None--Any impacts were taken into account in S.B. 29 (2010).
- ◆ SMALL BUSINESSES: None--Any impacts were taken into account in S.B. 29 (2010).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any impacts were taken into account in S.B. 29 (2010).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Some individuals may spend less days in the state under this rule than under the prior law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--May reduce burden on taxpayers.

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:

- ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

~~[A-]~~(1) Domicile.

~~[1-]~~(a) Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

~~[2-]~~(b) For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

~~[a-]~~(i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

~~[b-]~~(ii) Domicile applies equally to a permanent home within and without the United States.

~~[3-]~~(c) A domicile, once established, is not lost until there is a concurrence of the following three elements:

~~[a-]~~(i) a specific intent to abandon the former domicile;

~~[b-]~~(ii) the actual physical presence in a new domicile; and

~~[e-]~~(iii) the intent to remain in the new domicile permanently.

~~[4-]~~(d) An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

~~[B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.](2) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.~~

~~[C-]~~(3) Determination of resident individual status for military servicepersons.

~~[1-]~~(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows~~[- based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574].~~

~~[a-]~~(i) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

~~[b-]~~(ii) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

~~[2-]~~(b) Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of ~~[A-3]Subsection (1)(c).~~

~~[3-]~~(c) A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

~~[4-]~~(d) The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [April-8], 2010

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 59-10-103

Tax Commission, Auditing
R865-9I-42

Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63M-1-413

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33694

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates statutory citations and recognizes the addition of new income tax credits.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the statutory references to individual income tax credits to include renumbering of existing credits, and additional credits added since the rule was last updated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-202 and Section 59-13-301 and Section 59-6-102 and Title 59, Chapter 10 and Title 63M, Chapter 1

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--All income tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ **LOCAL GOVERNMENTS:** None--All income tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ **SMALL BUSINESSES:** None--All income tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--All income tax credits have been authorized by the Legislature in legislation. In addition, this amendment reflects Tax Commission practice since the new credits were added.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment updates the rule to include all credits authorized by the Legislature and reflects Tax Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None.

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:

◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, and 59-13-301, [Title 59, Chapter 10,] and Title 59, Chapter 10, and [63M-1-413] Title 63M, Chapter 1.

Taxpayers shall deduct credits authorized by [Sections,] Section 59-6-102, Section 59-13-202, Section 59-13-301, [Title 59, Chapter 10,] Title 59, Chapter 10, and [63M-1-413] Title 63M, Chapter 1 against Utah individual income tax due in the following order:

- (1) nonrefundable credits;
- (2) nonrefundable credits with a carryforward;
- (3) refundable credits.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [April 8], 2010

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 59-6-102; 59-10; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414

Tax Commission, Auditing
R865-20T-13
 Calculation of Tax on Moist Snuff
 Pursuant to Utah Code Ann. Section
 59-14-302

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33691

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will implement H.B. 92 (2010). (DAR NOTE: H.B. 92 (2010) is found at Chapter 115, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates that the moisture content that will be used to determine whether a tobacco product will be taxed as moist snuff (by weight), or taxed as other tobacco product (by value), shall be the moisture content the manufacturer reports annually to the U.S. Department of Health and Human Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-14-302

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any impacts were considered in H.B. 92 (2010).
- ◆ LOCAL GOVERNMENTS: None--Any impacts were considered in H.B. 92 (2010).
- ◆ SMALL BUSINESSES: None--Any impacts were considered in H.B. 92 (2010).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any impacts were considered in H.B. 92 (2010).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment allows a manufacturer to document the moisture content of moist snuff in the same manner the manufacturer documents moisture content to the U.S. Department of Health and Human Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--No extra burden.

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:

- ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-20T. Tobacco Tax.

R865-20T-13. Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302.

(1) Moisture content, for purposes of ascertaining whether a tobacco product meets the definition of moist snuff, shall be the moisture content annually reported by the manufacturer to the United States Department of Health and Human Services.

_____[~~(+)~~](2)(a) Tax on moist snuff shall be calculated by multiplying the net weight as listed by the manufacturer, in ounces, of the taxable moist snuff by \$[~~0.75~~]1.83.

(b) If the net weight includes a fractional part of an ounce, that fractional part of an ounce shall be included in the calculation.

[~~(2)~~](3) The calculation described in Subsection [~~(+)~~](2) shall be carried to three decimal places and rounded up to the nearest cent whenever the third decimal place of the calculation in Subsection [~~(+)~~](2) is greater than 4.

KEY: taxation, tobacco products

Date of Enactment or Last Substantive Amendment: [~~December 8, 2009~~]2010

Notice of Continuation: March 19, 2007

Authorizing, and Implemented or Interpreted Law: 59-14-301 through 59-14-303

Tax Commission, Property Tax
R884-24P-24
 Form for Notice of Property Valuation
 and Tax Changes Pursuant to Utah
 Code Ann. Sections 59-2-918 through
 59-2-924

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33692

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment deletes references to statutes that have been repealed; and clarifies the treatment of certain property in determining the property tax certified tax rate.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes references to Section 59-2-918 since that statute has been repealed; and clarifies how property subject to the age-based uniform fee is treated when determining the property tax certified tax rate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-918.5 through 59-2-924

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The proposed amendment reflects Tax Commission practice.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendment reflects Tax Commission practice.
- ◆ **SMALL BUSINESSES:** None--The proposed amendment reflects Tax Commission practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment reflects Tax Commission practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment reflects Tax Commission practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--No change to current practice.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-~~918~~918.5 through 59-2-924.**

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under ~~Sections 59-2-918 and~~ Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by ~~[Sections 59-2-918 and Section 59-2-919]~~ shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under ~~[Section]~~ Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under ~~[Section]~~ Sections 59-2-405 through 59-2-405.3, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

(iii) plus or minus changes in value as a result of factoring; then

(iv) plus or minus changes in value as a result of reappraisal; then

(v) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and
(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and
(B) the actual new growth value is greater than or equal

to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)

(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

KEY: taxation, personal property, property tax, appraisals

Date of Enactment or Last Substantive Amendment:
~~[December 22, 2009]~~ 2010

Notice of Continuation: March 12, 2007

Authorizing, and Implemented or Interpreted Law: 59-2-918 through 59-2-924

Tax Commission, Property Tax

R884-24P-62

**Valuation of State Assessed Unitary
Properties to Utah Code Ann. Section
59-2-201**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33695

FILED: 06/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is required by S.B. 125 (2010). (DAR NOTE: S.B. 125 (2010) is found at Chapter 14, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that was placed in statute by S.B. 125 (2010).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-201

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--Any revenue impacts were taken into account in S.B. 125 (2010).
- ◆ **LOCAL GOVERNMENTS:** None--Any revenue impacts were taken into account in S.B. 125 (2010).
- ◆ **SMALL BUSINESSES:** None--Any revenue impacts were taken into account in S.B. 125 (2010).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any revenue impacts were taken into account in S.B. 125 (2010).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The language deleted in this section has been placed in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Statute supersedes the rule language.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R884. Tax Commission, Property Tax.**R884-24P. Property Tax.****R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.**

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in Subsection (5) (d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is $CF/(k-g)$, where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$, where $k(e)$ is the cost of equity and $R(f)$ is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value. [

~~(c)(i) Wind Power Generating Plants.~~

~~(ii) Due to the unique financial nature of operating wind power generating plants, the following tax credits provided to entities operating wind power generating plants shall be identified and removed as intangible property from the indicators of value considered under this rule:~~

~~(A) renewable electricity production credits for wind power generation pursuant to Section 45, Internal Revenue Code; and~~

~~(B) refundable wind energy tax credits pursuant to Section 59-7-614(2)(c).]~~

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [December 22, 2009]2010
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 59-2-201

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to 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 upon filing.

NOTICES are governed by Section 63G-3-305.

Agriculture and Food, Plant Industry **R68-12** Quarantine Pertaining to Mint Wilt

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33677
FILED: 05/27/2010

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: Promulgated under authority of Subsection 4-2-2(i) to inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any private or public place that may become infested or infected with harmful insects, plant diseases, noxious or poisonous weeds, or other agricultural pests.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received from the Mint industry.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The current law continues to require this rule and the rule is needed to protect the mint industry from this disease. Therefore, this rule should be continued.

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:

◆ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 05/27/2010

Environmental Quality, Solid and Hazardous Waste **R315-16** Standards for Universal Waste Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33681
FILED: 05/27/2010

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 19-6-105 allows the board to set minimum standards for protection of human health and the environment for the storage, collection, transport, recovery, treatment, and disposal of solid waste. The Resource Conservation and Recovery Act (RCRA) section 3006 requires that authorized State programs be "equivalent" to the Federal program.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization and to provide standards for the handling of universal wastes (waste batteries, mercury-containing thermostats and lamps, certain recalled, obsolete, or unused pesticides). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 05/27/2010

Environmental Quality, Solid and
 Hazardous Waste
R315-102
 Penalty Policy

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33682
 FILED: 05/27/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-6-113(2) of the Utah Solid and Hazardous Waste Act provides that any person who violates any order, plan, rule, or other requirement issued or adopted under the Act is subject in a civil proceeding to a penalty. Subsection 19-6-104(1)(e) allows the Utah Solid and Hazardous Waste Control Board to settle or compromise administrative civil action initiated to compel compliance with the Act or rules adopted under the Act. This rule provides criteria to be used by the Executive Secretary of the Board for determining penalty amounts in settlement of enforcement actions.

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 THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The U.S. Environmental Protection Agency has required that the State have in place a policy for assessing penalties for violations of hazardous waste regulations. Sections 63G-3-201 and 63G-202 require that this policy be part of the State regulations. This rule provides criteria to be used by the Executive Secretary of the Board for determining penalty amounts in settlement of enforcement action. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 05/27/2010

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-19A

Coverage for Dialysis Services by a
Free-Standing State Licensed Dialysis
Facility

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33680
FILED: 05/27/2010

**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 rules that shall have the force and effect of law and Section 26-18-3 requires the Department to implement the Medicaid program through its administrative rules. In addition, 42 CFR 440.20 allows Medicaid clients to receive quality and cost effective outpatient dialysis services.

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 has not received any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE 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 provides outpatient dialysis to Medicaid clients who meet the eligibility requirements and are in need of these services.

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 Gomez by phone at 801-538-6381, by FAX at 801-237-0785, or by Internet E-mail at kgomez@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 05/27/2010

Insurance, Administration
R590-171
Surplus Lines Procedures Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33678
FILED: 05/27/2010

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to promulgate rules to implement the provisions of Title 31A. Subsection 31A-15-103(3) prescribes how a surplus lines producer may: make or seek remuneration for insurance placed by a surplus lines producer; and advertise surplus lines services. This is done in Section R590-171-7 of the rule. Subsection 31A-15-103(11) gives the commissioner the right to establish an organization to examine surplus lines policies to be sure they comply with the requirements of the law and the payment of taxes. This is done in Section R590-171-4 of the rule. Section 31A-15-111 authorizes the commissioner to require that surplus lines brokers be members of an advisory organization under this section of the law. This is done in Subsection R590-171-4(B) of the rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In August 2009 Hunter Finch of the Governor's Office of Planning and Budget notified the department of a possible error in a code reference made in the definitions section. The department concurred and a nonsubstantive change was made to the rule. No other comments have been received in the past five years regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines the authority of the Surplus Lines Association, outlines the conditions for placing insurance with surplus lines insurers, and provides

examination requirements for the Surplus Lines Association. The rule is also necessary to provide a measure of accountability for the Surplus Lines Association and how this line of insurance can be sold in Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 05/27/2010

any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule requires specific information to be provided to the commissioner for purposes of approving a plan of orderly withdrawal. This rule is needed to maintain a health benefit plan market that is stable, fair, and efficient for individuals and small employers. The rule promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 05/20/2010

Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule
Relating to Health Benefit Plans

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 33661
 FILED: 05/20/2010

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 31A-2-201(3) allows the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-4-115(8) allows the commissioner to write rules to implement this section regarding an insurer's "Plan of Orderly Withdrawal." The rule sets the information that is to be a part of the withdrawal plan and the way in which it is to be implemented, including to whom and when notification of the withdrawal is to be sent.

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 has not received

Labor Commission, Antidiscrimination and Labor, Antidiscrimination
R606-3

Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 33685
 FILED: 05/28/2010

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 34A-5-104 gives the Commission jurisdiction over the subject of employment

practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes that any contractor entering into a contract with the State of Utah and/or its agencies must not discriminate and must place a clause into the contract and any subcontracts to that effect. Therefore, this rule should be continued.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 05/28/2010

Labor Commission, Antidiscrimination
and Labor, Antidiscrimination

R606-4
Advertising

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33687
FILED: 05/28/2010

**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 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes that help-wanted advertisements must not indicate a discriminatory preference unless there is a bona fide occupational qualification requirement for that preference. Therefore, this rule should be continued.

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

LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
ANTIDISCRIMINATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 05/28/2010

Labor Commission, Antidiscrimination
and Labor, Antidiscrimination

R606-5
Employment Agencies

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33686
 FILED: 05/28/2010

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 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over employment discrimination. This rule establishes that employment agencies share liability with the employer if the employment agency attempts to fill a position for an employer based on unlawful discriminatory criteria. It also establishes an exception for application forms asking for gender information, if the inquiry is made in good faith for a nondiscriminatory purpose and is based upon a bona fide occupational qualification. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 LABOR COMMISSION
 ANTIDISCRIMINATION AND LABOR,
 ANTIDISCRIMINATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 05/28/2010

Labor Commission, Antidiscrimination and Labor, Antidiscrimination
R606-6

Regulation of Practice and Procedure on Employer Reports and Records

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33688
 FILED: 05/28/2010

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 34A-5-104 gives the Commission jurisdiction over the subject of employment practices and discrimination made unlawful by Title 34A, Chapter 5. It also gives the Commission authority to adopt, publish, amend, and rescind rules, consistent with and for the enforcement of Title 34A, Chapter 5.

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 during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission continues to have jurisdiction over discrimination in employment. This rule establishes the procedures for employers to follow in keeping personnel records in order to defend a claim of discrimination. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 LABOR COMMISSION
 ANTIDISCRIMINATION AND LABOR,
 ANTIDISCRIMINATION
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

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

EFFECTIVE: 05/28/2010

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz , Director

EFFECTIVE: 05/26/2010

Natural Resources, Wildlife Resources
R657-55
Wildlife Convention Permits

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33676
FILED: 05/26/2010

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate the management of big game species. This rule provides the standards and procedures for conservation groups to distribute hunting permits at the annual wildlife convention.

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 supporting or opposing Rule R657-55 were received since 06/01/2005, when the rule was initiated.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-55 provides the requirements, procedures, and standards for conservation groups to issue the 200 hunting permits made available at the wildlife convention. This rule provides the opportunity for residents and nonresidents to visit Utah during the convention for an opportunity to obtain one of the permits. The wildlife convention brings hundreds of thousands of dollars into the state each year. The provisions adopted in this rule are effective in providing the requirements, procedures and standards for managing the wildlife convention permit program. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE

**Transportation, Motor Carrier, Ports of
Entry**
R912-6
**Ports-of-Entry By-Pass Permit
Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 33675
FILED: 05/26/2010

**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: This rule is enacted under Section 72-9-502. Subsection 72-9-502(4) requires the Utah Department of Transportation to make rules for the issuance of a temporary port-of-entry by-pass permit.

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 has not received written comments from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring rules for temporary port-of-entry by-pass permits remains in force and the Department is required to comply with the law by having this rule in place. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
CALVIN L RAMPTON COMPLEX

4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 05/26/2010

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at
801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Archives

No. 33320 (AMD): R17-7-3. Archives/ Research

Room/Access to Records

Published: 02/01/2010

Effective: 05/17/2010

Records Committee

No. 33335 (AMD): R35-1-4. Committee Minutes

Published: 02/15/2010

Effective: 05/17/2010

Risk Management

No. 33390 (AMD): R37-1. Risk Management General Rules

Published: 03/01/2010

Effective: 06/01/2010

No. 33393 (AMD): R37-4. Adjusted Utah Governmental

Immunity Act Limitations on Judgments

Published: 03/15/2010

Effective: 06/01/2010

Alcoholic Beverage Control

Administration

No. 33469 (AMD): R81-7-1. Application Guidelines

Published: 04/15/2010

Effective: 05/26/2010

No. 33504 (AMD): R81-10B-1. Application Guidelines

Published: 04/15/2010

Effective: 05/26/2010

Commerce

Real Estate

No. 33526 (AMD): R162-2-2. Licensing Procedure

Published: 04/15/2010

Effective: 05/25/2010

Health

Epidemiology and Laboratory Services, Environmental Services

No. 33076 (AMD): R392-303. Public Geothermal Pools and Bathing Places

Published: 11/15/2009

Effective: 05/17/2010

No. 33076 (CPR): R392-303. Public Geothermal Pools and Bathing Places

Published: 03/15/2010

Effective: 05/17/2010

Health Care Financing, Coverage and Reimbursement Policy

No. 33528 (AMD): R414-19A. Coverage for Dialysis

Services by a Free-Standing State Licensed Dialysis Facility

Published: 04/15/2010

Effective: 05/27/2010

No. 33514 (REP): R414-33. Targeted Case Management Services

Published: 04/15/2010

Effective: 05/24/2010

Insurance

Administration

No. 33517 (AMD): R590-225. Submission of Property and Casualty Rate and Form Filings

Published: 04/15/2010

Effective: 05/26/2010

Natural Resources

Wildlife Resources

No. 33497 (AMD): R657-21. Cooperative Wildlife Management Units for Small Game and Waterfowl

Published: 04/15/2010

Effective: 06/01/2010

Public Safety

Fire Marshal

No. 33513 (AMD): R710-6. Liquefied Petroleum Gas Rules

Published: 04/15/2010

Effective: 05/24/2010

**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, 2010 through June 01, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules 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).

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>Administrative Rules</u>					
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Facilities Construction and Management</u>					
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35
<u>Risk Management</u>					
R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-17	Aquaculture and Aquatic Animal Health	33327	5YR	01/14/2010	2010-3/88
R58-20-5	Facilities	33217	AMD	01/27/2010	2009-24/4
R58-21	Trichomoniasis	33340	5YR	01/27/2010	2010-4/79
<u>Conservation and Resource Management</u>					
R64-1	Agriculture Resource and Development Loans (ARDL)	33305	5YR	01/07/2010	2010-3/89
<u>Plant Industry</u>					
R68-7	Utah Pesticide Control Act	33080	AMD	01/04/2010	2009-22/5
R68-12	Quarantine Pertaining to Mint Wilt	33677	5YR	05/27/2010	Not Printed
R68-20	Utah Organic Standards	33315	5YR	01/12/2010	2010-3/89
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33074	AMD	01/11/2010	2009-22/11

R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33542	5YR	04/07/2010	2010-9/41
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ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-11	Multiple-Licensed Facility Storage and Service	33153	AMD	01/26/2010	2009-24/5
R81-1-26	Criminal History Background Checks	33154	AMD	01/26/2010	2009-24/6
R81-3-13	Operational Restrictions	33152	AMD	01/26/2010	2009-24/8
R81-4D-1	Licensing	33155	AMD	01/26/2010	2009-24/10
R81-4D-14	Reporting Requirement	33156	AMD	01/26/2010	2009-24/11
R81-4E	Resort Licenses	33157	NEW	01/26/2010	2009-24/12
R81-4E-4	Insurance	33339	NSC	02/11/2010	Not Printed
R81-7-1	Application Guidelines	33469	AMD	05/26/2010	2010-8/6
R81-10B-1	Application Guidelines	33504	AMD	05/26/2010	2010-8/7

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-1	Procurement of Architectural and Engineering Services	33363	EXT	02/08/2010	2010-5/73
R131-1	Procurement of Architectural and Engineering Services	33544	5YR	04/07/2010	2010-9/41
R131-1	Procurement of Architectural and Engineering Services	33543	NSC	04/26/2010	Not Printed
R131-2	Capitol Hill Complex Facility Use	33364	EXT	02/08/2010	2010-5/73
R131-2	Capitol Hill Complex Facility Use	33545	5YR	04/07/2010	2010-9/42
R131-2-11	Fees and Charges During Legislative Session	33151	AMD	01/07/2010	2009-23/6
R131-7	State Capitol Preservation Board Master Planning Policy	33365	EXT	02/08/2010	2010-5/74
R131-7	State Capitol Preservation Board Master Planning Policy	33547	5YR	04/07/2010	2010-9/43
R131-7	State Capitol Preservation Board Master Planning Policy	33546	NSC	04/26/2010	Not Printed
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33405	EXT	02/24/2010	2010-6/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33549	5YR	04/07/2010	2010-9/43
R131-8	CPB Facilities and Grounds: Maintenance of Aesthetics	33548	NSC	04/26/2010	Not Printed
R131-9	State Capitol Preservation Board Art Program and Policy	33406	EXT	02/24/2010	2010-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	33551	5YR	04/07/2010	2010-9/44
R131-9	State Capitol Preservation Board Art Program and Policy	33550	NSC	04/26/2010	Not Printed
R131-14	Parking on Capitol Hill	33298	NEW	02/22/2010	2010-2/4

COMMERCE

Administration

R151-1	Department of Commerce General Provisions	33336	5YR	01/25/2010	2010-4/80
R151-46b	Department of Commerce Administrative Procedures Act Rules	33150	AMD	01/07/2010	2009-23/7
R151-46b-5	General Provisions	33149	AMD	01/07/2010	2009-23/11

Consumer Protection

R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	33583	5YR	04/28/2010	2010-10/165
R152-1-1	Purposes, Policies and Rules of Construction	33168	AMD	01/21/2010	2009-24/16
R152-11-1	Purposes, Rules of Construction	33169	AMD	01/21/2010	2009-24/17
R152-11-1	Purposes, Rules of Construction	33238	AMD	02/08/2010	2010-1/6
R152-11-5	Repairs and Services	33239	AMD	02/08/2010	2010-1/7
R152-39	Child Protection Registry Rules	33598	5YR	04/29/2010	2010-10/165

RULES INDEX

Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	33227	AMD	03/25/2010	2009-24/18
R156-17b	Pharmacy Practice Act Rule	33402	5YR	02/23/2010	2010-6/35
R156-31b-701a	Delegation of Nursing Tasks in a School Setting	33266	AMD	03/29/2010	2010-1/9
R156-37-301	License Classifications - Restrictions	33264	AMD	02/08/2010	2010-1/11
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	33307	5YR	01/07/2010	2010-3/90
R156-38b	State Construction Registry Rules	33366	5YR	02/08/2010	2010-5/69
R156-47b	Massage Therapy Practice Act Rule	33293	AMD	02/22/2010	2010-2/6
R156-47b-102	Definitions	33400	NSC	03/10/2010	Not Printed
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule	33409	5YR	02/25/2010	2010-6/36
R156-60c	Professional Counselor Licensing Act Rule	33306	5YR	01/07/2010	2010-3/90
R156-77-102	Definitions	33263	AMD	02/08/2010	2010-1/12
R156-78B-4	General Provisions	33175	AMD	01/21/2010	2009-24/28
R156-79	Hunting Guides and Outfitters Licensing Act Rule	33265	AMD	02/08/2010	2010-1/14

Real Estate

R162-2-2	Licensing Procedure	33526	AMD	05/25/2010	2010-8/8
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	33372	NEW	04/12/2010	2010-5/7
R162-2c-203	Utah-Specific Education Certification	33506	NSC	04/14/2010	Not Printed
R162-2c-204	License Renewal	33470	NSC	04/14/2010	Not Printed
R162-2c-301	Unprofessional Conduct	33471	NSC	04/14/2010	Not Printed
R162-2c-401	Administrative Proceedings	33507	NSC	04/14/2010	Not Printed
R162-101	Authority and Definitions	33158	AMD	01/27/2010	2009-24/29
R162-102	Application Procedures	33180	AMD	01/27/2010	2009-24/30
R162-104	Experience Requirement	33224	AMD	01/27/2010	2009-24/33
R162-105	Scope of Authority	33225	AMD	01/27/2010	2009-24/39
R162-106-1	Uniform Standards	33226	AMD	02/03/2010	2009-24/42
R162-106-7	Sales and Listing History	33398	AMD	04/28/2010	2010-6/7
R162-110	Trainee Registration	33148	NEW	01/07/2010	2009-23/13
R162-110-1	Trainee Registration	33303	NSC	01/28/2010	Not Printed
R162-201	Residential Mortgage Definitions	33373	REP	04/12/2010	2010-5/20
R162-202	Initial Application	33374	REP	04/12/2010	2010-5/21
R162-203	Changes to Residential Mortgage Licensure Statement	33375	REP	04/12/2010	2010-5/24
R162-204	Residential Mortgage Record Keeping Requirements	33376	REP	04/12/2010	2010-5/26
R162-205	Residential Mortgage Unprofessional Conduct	33377	REP	04/12/2010	2010-5/27
R162-207	License Renewal	33378	REP	04/12/2010	2010-5/29
R162-208	Continuing Education	33379	REP	04/12/2010	2010-5/31
R162-209	Administrative Proceedings	33380	REP	04/12/2010	2010-5/35
R162-210	Certification of Prelicensing Education Providers	33381	REP	04/12/2010	2010-5/37
R162-211	Adjusted License Terms	33382	REP	04/12/2010	2010-5/41

Securities

R164-2	Investment Adviser - Unlawful Acts	33389	5YR	02/16/2010	2010-5/69
R164-4-9	Exemptions From Licensing Requirements for Certain Investment Advisers	33006	AMD	01/06/2010	2009-20/12
R164-4-9	Exemptions from Licensing Requirements for Certain Investment Advisers	33316	AMD	03/11/2010	2010-3/14
R164-9	Registration by Coordination	33010	AMD	02/02/2010	2009-20/14
R164-10-2	Registration Statements	33011	AMD	02/02/2010	2009-20/16
R164-11-1	General Registration Provisions	33012	AMD	02/02/2010	2009-20/18
R164-12-1f	Commissions on Sales of Securities	33013	AMD	02/02/2010	2009-20/19
R164-13	Definitions	33014	REP	02/02/2010	2009-20/22
R164-18-6	Procedures for Administrative Actions	33016	AMD	02/02/2010	2009-20/23

COMMUNITY AND CULTURE

Arts and Museums

R207-3	Capital Funds Request Prioritization	32949	NEW	01/27/2010	2009-19/72
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<u>History</u>						
R212-11	Historic Preservation Tax Credit	33448	5YR	03/10/2010	2010-7/51	
<u>Housing and Community Development, Community Services</u>						
R202-101	Qualified Emergency Food Agencies Fund (QEFAF)	33252	NEW	02/22/2010	2010-1/16	
<u>Library</u>						
R223-3	Capital Funds Request Prioritization	32936	NEW	01/27/2010	2009-19/75	
EDUCATION						
<u>Administration</u>						
R277-111	Sharing of Curriculum Materials by Public School Educators	33147	NEW	01/08/2010	2009-23/15	
R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	33440	NEW	05/12/2010	2010-7/2	
R277-419-3	Minimum School Days, LEA Records, and Audits	33441	AMD	05/12/2010	2010-7/3	
R277-470	Charter Schools	33442	AMD	05/12/2010	2010-7/5	
R277-473	Testing Procedures	33588	5YR	04/29/2010	2010-10/166	
R277-484	Data Standards	33443	AMD	05/12/2010	2010-7/8	
R277-501	Educator Licensing Renewal and Timelines	33397	5YR	02/18/2010	2010-6/37	
R277-613-1	Definitions	33253	NSC	01/04/2010	Not Printed	
R277-711-4	Fiscal Standards	33234	NSC	01/04/2010	Not Printed	
R277-800	Utah Schools for the Deaf and the Blind	33254	NSC	01/04/2010	Not Printed	
ENVIRONMENTAL QUALITY						
<u>Administration</u>						
R305-5	Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation	33102	NEW	02/16/2010	2009-22/30	
R305-5	Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation	33102	CPR	02/16/2010	2010-2/48	
<u>Air Quality</u>						
R307-101-3	Version of Code of Federal Regulations Incorporated by Reference	33251	AMD	03/04/2010	2010-1/19	
R307-103	Administrative Procedures	33428	5YR	03/04/2010	2010-7/51	
R307-201	Emission Standards: General Emission Standards	33429	5YR	03/04/2010	2010-7/52	
R307-202	Emission Standards: General Burning	33430	5YR	03/04/2010	2010-7/52	
R307-203	Emission Standards: Sulfur Content of Fuels	33431	5YR	03/04/2010	2010-7/53	
R307-204	Emission Standards: Smoke Management	33432	5YR	03/04/2010	2010-7/53	
R307-205	Emission Standards: Fugitive Emissions and Fugitive Dust	33433	5YR	03/04/2010	2010-7/54	
R307-206	Emission Standards: Abrasive Blasting	33434	5YR	03/04/2010	2010-7/55	
R307-207	Emission Standards: Residential Fireplaces and Stoves	33435	5YR	03/04/2010	2010-7/55	
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	33308	R&R	04/08/2010	2010-3/17	
R307-841	Residential Property and Child-Occupied Facility Renovation	33309	NEW	04/08/2010	2010-3/24	
R307-842	Lead-Based Paint Activities	33310	NEW	04/08/2010	2010-3/32	
<u>Drinking Water</u>						
R309-100	Administration: Drinking Water Program	33468	5YR	03/22/2010	2010-8/41	
R309-100-7	Sanitary Survey, Evaluation, and Corrective Action of Existing Facilities	33455	NSC	03/29/2010	Not Printed	
R309-105	Administration: General Responsibilities of Public Water Systems	33473	5YR	03/22/2010	2010-8/41	
R309-110	Administration: Definitions	33474	5YR	03/22/2010	2010-8/42	
R309-115	Administrative Procedures	33475	5YR	03/22/2010	2010-8/42	
R309-200	Monitoring and Water Quality: Drinking Water Standards	33476	5YR	03/22/2010	2010-8/43	
R309-200-2	Authority	33457	NSC	03/29/2010	Not Printed	

RULES INDEX

R309-205	Monitoring and Water Quality: Source Monitoring Requirements	33477	5YR	03/22/2010	2010-8/43
R309-205-9	Microbiological Contaminants	33456	NSC	03/29/2010	Not Printed
R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	33478	5YR	03/22/2010	2010-8/44
R309-210-6	Lead and Copper Monitoring	33459	NSC	03/29/2010	Not Printed
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	33479	5YR	03/22/2010	2010-8/45
R309-220	Monitoring and Water Quality: Public Notification Requirements	33480	5YR	03/22/2010	2010-8/45
R309-220-5	Tier 1 Public Notice -- Form, Manner and Frequency of Notice	33458	NSC	03/29/2010	Not Printed
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	33481	5YR	03/22/2010	2010-8/46
R309-300	Certification Rules for Water Supply Operators	33484	5YR	03/22/2010	2010-8/46
R309-305	Certification Rules for Backflow Technicians	33485	5YR	03/22/2010	2010-8/47
R309-352	Capacity Development Program	33501	5YR	03/23/2010	2010-8/47
R309-400	Water System Rating Criteria	33482	5YR	03/22/2010	2010-8/48
R309-405	Compliance and Enforcement: Administrative Penalty	33483	5YR	03/22/2010	2010-8/49
R309-500	Facility Design and Operation: Plan Review, Operation and Maintenance Requirements	33486	5YR	03/22/2010	2010-8/49
R309-505	Facility Design and Operation: Minimum Treatment Requirements	33487	5YR	03/22/2010	2010-8/50
R309-510	Facility Design and Operation: Minimum Sizing Requirements	33488	5YR	03/22/2010	2010-8/50
R309-511	Hydraulic Modeling Requirements	32978	NEW	03/11/2010	2009-19/88
R309-511	Hydraulic Modeling Requirements	32978	CPR	03/11/2010	2010-3/62
R309-515	Facility Design and Operation: Source Development	33489	5YR	03/22/2010	2010-8/51
R309-515-6	Ground Water - Wells	33462	AMD	05/13/2010	2010-7/18
R309-520	Facility Design and Operation: Disinfection	33490	5YR	03/22/2010	2010-8/51
R309-525	Facility Design and Operation: Conventional Surface Water Treatment	33491	5YR	03/22/2010	2010-8/52
R309-530	Facility Design and Operation: Alternate Surface Water Treatment Methods	33492	5YR	03/22/2010	2010-8/52
R309-535	Facility Design and Operation: Miscellaneous Treatment Methods	33493	5YR	03/22/2010	2010-8/53
R309-540	Facility Design and Operation: Pump Stations	33494	5YR	03/22/2010	2010-8/53
R309-545	Facility Design and Operation: Drinking Water Storage Tanks	33495	5YR	03/22/2010	2010-8/54
R309-550	Facility Design and Operation: Transmission and Distribution Pipelines	33496	5YR	03/22/2010	2010-8/55
R309-600	Source Protection: Drinking Water Source Protection for Ground Water Sources	33464	5YR	03/17/2010	2010-8/55
R309-605	Source Protection: Drinking Water Source Protection for Surface Water Sources	33465	5YR	03/17/2010	2010-8/56
R309-700	Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program	33500	5YR	03/23/2010	2010-8/56
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	33502	5YR	03/23/2010	2010-8/57
<u>Radiation Control</u>					
R313-34	Requirements for Irradiators	33367	5YR	02/10/2010	2010-5/70
R313-34-3	Clarifications or Exemptions	33368	AMD	04/15/2010	2010-5/42
<u>Solid and Hazardous Waste</u>					
R315-1-1	Definitions	32966	AMD	01/15/2010	2009-19/92
R315-2	General Requirements - Identification and Listing of Hazardous Waste	32967	AMD	01/15/2010	2009-19/94
R315-2	General Requirements - Identification and Listing of Hazardous Waste	32967	CPR	01/15/2010	2009-23/32
R315-5	Hazardous Waste Generator Requirements	32968	AMD	01/15/2010	2009-19/96
R315-7-27	Air Emission Standards for Equipment Leaks	33144	AMD	01/15/2010	2009-23/16
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	32969	AMD	01/15/2010	2009-19/99

R315-13-1	Land Disposal Restrictions	32970	AMD	01/15/2010	2009-19/103
R315-14-7	Hazardous Waste Burned in Boilers and Industrial Furnaces	32971	AMD	01/15/2010	2009-19/104
R315-16	Standards for Universal Waste Management	33681	5YR	05/27/2010	Not Printed
R315-50-1	Instructions for Completion of Uniform Hazardous Waste Manifest	32972	AMD	01/15/2010	2009-19/105
R315-102	Penalty Policy	33682	5YR	05/27/2010	Not Printed
R315-302-1	Location Standards for Disposal Facilities	33391	NSC	03/10/2010	Not Printed
R315-316	Infectious Waste Requirements	33145	AMD	01/15/2010	2009-23/17

Water Quality

R317-1-1	Definitions	33232	AMD	04/01/2010	2009-24/43
R317-1-1	Definitions	33232	CPR	04/01/2010	2010-4/66
R317-2	Standards of Quality for Waters of the State	33233	AMD	04/01/2010	2009-24/45
R317-2	Standards of Quality for Waters of the State	33233	CPR	04/01/2010	2010-4/68
R317-4	Onsite Wastewater Systems	33370	5YR	02/10/2010	2010-5/71

GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	33073	NEW	01/04/2010	2009-22/41
R356-1-7	Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates	33237	NSC	01/04/2010	Not Printed

HEALTH

Administration

R380-40	Local Health Department Minimum Performance Standards	33553	5YR	04/08/2010	2010-9/44
---------	---	-------	-----	------------	-----------

Community and Family Health Services, Children with Special Health Care Needs

R398-2-7	Penalty for Violation of Rule	33134	AMD	03/15/2010	2009-22/53
----------	-------------------------------	-------	-----	------------	------------

Community and Family Health Services, Chronic Disease

R384-100-10	Penalties	33138	AMD	03/15/2010	2009-23/21
-------------	-----------	-------	-----	------------	------------

Community and Family Health Services, Immunization

R396-100-9	Penalties	33181	AMD	03/15/2010	2009-24/66
------------	-----------	-------	-----	------------	------------

Epidemiology and Laboratory Services, Environmental Services

R392-100-2	Incorporation by Reference	33210	AMD	03/15/2010	2009-24/61
R392-101-9	Penalties	33211	AMD	03/15/2010	2009-24/63
R392-303	Public Geothermal Pools and Bathing Places	33076	AMD	05/17/2010	2009-22/46
R392-303	Public Geothermal Pools and Bathing Places	33076	CPR	05/17/2010	2010-6/28
R392-400-17	Penalty	33212	AMD	03/15/2010	2009-24/64
R392-600	Illegal Drug Operations Decontamination Standards	33410	5YR	02/25/2010	2010-6/37
R392-700-11	Enforcement and Penalties	33213	AMD	03/15/2010	2009-24/65

Epidemiology and Laboratory Services, Epidemiology

R386-702-11	Penalties	33182	AMD	03/15/2010	2009-24/57
R386-705-101	Penalties	33183	AMD	03/15/2010	2009-24/58
R386-800	Immunization Coordination	33562	5YR	04/15/2010	2010-9/45
R386-800-8	Penalties for Violation	33185	AMD	03/15/2010	2009-24/59

Epidemiology and Laboratory Services, Laboratory Improvement

R444-14-8	Penalties	33218	AMD	03/15/2010	2009-24/86
-----------	-----------	-------	-----	------------	------------

Epidemiology and Laboratory Services, Laboratory Services

R438-12-2	Authorized Individual - Qualifications	33087	AMD	01/06/2010	2009-22/82
-----------	--	-------	-----	------------	------------

Epidemiology and Laboratory Services: HIV/AIDS, Tuberculosis Control/Refugee Health

R388-804-9	Penalty for Violation	33188	AMD	03/15/2010	2009-24/60
------------	-----------------------	-------	-----	------------	------------

RULES INDEX

Health Care Financing, Coverage and Reimbursement Policy

R414-1	Utah Medicaid Program	33214	AMD	01/27/2010	2009-24/67
R414-1-5	Incorporations by Reference	33342	AMD	04/01/2010	2010-4/17
R414-1-28	Cost Sharing	33414	AMD	05/01/2010	2010-6/8
R414-3A	Outpatient Hospital Services	33413	EMR	03/01/2010	2010-6/31
R414-5	Reduction in Hospital Payments	33215	REP	02/16/2010	2009-24/69
R414-7B	Nurse Aide Training and Competency Evaluation Program	33341	R&R	03/29/2010	2010-4/18
R414-10-6	Copayment Policy	33415	AMD	05/01/2010	2010-6/9
R414-11-8	Copayment Policy	33416	AMD	05/01/2010	2010-6/10
R414-14A	Hospice Care	33216	AMD	01/28/2010	2009-24/70
R414-19A	Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility	33528	AMD	05/27/2010	2010-8/15
R414-19A	Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility	33680	5YR	05/27/2010	Not Printed
R414-33	Targeted Case Management Services	33514	REP	05/24/2010	2010-8/17
R414-33C	Targeted Case Management for the Homeless Services	33403	5YR	02/23/2010	2010-6/38
R414-54-3	Services	33343	AMD	04/01/2010	2010-4/26
R414-55-3	Copayment Policy	33417	AMD	05/01/2010	2010-6/11
R414-59-4	Client Eligibility Requirements	33344	AMD	04/01/2010	2010-4/27
R414-60-6	Co-payment Policy	33418	AMD	05/01/2010	2010-6/12
R414-61	Home and Community-Based Services Waivers	33407	5YR	02/24/2010	2010-6/39
R414-200-4	Cost Sharing	33419	AMD	05/01/2010	2010-6/13
R414-302-4	Residents of Institutions	33345	AMD	04/01/2010	2010-4/28
R414-303-3	A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups	33346	AMD	04/01/2010	2010-4/30
R414-306	Program Benefits	33259	AMD	02/22/2010	2010-1/23
R414-309	Medicare Drug Benefit Low-Income Subsidy Determination	33466	5YR	03/18/2010	2010-8/57
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	32925	AMD	02/16/2010	2009-18/36
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	32925	CPR	02/16/2010	2009-24/94
R414-320-7	Creditable Health Coverage	33529	EMR	04/01/2010	2010-8/37
R414-501	Preadmission Authorization, Retroactive Authorization, and Continued Stay Review	33304	NSC	01/28/2010	Not Printed

Health Systems Improvement, Emergency Medical Services

R426-2-7	Statutory Penalties	33240	AMD	03/15/2010	2010-1/26
R426-5-11	Statutory Penalties	33244	AMD	03/15/2010	2010-1/27
R426-7-5	Penalty for Violation of Rule	33245	AMD	03/15/2010	2010-1/28
R426-12-1400	Penalties	33246	AMD	03/15/2010	2010-1/29
R426-14-301	Application, Department Review, and Issuance	33125	AMD	01/11/2010	2009-22/60
R426-14-600	Penalties	33247	AMD	03/15/2010	2010-1/29
R426-15-700	Penalties	33248	AMD	03/15/2010	2010-1/30
R426-16-3	Penalty for Violation of Rule	33249	AMD	03/15/2010	2010-1/31

Health Systems Improvement, Licensing

R432-2-6	Application	33221	AMD	01/27/2010	2009-24/77
R432-3	General Health Care Facility Rules Inspection and Enforcement	33137	AMD	01/05/2010	2009-22/72
R432-4-26	Penalties	33186	AMD	02/04/2010	2009-24/79
R432-5-17	Penalties	33187	AMD	02/04/2010	2009-24/80
R432-6-211 (Changed to R432-6-26)	Penalties	33189	AMD	02/04/2010	2009-24/81
R432-7-7	Penalties	33190	AMD	02/04/2010	2009-24/83
R432-8-8	Penalties	33191	AMD	02/04/2010	2009-24/84
R432-9-7	Special Hospital-Rehabilitation Construction Penalties	33184	AMD	02/04/2010	2009-24/85
R432-10-8	Penalties	33119	AMD	01/05/2010	2009-22/74
R432-11-7	Penalties	33120	AMD	01/05/2010	2009-22/75
R432-12-25	Penalties	33121	AMD	01/05/2010	2009-22/76
R432-13-8	Penalties	33122	AMD	01/05/2010	2009-22/77
R432-14-6	Penalties	33123	AMD	01/05/2010	2009-22/78
R432-16-16	Penalties	33118	AMD	01/05/2010	2009-22/79

R432-30	Adjudicative Procedure	33273	NSC	01/04/2010	Not Printed
R432-31	Transferable Physician Order for Life-Sustaining Treatment	33282	R&R	02/25/2010	2010-2/9
R432-31	Life with Dignity Order	33463	NSC	04/14/2010	Not Printed
R432-35-8	Penalties	33136	AMD	01/05/2010	2009-22/80
R432-270	Assisted Living Facilities	33283	NSC	01/13/2010	Not Printed
R432-700-30	Home Health - Personal Care Service Agency	33135	AMD	01/05/2010	2009-22/81

HUMAN RESOURCE MANAGEMENT

Administration

R477-7-2	Holiday Leave	33278	AMD	02/08/2010	2010-1/32
----------	---------------	-------	-----	------------	-----------

HUMAN SERVICES

Administration

R495-879	Parental Support for Children in Care	33192	AMD	02/23/2010	2009-24/87
R495-888	Department of Human Services Related Parties Conflict Investigation Procedure	33628	LNR	05/01/2010	2010-11/131

Administration, Administrative Services, Licensing

R501-19	Residential Treatment Programs	33538	5YR	04/05/2010	2010-9/46
R501-20	Day Treatment Programs	33539	5YR	04/05/2010	2010-9/46
R501-21	Outpatient Treatment Programs	33540	5YR	04/05/2010	2010-9/47
R501-22	Residential Support Programs	33541	5YR	04/05/2010	2010-9/47

Aging and Adult Services

R510-401	Utah Caregiver Support Program	33027	R&R	01/19/2010	2009-21/35
----------	--------------------------------	-------	-----	------------	------------

Child and Family Services

R512-10	Youth Advocate Program	33256	AMD	02/09/2010	2010-1/33
R512-31	Foster Parent Due Process	33257	AMD	02/09/2010	2010-1/35
R512-42	Adoption by Relatives	33258	AMD	02/09/2010	2010-1/37

Recovery Services

R527-35	Non-IV-A Fee Schedule	33277	AMD	02/23/2010	2010-1/38
R527-37	Closure Criteria for Support Cases	33332	AMD	04/02/2010	2010-4/32
R527-40	Retained Support	33301	5YR	01/04/2010	2010-3/91
R527-332	Unreimbursed Assistance Calculation	33261	AMD	02/09/2010	2010-1/39
R527-412	Intercept of Unemployment Compensation	33243	AMD	02/09/2010	2010-1/40

Substance Abuse and Mental Health

R523-1-25	20% Match Required to Be County Tax Revenue	33333	NSC	02/11/2010	Not Printed
R523-21	Division of Substance Abuse and Mental Health Rules	33142	AMD	01/20/2010	2009-23/21

INSURANCE

Administration

R590-88	Prohibited Transactions Between Agents and Unauthorized Multiple Employer Trusts	33318	5YR	01/13/2010	2010-3/92
R590-128	Unfair Discrimination Based on the Failure to Maintain Automobile Insurance (Revised)	33319	5YR	01/13/2010	2010-3/92
R590-132	Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection	33330	5YR	01/19/2010	2010-4/81
R590-140	Reference Filings of Rate Service Organization Prospective Loss Costs	33404	5YR	02/23/2010	2010-6/39
R590-160	Administrative Proceedings	33317	AMD	03/10/2010	2010-3/46
R590-160-7	Rules Applicable to Informal Proceedings	33467	NSC	04/14/2010	Not Printed
R590-164	Uniform Health Billing Rule	33453	5YR	03/11/2010	2010-7/56
R590-166-4	Rule	33388	NSC	02/24/2010	Not Printed
R590-166-4	Rule	33498	NSC	04/14/2010	Not Printed
R590-171	Surplus Lines Procedures Rule	33678	5YR	05/27/2010	Not Printed
R590-172	Notice to Uninsurable Applicants for Health Insurance	33595	5YR	04/29/2010	2010-10/166

RULES INDEX

R590-196	Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form	33387	AMD	04/14/2010	2010-5/43
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	33661	5YR	05/20/2010	Not Printed
R590-220	Submission of Accident and Health Insurance Filings	33297	AMD	02/22/2010	2010-2/12
R590-220	Submission of Accident and Health Insurance Filings	33401	NSC	03/10/2010	Not Printed
R590-225	Submission of Property and Casualty Rate and Form Filings	33517	AMD	05/26/2010	2010-8/19
R590-231	Workers' Compensation Market of Last Resort	33617	5YR	05/04/2010	2010-11/129
R590-247-3	General Instructions	33505	EMR	03/24/2010	2010-8/39
R590-255	Utah NetCare Alternative Coverage Notification Rule	33260	NEW	02/09/2010	2010-1/41
R590-256	Health Benefit Plan Internet Portal Solvency Rating	33321	NEW	03/10/2010	2010-3/52
R590-256-5	Enforcement Date	33499	NSC	03/29/2010	Not Printed

JUDICIAL CONDUCT COMMISSION

Administration

R595-1	General Provisions	33322	5YR	01/14/2010	2010-3/93
R595-2	Administration	33323	5YR	01/14/2010	2010-3/93
R595-3	Procedure	33324	5YR	01/14/2010	2010-3/94
R595-4	Sanctions	33325	5YR	01/14/2010	2010-3/94

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-3	Judicial Performance Evaluations	33385	AMD	04/15/2010	2010-5/45
R597-3-1	Evaluation Cycles	33578	EMR	04/27/2010	2010-10/161

LABOR COMMISSION

Antidiscrimination and Labor, Antidiscrimination

R606-3	Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies	33685	5YR	05/28/2010	Not Printed
R606-4	Advertising	33687	5YR	05/28/2010	Not Printed
R606-5	Employment Agencies	33686	5YR	05/28/2010	Not Printed
R606-6	Regulation of Practice and Procedure on Employer Reports and Records	33688	5YR	05/28/2010	Not Printed

Antidiscrimination and Labor, Labor

R610-3-22	Payment of Wages Via Pay Cards	33299	CPR	03/24/2010	2010-4/75
-----------	--------------------------------	-------	-----	------------	-----------

Boiler and Elevator Safety

R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	33362	AMD	04/07/2010	2010-5/48
R616-4	Coal Mine Safety	33300	NEW	03/11/2010	2010-3/54
R616-4-3	Examining Coal Mines	33454	NSC	03/29/2010	Not Printed

Industrial Accidents

R612-13	Proceedings to Impose Non-Reporting Penalties Against Employers	33230	NEW	01/21/2010	2009-24/89
---------	---	-------	-----	------------	------------

Occupational Safety and Health

R614-1-4	Incorporation of Federal Standards	33280	NSC	05/25/2010	Not Printed
R614-7-1	Roofing, Tar-Asphalt Operations	33279	AMD	02/22/2010	2010-2/20

MONEY MANAGEMENT COUNCIL

Administration

R628-11	Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository	33359	AMD	03/24/2010	2010-4/33
R628-11	Maximum Amount of Uninsured Public Funds Allowed to Be Held by Any Qualified Depository	33420	AMD	04/27/2010	2010-6/14

R628-15 Certification as an Investment Adviser 33620 5YR 05/05/2010 2010-11/129

NATURAL RESOURCES

Forestry, Fire and State Lands

R652-70-700 Permit Rates 33268 AMD 02/25/2010 2010-1/43
 R652-90-600 Public Review 33276 AMD 02/24/2010 2010-1/44
 R652-120 Wildland Fire 33537 5YR 04/01/2010 2010-8/58

Oil, Gas and Mining: Coal

R645-105 Blaster Training, Examination and Certification 33394 5YR 02/17/2010 2010-6/40
 R645-301-600 Geology 33509 NSC 04/14/2010 Not Printed
 R645-400 Inspection and Enforcement: Division Authority and Procedures 33395 5YR 02/17/2010 2010-6/40

Oil, Gas and Mining: Oil and Gas

R649-3-31 Designated Oil Shale Areas 33510 NSC 04/14/2010 Not Printed
 R649-9-1 Introduction 33508 NSC 04/14/2010 Not Printed

Parks and Recreation

R651-101-1 Authority and Effective Date 33408 AMD 04/21/2010 2010-6/16
 R651-206-3 Utah Captain's/Guides License and Utah Boat Crew Permit 33422 AMD 04/21/2010 2010-6/17
 R651-219-7 Equipment Exemptions 33424 AMD 04/21/2010 2010-6/20
 R651-412 Curriculum Standards for OHV Education Programs Offered by Non-Division Entities 33421 NEW 04/21/2010 2010-6/22

Water Rights

R655-2 Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988 33629 NSC 05/27/2010 Not Printed
 R655-3 Reports of Water Rights Conveyance 33347 5YR 01/27/2010 2010-4/81
 R655-6 Administrative Procedures for Informal Proceedings Before the Division of Water Rights 33632 NSC 05/27/2010 Not Printed
 R655-14-14 Procedures for Determining Administrative Penalties, Enforcement Costs and Water Replacement 33619 NSC 05/27/2010 Not Printed
 R655-16 Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights 33066 NEW 04/07/2010 2009-21/62
 R655-16 Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights 33066 CPR 04/07/2010 2010-5/58

Wildlife Resources

R657-5-13 Areas With Special Restrictions 33271 AMD 02/08/2010 2010-1/46
 R657-15 Closure of Gunnison, Cub and Hat Islands 33439 5YR 03/09/2010 2010-7/56
 R657-17 Lifetime Hunting and Fishing License 33451 AMD 05/10/2010 2010-7/24
 R657-20 Falconry 33314 EMR 01/12/2010 2010-3/65
 R657-20 Falconry 33287 AMD 02/22/2010 2010-2/22
 R657-20-11 Take of Wild Raptors 33361 NSC 02/24/2010 Not Printed
 R657-21 Cooperative Wildlife Management Units for Small Game and Waterfowl 33438 5YR 03/09/2010 2010-7/57
 R657-21 Cooperative Wildlife Management Units for Small Game and Waterfowl 33497 AMD 06/01/2010 2010-8/27
 R657-33 Taking Bear 33331 AMD 03/25/2010 2010-4/35
 R657-37-9 Permit Allocation 33272 AMD 02/08/2010 2010-1/47
 R657-53 Amphibian and Reptile Collection, Importation, Transportation, and Possession 33449 AMD 05/10/2010 2010-7/26
 R657-55 Wildlife Convention Permits 33676 5YR 05/26/2010 Not Printed
 R657-62 Drawing Application Procedures 33450 AMD 05/10/2010 2010-7/28

PUBLIC SAFETY

Criminal Investigations and Technical Services, Criminal Identification

R722-310 Regulation of Bail Bond Recovery and 33636 5YR 05/12/2010 2010-11/130

RULES INDEX

	Enforcement Agents				
R722-330	Licensing of Private Investigators	33567	5YR	04/22/2010	2010-10/167
<u>Driver License</u>					
R708-32	Uninsured Motorist Database	33511	5YR	03/25/2010	2010-8/58
R708-36	Disclosure of Personal Identifying Information in MVRs	33518	5YR	03/30/2010	2010-8/59
R708-37	Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests	33520	5YR	03/30/2010	2010-8/60
R708-39-4	Knowledge Testing	33411	AMD	04/21/2010	2010-6/23
R708-40	Driving Simulators	33519	5YR	03/30/2010	2010-8/60
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33143	AMD	01/25/2010	2009-23/23
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33338	AMD	03/24/2010	2010-4/40
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	33512	5YR	03/25/2010	2010-8/61
R708-45	Exception for Renewal or Duplicate License for a Utah Resident Temporarily Residing Out of State	33516	NSC	04/14/2010	Not Printed
<u>Fire Marshal</u>					
R710-6	Liquefied Petroleum Gas Rules	33357	AMD	03/24/2010	2010-4/44
R710-6	Liquefied Petroleum Gas Rules	33513	AMD	05/24/2010	2010-8/28
R710-10-8	Non-Affiliated Fire Service Training	33358	AMD	03/24/2010	2010-4/47
PUBLIC SERVICE COMMISSION					
<u>Administration</u>					
R746-312	Electrical Interconnection	32881	NEW	04/30/2010	2009-17/40
R746-312	Electrical Interconnection	32881	CPR	04/30/2010	2010-1/64
REGENTS (BOARD OF)					
<u>Administration</u>					
R765-604	New Century Scholarship	33461	AMD	05/11/2010	2010-7/36
R765-626	Lender of Last Resort Program	33556	5YR	04/13/2010	2010-9/48
<u>University of Utah, Administration</u>					
R805-4	Illegal, Harmful and Disruptive Behavior on University of Utah Property	33146	NEW	01/07/2010	2009-23/27
SCHOOL AND INSTITUTIONAL TRUST LANDS					
<u>Administration</u>					
R850-21	Oil, Gas and Hydrocarbon Resources	33530	5YR	04/01/2010	2010-8/61
R850-22	Bituminous-Asphaltic Sands and Oil Shale Resources	33531	5YR	04/01/2010	2010-8/62
R850-23	Sand, Gravel and Cinders Permits	33532	5YR	04/01/2010	2010-8/62
R850-24	General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits	33533	5YR	04/01/2010	2010-8/63
R850-25	Mineral Leases and Materials Permits	33534	5YR	04/01/2010	2010-8/64
R850-26	Coal Leases	33535	5YR	04/01/2010	2010-8/64
R850-27	Geothermal Steam	33536	5YR	04/01/2010	2010-8/65
TAX COMMISSION					
<u>Administration</u>					
R861-1A-23	Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202	33313	NSC	01/28/2010	Not Printed
R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	33637	NSC	05/27/2010	Not Printed

R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	33231	AMD	01/21/2010	2009-24/90
<u>Auditing</u>					
R865-6F-28	Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63-38F-401 through 63-38F-414	33643	NSC	05/27/2010	Not Printed
R865-9I-7	Change of Status as Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120	33384	AMD	04/08/2010	2010-5/51
R865-9I-13	Nonresident's share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2 and 59-10-1405	33349	AMD	04/08/2010	2010-4/49
R865-9I-17	Time for Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407	33113	AMD	01/21/2010	2009-22/86
R865-9I-44	Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118	33348	AMD	04/08/2010	2010-4/50
R865-9I-56	Determination of Amounts Withheld by a Pass-Through entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405	33351	AMD	04/08/2010	2010-4/53
R865-12L-5	Place of Sale Pursuant to Utah Code Ann. Section 59-12-207	33350	AMD	04/08/2010	2010-4/54
R865-12L-6	Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207	33352	AMD	04/08/2010	2010-4/55

TECHNOLOGY SERVICES

Administration

R895-9	Utah Geographic Information Systems Advisory Council	33334	5YR	01/20/2010	2010-4/82
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TRANSPORTATION

Motor Carrier, Ports of Entry

R912-6	Ports-of-Entry By-Pass Permit Provisions	33675	5YR	05/26/2010	Not Printed
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Operations, Construction

R916-1	Advertising and Awarding Construction Contracts	33444	NSC	03/29/2010	Not Printed
R916-3	DESIGN-BUILD Contracts	33396	NSC	03/10/2010	Not Printed
R916-4	Construction Manager/General Contractor Contracts	33452	5YR	03/11/2010	2010-7/58

Preconstruction

R930-5	Establishment and Regulation of At-Grade Railroad Crossings	33274	R&R	02/08/2010	2010-1/49
R930-6	Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way	33312	NSC	01/28/2010	Not Printed

Preconstruction, Right-of-Way Acquisition

R933-4	Bus Shelters and Bus Benches	33311	REP	03/10/2010	2010-3/56
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TRANSPORTATION COMMISSION

Administration

R940-1-3	Base Toll Rate and Range for HOT Lanes	33369	EMR	02/10/2010	2010-5/67
R940-1-3	Base Toll Rate and Range for HOT Lanes	33386	AMD	04/07/2010	2010-5/52

RULES INDEX

WORKFORCE SERVICES

Employment Development

R986-200-214	Assistance for Specified Relatives	33356	AMD	04/01/2010	2010-4/56
R986-200-235	Unearned Income	33296	AMD	04/01/2010	2010-2/43
R986-700	Child Care Assistance	33017	AMD	01/13/2010	2009-20/34
R986-700	Child Care Assistance	33383	AMD	04/21/2010	2010-5/53
R986-700-714	CC Payment Method	33295	AMD	04/01/2010	2010-2/44
R986-900-902	Options and Waivers	33412	AMD	05/01/2010	2010-6/24

Unemployment Insurance

R994-106-104	Determining the Paying State	33114	AMD	01/13/2010	2009-22/98
R994-204	Covered Employment	33521	5YR	03/31/2010	2010-8/65
R994-205	Exempt Employment	33522	5YR	03/31/2010	2010-8/66
R994-206	Agricultural Labor	33523	5YR	03/31/2010	2010-8/66
R994-206-101	Agricultural Labor	33527	NSC	04/14/2010	Not Printed
R994-304	Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates	33524	5YR	03/31/2010	2010-8/67
R994-402	Extended Benefits	33354	R&R	04/01/2010	2010-4/57
R994-406-203	Waiver of Recovery of Nonfault Overpayments	33355	AMD	04/01/2010	2010-4/62

RULES INDEX - BY KEYWORD (SUBJECT)

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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abrasive blasting</u> Environmental Quality, Air Quality	33434	R307-206	5YR	03/04/2010	2010-7/55
<u>accelerated learning</u> Education, Administration	33234	R277-711-4	NSC	01/04/2010	Not Printed
<u>acceptable documents</u> Public Safety, Driver License	33143	R708-41	AMD	01/25/2010	2009-23/23
Public Safety, Driver License	33338	R708-41	AMD	03/24/2010	2010-4/40
Public Safety, Driver License	33512	R708-41	5YR	03/25/2010	2010-8/61
<u>access</u> Environmental Quality, Drinking Water	33495	R309-545	5YR	03/22/2010	2010-8/54
<u>access to information</u> Administrative Services, Archives	33320	R17-7-3	AMD	05/17/2010	2010-3/12
<u>adjudicative procedures</u> Commerce, Securities	33016	R164-18-6	AMD	02/02/2010	2009-20/23
<u>adjudicative proceedings</u> Commerce, Administration	33150	R151-46b	AMD	01/07/2010	2009-23/7
Commerce, Administration	33149	R151-46b-5	AMD	01/07/2010	2009-23/11
<u>administrative law</u> Administrative Services, Administrative Rules	33437	R15-4	NSC	03/29/2010	Not Printed

<u>administrative penalties</u>						
Natural Resources, Water Rights	33619	R655-14-14	NSC	05/27/2010	Not Printed	
<u>administrative procedures</u>						
Commerce, Administration	33150	R151-46b	AMD	01/07/2010	2009-23/7	
Commerce, Administration	33149	R151-46b-5	AMD	01/07/2010	2009-23/11	
Environmental Quality, Air Quality	33428	R307-103	5YR	03/04/2010	2010-7/51	
Environmental Quality, Drinking Water	33468	R309-100	5YR	03/22/2010	2010-8/41	
Environmental Quality, Drinking Water	33455	R309-100-7	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33475	R309-115	5YR	03/22/2010	2010-8/42	
Environmental Quality, Drinking Water	33484	R309-300	5YR	03/22/2010	2010-8/46	
Environmental Quality, Drinking Water	33482	R309-400	5YR	03/22/2010	2010-8/48	
Environmental Quality, Drinking Water	33483	R309-405	5YR	03/22/2010	2010-8/49	
Labor Commission, Industrial Accidents	33230	R612-13	NEW	01/21/2010	2009-24/89	
Natural Resources, Forestry, Fire and State Lands	33268	R652-70-700	AMD	02/25/2010	2010-1/43	
Natural Resources, Forestry, Fire and State Lands	33537	R652-120	5YR	04/01/2010	2010-8/58	
Natural Resources, Parks and Recreation	33408	R651-101-1	AMD	04/21/2010	2010-6/16	
Natural Resources, Water Rights	33632	R655-6	NSC	05/27/2010	Not Printed	
School and Institutional Trust Lands, Administration	33530	R850-21	5YR	04/01/2010	2010-8/61	
School and Institutional Trust Lands, Administration	33531	R850-22	5YR	04/01/2010	2010-8/62	
School and Institutional Trust Lands, Administration	33534	R850-25	5YR	04/01/2010	2010-8/64	
School and Institutional Trust Lands, Administration	33535	R850-26	5YR	04/01/2010	2010-8/64	
School and Institutional Trust Lands, Administration	33536	R850-27	5YR	04/01/2010	2010-8/65	
<u>adoption</u>						
Human Services, Child and Family Services	33258	R512-42	AMD	02/09/2010	2010-1/37	
<u>advertising</u>						
Commerce, Consumer Protection	33169	R152-11-1	AMD	01/21/2010	2009-24/17	
Commerce, Consumer Protection	33239	R152-11-5	AMD	02/08/2010	2010-1/7	
Commerce, Consumer Protection	33598	R152-39	5YR	04/29/2010	2010-10/165	
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33687	R606-4	5YR	05/28/2010	Not Printed	
Transportation, Operations, Construction	33444	R916-1	NSC	03/29/2010	Not Printed	
<u>aesthetics</u>						
Capitol Preservation Board (State), Administration	33405	R131-8	EXT	02/24/2010	2010-6/43	
Capitol Preservation Board (State), Administration	33549	R131-8	5YR	04/07/2010	2010-9/43	
Capitol Preservation Board (State), Administration	33548	R131-8	NSC	04/26/2010	Not Printed	
<u>air pollution</u>						
Environmental Quality, Air Quality	33251	R307-101-3	AMD	03/04/2010	2010-1/19	
Environmental Quality, Air Quality	33428	R307-103	5YR	03/04/2010	2010-7/51	
Environmental Quality, Air Quality	33429	R307-201	5YR	03/04/2010	2010-7/52	
Environmental Quality, Air Quality	33430	R307-202	5YR	03/04/2010	2010-7/52	
Environmental Quality, Air Quality	33431	R307-203	5YR	03/04/2010	2010-7/53	
Environmental Quality, Air Quality	33433	R307-205	5YR	03/04/2010	2010-7/54	
Environmental Quality, Air Quality	33434	R307-206	5YR	03/04/2010	2010-7/55	
<u>air quality</u>						
Environmental Quality, Air Quality	33432	R307-204	5YR	03/04/2010	2010-7/53	
<u>air travel</u>						
Administrative Services, Finance	33302	R25-7-10	AMD	04/21/2010	2010-3/12	
<u>alarm company</u>						
Commerce, Occupational and Professional Licensing	33409	R156-55d	5YR	02/25/2010	2010-6/36	
<u>alcoholic beverages</u>						
Alcoholic Beverage Control, Administration	33153	R81-1-11	AMD	01/26/2010	2009-24/5	
Alcoholic Beverage Control, Administration	33154	R81-1-26	AMD	01/26/2010	2009-24/6	
Alcoholic Beverage Control, Administration	33152	R81-3-13	AMD	01/26/2010	2009-24/8	
Alcoholic Beverage Control, Administration	33155	R81-4D-1	AMD	01/26/2010	2009-24/10	
Alcoholic Beverage Control, Administration	33156	R81-4D-14	AMD	01/26/2010	2009-24/11	
Alcoholic Beverage Control, Administration	33157	R81-4E	NEW	01/26/2010	2009-24/12	
Alcoholic Beverage Control, Administration	33339	R81-4E-4	NSC	02/11/2010	Not Printed	
Alcoholic Beverage Control, Administration	33469	R81-7-1	AMD	05/26/2010	2010-8/6	

RULES INDEX

Alcoholic Beverage Control, Administration	33504	R81-10B-1	AMD	05/26/2010	2010-8/7
<u>alternative onsite waste wastewater systems</u> Environmental Quality, Water Quality	33370	R317-4	5YR	02/10/2010	2010-5/71
<u>amphibians</u> Natural Resources, Wildlife Resources	33449	R657-53	AMD	05/10/2010	2010-7/26
<u>antipoverty programs</u> Community and Culture, Housing and Community Development, Community Services	33252	R202-101	NEW	02/22/2010	2010-1/16
<u>application</u> Health, Health Care Financing, Coverage and Reimbursement Policy	33345	R414-302-4	AMD	04/01/2010	2010-4/28
<u>aquaculture</u> Agriculture and Food, Animal Industry	33327	R58-17	5YR	01/14/2010	2010-3/88
<u>architects</u> Capitol Preservation Board (State), Administration	33363	R131-1	EXT	02/08/2010	2010-5/73
Capitol Preservation Board (State), Administration	33544	R131-1	5YR	04/07/2010	2010-9/41
Capitol Preservation Board (State), Administration	33543	R131-1	NSC	04/26/2010	Not Printed
<u>architecture</u> Capitol Preservation Board (State), Administration	33405	R131-8	EXT	02/24/2010	2010-6/43
Capitol Preservation Board (State), Administration	33549	R131-8	5YR	04/07/2010	2010-9/43
Capitol Preservation Board (State), Administration	33548	R131-8	NSC	04/26/2010	Not Printed
<u>art</u> Capitol Preservation Board (State), Administration	33406	R131-9	EXT	02/24/2010	2010-6/43
Capitol Preservation Board (State), Administration	33551	R131-9	5YR	04/07/2010	2010-9/44
Capitol Preservation Board (State), Administration	33550	R131-9	NSC	04/26/2010	Not Printed
<u>assistance</u> Human Services, Recovery Services	33261	R527-332	AMD	02/09/2010	2010-1/39
<u>audiology</u> Health, Health Care Financing, Coverage and Reimbursement Policy	33344	R414-59-4	AMD	04/01/2010	2010-4/27
<u>backflow assembly tester</u> Environmental Quality, Drinking Water	33485	R309-305	5YR	03/22/2010	2010-8/47
<u>bail bond enforcement agent</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	33636	R722-310	5YR	05/12/2010	2010-11/130
<u>bail bond recovery agent</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	33636	R722-310	5YR	05/12/2010	2010-11/130
<u>bail bonds</u> Insurance, Administration	33387	R590-196	AMD	04/14/2010	2010-5/43
<u>bait and switch</u> Commerce, Consumer Protection	33169	R152-11-1	AMD	01/21/2010	2009-24/17
Commerce, Consumer Protection	33239	R152-11-5	AMD	02/08/2010	2010-1/7
<u>banking law</u> Money Management Council, Administration	33359	R628-11	AMD	03/24/2010	2010-4/33
Money Management Council, Administration	33420	R628-11	AMD	04/27/2010	2010-6/14
<u>bear</u> Natural Resources, Wildlife Resources	33331	R657-33	AMD	03/25/2010	2010-4/35

<u>bed allocations</u>						
Human Services, Substance Abuse and Mental Health	33333	R523-1-25	NSC	02/11/2010	Not Printed	
<u>beneficial use</u>						
Natural Resources, Water Rights	33066	R655-16	NEW	04/07/2010	2009-21/62	
Natural Resources, Water Rights	33066	R655-16	CPR	04/07/2010	2010-5/58	
<u>bids</u>						
Transportation, Operations, Construction	33444	R916-1	NSC	03/29/2010	Not Printed	
<u>big game seasons</u>						
Natural Resources, Wildlife Resources	33271	R657-5-13	AMD	02/08/2010	2010-1/46	
<u>birds</u>						
Natural Resources, Wildlife Resources	33439	R657-15	5YR	03/09/2010	2010-7/56	
Natural Resources, Wildlife Resources	33314	R657-20	EMR	01/12/2010	2010-3/65	
Natural Resources, Wildlife Resources	33287	R657-20	AMD	02/22/2010	2010-2/22	
Natural Resources, Wildlife Resources	33361	R657-20-11	NSC	02/24/2010	Not Printed	
<u>bituminous-asphaltic sands</u>						
School and Institutional Trust Lands, Administration	33531	R850-22	5YR	04/01/2010	2010-8/62	
<u>board members</u>						
Commerce, Administration	33336	R151-1	5YR	01/25/2010	2010-4/80	
<u>boating</u>						
Natural Resources, Parks and Recreation	33422	R651-206-3	AMD	04/21/2010	2010-6/17	
Natural Resources, Parks and Recreation	33424	R651-219-7	AMD	04/21/2010	2010-6/20	
<u>boilers</u>						
Labor Commission, Boiler and Elevator Safety	33362	R616-2-3	AMD	04/07/2010	2010-5/48	
<u>bonding requirements</u>						
Transportation, Operations, Construction	33444	R916-1	NSC	03/29/2010	Not Printed	
<u>bullying</u>						
Education, Administration	33253	R277-613-1	NSC	01/04/2010	Not Printed	
<u>burglar alarms</u>						
Commerce, Occupational and Professional Licensing	33409	R156-55d	5YR	02/25/2010	2010-6/36	
<u>burns</u>						
Natural Resources, Forestry, Fire and State Lands	33537	R652-120	5YR	04/01/2010	2010-8/58	
<u>bus benches</u>						
Transportation, Preconstruction, Right-of-Way Acquisition	33311	R933-4	REP	03/10/2010	2010-3/56	
<u>bus shelters</u>						
Transportation, Preconstruction, Right-of-Way Acquisition	33311	R933-4	REP	03/10/2010	2010-3/56	
<u>buses</u>						
Transportation, Preconstruction, Right-of-Way Acquisition	33311	R933-4	REP	03/10/2010	2010-3/56	
<u>cancer</u>						
Health, Community and Family Health Services, Chronic Disease	33138	R384-100-10	AMD	03/15/2010	2009-23/21	
<u>capacity development</u>						
Environmental Quality, Drinking Water	33501	R309-352	5YR	03/23/2010	2010-8/47	
<u>capital facilities</u>						
Community and Culture, Arts and Museums	32949	R207-3	NEW	01/27/2010	2009-19/72	
Community and Culture, Library	32936	R223-3	NEW	01/27/2010	2009-19/75	

RULES INDEX

<u>capitol-preservation</u>						
Capitol Preservation Board (State), Administration	33363	R131-1	EXT	02/08/2010	2010-5/73	
Capitol Preservation Board (State), Administration	33544	R131-1	5YR	04/07/2010	2010-9/41	
Capitol Preservation Board (State), Administration	33543	R131-1	NSC	04/26/2010	Not Printed	
<u>care receiver</u>						
Human Services, Aging and Adult Services	33027	R510-401	R&R	01/19/2010	2009-21/35	
<u>caregiver</u>						
Human Services, Aging and Adult Services	33027	R510-401	R&R	01/19/2010	2009-21/35	
<u>cash management</u>						
Money Management Council, Administration	33620	R628-15	5YR	05/05/2010	2010-11/129	
<u>certification</u>						
Labor Commission, Boiler and Elevator Safety	33362	R616-2-3	AMD	04/07/2010	2010-5/48	
<u>charter schools</u>						
Education, Administration	33442	R277-470	AMD	05/12/2010	2010-7/5	
<u>child care</u>						
Workforce Services, Employment Development	33017	R986-700	AMD	01/13/2010	2009-20/34	
Workforce Services, Employment Development	33383	R986-700	AMD	04/21/2010	2010-5/53	
Workforce Services, Employment Development	33295	R986-700-714	AMD	04/01/2010	2010-2/44	
<u>child support</u>						
Human Services, Administration	33192	R495-879	AMD	02/23/2010	2009-24/87	
Human Services, Recovery Services	33277	R527-35	AMD	02/23/2010	2010-1/38	
Human Services, Recovery Services	33332	R527-37	AMD	04/02/2010	2010-4/32	
Human Services, Recovery Services	33301	R527-40	5YR	01/04/2010	2010-3/91	
Human Services, Recovery Services	33261	R527-332	AMD	02/09/2010	2010-1/39	
Human Services, Recovery Services	33243	R527-412	AMD	02/09/2010	2010-1/40	
<u>child welfare</u>						
Human Services, Child and Family Services	33256	R512-10	AMD	02/09/2010	2010-1/33	
Human Services, Child and Family Services	33257	R512-31	AMD	02/09/2010	2010-1/35	
<u>CHIP</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	AMD	02/16/2010	2009-18/36	
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	CPR	02/16/2010	2009-24/94	
Health, Health Care Financing, Coverage and Reimbursement Policy	33529	R414-320-7	EMR	04/01/2010	2010-8/37	
<u>cinders</u>						
School and Institutional Trust Lands, Administration	33532	R850-23	5YR	04/01/2010	2010-8/62	
<u>coal</u>						
School and Institutional Trust Lands, Administration	33535	R850-26	5YR	04/01/2010	2010-8/64	
<u>coal mines</u>						
Labor Commission, Boiler and Elevator Safety	33300	R616-4	NEW	03/11/2010	2010-3/54	
Labor Commission, Boiler and Elevator Safety	33454	R616-4-3	NSC	03/29/2010	Not Printed	
Natural Resources, Oil, Gas and Mining; Coal	33394	R645-105	5YR	02/17/2010	2010-6/40	
Natural Resources, Oil, Gas and Mining; Coal	33509	R645-301-600	NSC	04/14/2010	Not Printed	
Natural Resources, Oil, Gas and Mining; Coal	33395	R645-400	5YR	02/17/2010	2010-6/40	
<u>collections</u>						
Tax Commission, Auditing	33350	R865-12L-5	AMD	04/08/2010	2010-4/54	
Tax Commission, Auditing	33352	R865-12L-6	AMD	04/08/2010	2010-4/55	
<u>communicable diseases</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57	

Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health	33188	R388-804-9	AMD	03/15/2010	2009-24/60
<u>community action programs</u>					
Community and Culture, Housing and Community Development, Community Services	33252	R202-101	NEW	02/22/2010	2010-1/16
<u>compliance determinations</u>					
Environmental Quality, Drinking Water	33477	R309-205	5YR	03/22/2010	2010-8/43
Environmental Quality, Drinking Water	33456	R309-205-9	NSC	03/29/2010	Not Printed
Environmental Quality, Drinking Water	33478	R309-210	5YR	03/22/2010	2010-8/44
Environmental Quality, Drinking Water	33459	R309-210-6	NSC	03/29/2010	Not Printed
Environmental Quality, Drinking Water	33479	R309-215	5YR	03/22/2010	2010-8/45
<u>conduct</u>					
Commerce, Real Estate	33226	R162-106-1	AMD	02/03/2010	2009-24/42
Commerce, Real Estate	33398	R162-106-7	AMD	04/28/2010	2010-6/7
<u>conflict</u>					
Human Services, Administration	33628	R495-888	LNR	05/01/2010	2010-11/131
<u>connections</u>					
Environmental Quality, Drinking Water	33496	R309-550	5YR	03/22/2010	2010-8/55
<u>consent</u>					
Health, Epidemiology and Laboratory Services, Epidemiology	33185	R386-800-8	AMD	03/15/2010	2009-24/59
<u>conservation</u>					
Natural Resources, Wildlife Resources	33439	R657-15	5YR	03/09/2010	2010-7/56
<u>construction</u>					
Transportation, Operations, Construction	33396	R916-3	NSC	03/10/2010	Not Printed
Transportation, Operations, Construction	33452	R916-4	5YR	03/11/2010	2010-7/58
<u>construction contracts</u>					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33685	R606-3	5YR	05/28/2010	Not Printed
<u>consumer confidence report</u>					
Environmental Quality, Drinking Water	33481	R309-225	5YR	03/22/2010	2010-8/46
<u>consumer protection</u>					
Commerce, Consumer Protection	33583	R152-1	5YR	04/28/2010	2010-10/165
Commerce, Consumer Protection	33168	R152-1-1	AMD	01/21/2010	2009-24/16
Commerce, Consumer Protection	33169	R152-11-1	AMD	01/21/2010	2009-24/17
Commerce, Consumer Protection	33238	R152-11-1	AMD	02/08/2010	2010-1/6
Commerce, Consumer Protection	33239	R152-11-5	AMD	02/08/2010	2010-1/7
Commerce, Consumer Protection	33598	R152-39	5YR	04/29/2010	2010-10/165
<u>consumer transactions</u>					
Commerce, Consumer Protection	33238	R152-11-1	AMD	02/08/2010	2010-1/6
<u>contract requirements</u>					
Environmental Quality, Administration	33102	R305-5	NEW	02/16/2010	2009-22/30
Environmental Quality, Administration	33102	R305-5	CPR	02/16/2010	2010-2/48
<u>contractors</u>					
Commerce, Occupational and Professional Licensing	33307	R156-38a	5YR	01/07/2010	2010-3/90
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33685	R606-3	5YR	05/28/2010	Not Printed
<u>contracts</u>					
Transportation, Operations, Construction	33444	R916-1	NSC	03/29/2010	Not Printed
Transportation, Operations, Construction	33396	R916-3	NSC	03/10/2010	Not Printed
Transportation, Operations, Construction	33452	R916-4	5YR	03/11/2010	2010-7/58

RULES INDEX

<u>controlled substances</u>						
Commerce, Occupational and Professional Licensing	33264	R156-37-301	AMD	02/08/2010	2010-1/11	
<u>conveyance</u>						
Natural Resources, Water Rights	33347	R655-3	5YR	01/27/2010	2010-4/81	
<u>cooperative wildlife management unit</u>						
Natural Resources, Wildlife Resources	33272	R657-37-9	AMD	02/08/2010	2010-1/47	
<u>corrective action</u>						
Education, Administration	33440	R277-114	NEW	05/12/2010	2010-7/2	
<u>cost sharing</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33419	R414-200-4	AMD	05/01/2010	2010-6/13	
<u>counselors</u>						
Commerce, Occupational and Professional Licensing	33306	R156-60c	5YR	01/07/2010	2010-3/90	
<u>coverage groups</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33346	R414-303-3	AMD	04/01/2010	2010-4/30	
<u>CPB</u>						
Capitol Preservation Board (State), Administration	33405	R131-8	EXT	02/24/2010	2010-6/43	
Capitol Preservation Board (State), Administration	33549	R131-8	5YR	04/07/2010	2010-9/43	
Capitol Preservation Board (State), Administration	33548	R131-8	NSC	04/26/2010	Not Printed	
Capitol Preservation Board (State), Administration	33406	R131-9	EXT	02/24/2010	2010-6/43	
Capitol Preservation Board (State), Administration	33551	R131-9	5YR	04/07/2010	2010-9/44	
Capitol Preservation Board (State), Administration	33550	R131-9	NSC	04/26/2010	Not Printed	
<u>credit enhancements</u>						
Environmental Quality, Drinking Water	33500	R309-700	5YR	03/23/2010	2010-8/56	
<u>cross connection control</u>						
Environmental Quality, Drinking Water	33485	R309-305	5YR	03/22/2010	2010-8/47	
<u>crossing</u>						
Transportation, Preconstruction	33274	R930-5	R&R	02/08/2010	2010-1/49	
<u>curriculum materials</u>						
Education, Administration	33147	R277-111	NEW	01/08/2010	2009-23/15	
<u>custody of children</u>						
Human Services, Administration	33192	R495-879	AMD	02/23/2010	2009-24/87	
<u>data standards</u>						
Education, Administration	33443	R277-484	AMD	05/12/2010	2010-7/8	
<u>deadlines</u>						
Education, Administration	33443	R277-484	AMD	05/12/2010	2010-7/8	
<u>definitions</u>						
Commerce, Real Estate	33158	R162-101	AMD	01/27/2010	2009-24/29	
Environmental Quality, Air Quality	33251	R307-101-3	AMD	03/04/2010	2010-1/19	
Environmental Quality, Air Quality	33308	R307-840	R&R	04/08/2010	2010-3/17	
Environmental Quality, Drinking Water	33474	R309-110	5YR	03/22/2010	2010-8/42	
<u>DESIGN-BUILD</u>						
Transportation, Operations, Construction	33396	R916-3	NSC	03/10/2010	Not Printed	
<u>developmentally disabled</u>						
Tax Commission, Administration	33313	R861-1A-23	NSC	01/28/2010	Not Printed	
Tax Commission, Administration	33637	R861-1A-42	NSC	05/27/2010	Not Printed	
Tax Commission, Administration	33231	R861-1A-43	AMD	01/21/2010	2009-24/90	

<u>direct filtration</u>						
Environmental Quality, Drinking Water	33492	R309-530	5YR	03/22/2010	2010-8/52	
<u>direct-entry midwife</u>						
Commerce, Occupational and Professional Licensing	33263	R156-77-102	AMD	02/08/2010	2010-1/12	
<u>disclosure requirements</u>						
Tax Commission, Administration	33313	R861-1A-23	NSC	01/28/2010	Not Printed	
Tax Commission, Administration	33637	R861-1A-42	NSC	05/27/2010	Not Printed	
Tax Commission, Administration	33231	R861-1A-43	AMD	01/21/2010	2009-24/90	
<u>discrimination</u>						
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33685	R606-3	5YR	05/28/2010	Not Printed	
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33687	R606-4	5YR	05/28/2010	Not Printed	
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33686	R606-5	5YR	05/28/2010	Not Printed	
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33688	R606-6	5YR	05/28/2010	Not Printed	
<u>disease control</u>						
Agriculture and Food, Animal Industry	33340	R58-21	5YR	01/27/2010	2010-4/79	
<u>disinfection monitoring</u>						
Environmental Quality, Drinking Water	33479	R309-215	5YR	03/22/2010	2010-8/45	
<u>disputes</u>						
Administrative Services, Facilities Construction and Management	33360	R23-26	5YR	02/01/2010	2010-4/79	
<u>disruptive behavior</u>						
Regents (Board Of), University of Utah, Administration	33146	R805-4	NEW	01/07/2010	2009-23/27	
<u>distribution system monitoring</u>						
Environmental Quality, Drinking Water	33459	R309-210-6	NSC	03/29/2010	Not Printed	
<u>distribution system monitoring</u>						
Environmental Quality, Drinking Water	33478	R309-210	5YR	03/22/2010	2010-8/44	
<u>diversion programs</u>						
Commerce, Occupational and Professional Licensing	33227	R156-1	AMD	03/25/2010	2009-24/18	
<u>do not resuscitate</u>						
Health, Health Systems Improvement, Licensing	33282	R432-31	R&R	02/25/2010	2010-2/9	
Health, Health Systems Improvement, Licensing	33463	R432-31	NSC	04/14/2010	Not Printed	
<u>drinking water</u>						
Environmental Quality, Drinking Water	33468	R309-100	5YR	03/22/2010	2010-8/41	
Environmental Quality, Drinking Water	33455	R309-100-7	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33473	R309-105	5YR	03/22/2010	2010-8/41	
Environmental Quality, Drinking Water	33474	R309-110	5YR	03/22/2010	2010-8/42	
Environmental Quality, Drinking Water	33475	R309-115	5YR	03/22/2010	2010-8/42	
Environmental Quality, Drinking Water	33476	R309-200	5YR	03/22/2010	2010-8/43	
Environmental Quality, Drinking Water	33457	R309-200-2	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33477	R309-205	5YR	03/22/2010	2010-8/43	
Environmental Quality, Drinking Water	33456	R309-205-9	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33478	R309-210	5YR	03/22/2010	2010-8/44	
Environmental Quality, Drinking Water	33459	R309-210-6	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33479	R309-215	5YR	03/22/2010	2010-8/45	
Environmental Quality, Drinking Water	33480	R309-220	5YR	03/22/2010	2010-8/45	
Environmental Quality, Drinking Water	33458	R309-220-5	NSC	03/29/2010	Not Printed	
Environmental Quality, Drinking Water	33481	R309-225	5YR	03/22/2010	2010-8/46	
Environmental Quality, Drinking Water	33484	R309-300	5YR	03/22/2010	2010-8/46	
Environmental Quality, Drinking Water	33485	R309-305	5YR	03/22/2010	2010-8/47	
Environmental Quality, Drinking Water	33501	R309-352	5YR	03/23/2010	2010-8/47	

RULES INDEX

Environmental Quality, Drinking Water	33482	R309-400	5YR	03/22/2010	2010-8/48
Environmental Quality, Drinking Water	33483	R309-405	5YR	03/22/2010	2010-8/49
Environmental Quality, Drinking Water	33486	R309-500	5YR	03/22/2010	2010-8/49
Environmental Quality, Drinking Water	33487	R309-505	5YR	03/22/2010	2010-8/50
Environmental Quality, Drinking Water	33488	R309-510	5YR	03/22/2010	2010-8/50
Environmental Quality, Drinking Water	32978	R309-511	NEW	03/11/2010	2009-19/88
Environmental Quality, Drinking Water	32978	R309-511	CPR	03/11/2010	2010-3/62
Environmental Quality, Drinking Water	33489	R309-515	5YR	03/22/2010	2010-8/51
Environmental Quality, Drinking Water	33462	R309-515-6	AMD	05/13/2010	2010-7/18
Environmental Quality, Drinking Water	33490	R309-520	5YR	03/22/2010	2010-8/51
Environmental Quality, Drinking Water	33491	R309-525	5YR	03/22/2010	2010-8/52
Environmental Quality, Drinking Water	33492	R309-530	5YR	03/22/2010	2010-8/52
Environmental Quality, Drinking Water	33493	R309-535	5YR	03/22/2010	2010-8/53
Environmental Quality, Drinking Water	33494	R309-540	5YR	03/22/2010	2010-8/53
Environmental Quality, Drinking Water	33495	R309-545	5YR	03/22/2010	2010-8/54
Environmental Quality, Drinking Water	33496	R309-550	5YR	03/22/2010	2010-8/55
Environmental Quality, Drinking Water	33464	R309-600	5YR	03/17/2010	2010-8/55
Environmental Quality, Drinking Water	33465	R309-605	5YR	03/17/2010	2010-8/56
<u>driver license</u>					
Public Safety, Driver License	33518	R708-36	5YR	03/30/2010	2010-8/59
Public Safety, Driver License	33516	R708-45	NSC	04/14/2010	Not Printed
<u>driver training</u>					
Public Safety, Driver License	33520	R708-37	5YR	03/30/2010	2010-8/60
<u>driving simulators</u>					
Public Safety, Driver License	33519	R708-40	5YR	03/30/2010	2010-8/60
<u>due process</u>					
Human Services, Child and Family Services	33257	R512-31	AMD	02/09/2010	2010-1/35
Human Services, Substance Abuse and Mental Health	33333	R523-1-25	NSC	02/11/2010	Not Printed
<u>e-mail</u>					
Commerce, Consumer Protection	33598	R152-39	5YR	04/29/2010	2010-10/165
<u>education</u>					
Education, Administration	33442	R277-470	AMD	05/12/2010	2010-7/5
<u>education finance</u>					
Education, Administration	33441	R277-419-3	AMD	05/12/2010	2010-7/3
<u>educational administration</u>					
Education, Administration	33254	R277-800	NSC	01/04/2010	Not Printed
<u>educational program evaluations</u>					
Education, Administration	33397	R277-501	5YR	02/18/2010	2010-6/37
<u>educational testing</u>					
Education, Administration	33588	R277-473	5YR	04/29/2010	2010-10/166
<u>educator license renewal</u>					
Education, Administration	33397	R277-501	5YR	02/18/2010	2010-6/37
<u>effluent standards</u>					
Environmental Quality, Water Quality	33232	R317-1-1	AMD	04/01/2010	2009-24/43
Environmental Quality, Water Quality	33232	R317-1-1	CPR	04/01/2010	2010-4/66
<u>elderly</u>					
Human Services, Aging and Adult Services	33027	R510-401	R&R	01/19/2010	2009-21/35
<u>electronic meetings</u>					
Commerce, Administration	33336	R151-1	5YR	01/25/2010	2010-4/80
<u>electronic preliminary lien filing</u>					
Commerce, Occupational and Professional Licensing	33366	R156-38b	5YR	02/08/2010	2010-5/69

<u>eligibility</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33345	R414-302-4	AMD	04/01/2010	2010-4/28	
Health, Health Care Financing, Coverage and Reimbursement Policy	33466	R414-309	5YR	03/18/2010	2010-8/57	
<u>emergency medical services</u>						
Health, Health Systems Improvement, Emergency Medical Services	33240	R426-2-7	AMD	03/15/2010	2010-1/26	
Health, Health Systems Improvement, Emergency Medical Services	33245	R426-7-5	AMD	03/15/2010	2010-1/28	
Health, Health Systems Improvement, Emergency Medical Services	33246	R426-12-1400	AMD	03/15/2010	2010-1/29	
Health, Health Systems Improvement, Emergency Medical Services	33125	R426-14-301	AMD	01/11/2010	2009-22/60	
Health, Health Systems Improvement, Emergency Medical Services	33247	R426-14-600	AMD	03/15/2010	2010-1/29	
Health, Health Systems Improvement, Emergency Medical Services	33248	R426-15-700	AMD	03/15/2010	2010-1/30	
Health, Health Systems Improvement, Emergency Medical Services	33249	R426-16-3	AMD	03/15/2010	2010-1/31	
<u>emergency medical systems</u>						
Health, Health Systems Improvement, Emergency Medical Services	33244	R426-5-11	AMD	03/15/2010	2010-1/27	
<u>employee recruitment</u>						
Workforce Services, Unemployment Insurance	33354	R994-402	R&R	04/01/2010	2010-4/57	
<u>employment</u>						
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33687	R606-4	5YR	05/28/2010	Not Printed	
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33686	R606-5	5YR	05/28/2010	Not Printed	
<u>employment agencies</u>						
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33686	R606-5	5YR	05/28/2010	Not Printed	
<u>employment tests</u>						
Workforce Services, Unemployment Insurance	33521	R994-204	5YR	03/31/2010	2010-8/65	
Workforce Services, Unemployment Insurance	33522	R994-205	5YR	03/31/2010	2010-8/66	
Workforce Services, Unemployment Insurance	33523	R994-206	5YR	03/31/2010	2010-8/66	
Workforce Services, Unemployment Insurance	33527	R994-206-101	NSC	04/14/2010	Not Printed	
<u>endangered species</u>						
Natural Resources, Forestry, Fire and State Lands	33537	R652-120	5YR	04/01/2010	2010-8/58	
<u>enforcement</u>						
Commerce, Real Estate	33372	R162-2c	NEW	04/12/2010	2010-5/7	
Commerce, Real Estate	33506	R162-2c-203	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33470	R162-2c-204	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33471	R162-2c-301	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33507	R162-2c-401	NSC	04/14/2010	Not Printed	
Natural Resources, Water Rights	33619	R655-14-14	NSC	05/27/2010	Not Printed	
<u>engineers</u>						
Capitol Preservation Board (State), Administration	33363	R131-1	EXT	02/08/2010	2010-5/73	
Capitol Preservation Board (State), Administration	33544	R131-1	5YR	04/07/2010	2010-9/41	
Capitol Preservation Board (State), Administration	33543	R131-1	NSC	04/26/2010	Not Printed	
<u>enterprise zones</u>						
Tax Commission, Auditing	33384	R865-9I-7	AMD	04/08/2010	2010-5/51	
Tax Commission, Auditing	33349	R865-9I-13	AMD	04/08/2010	2010-4/49	
Tax Commission, Auditing	33113	R865-9I-17	AMD	01/21/2010	2009-22/86	
Tax Commission, Auditing	33348	R865-9I-44	AMD	04/08/2010	2010-4/50	

RULES INDEX

Tax Commission, Auditing	33351	R865-9I-56	AMD	04/08/2010	2010-4/53
<u>environmental assessments</u>					
Natural Resources, Forestry, Fire and State Lands	33276	R652-90-600	AMD	02/24/2010	2010-1/44
<u>environmental health</u>					
Environmental Quality, Drinking Water	33464	R309-600	5YR	03/17/2010	2010-8/55
Environmental Quality, Drinking Water	33465	R309-605	5YR	03/17/2010	2010-8/56
<u>environmental protection</u>					
Environmental Quality, Drinking Water	33468	R309-100	5YR	03/22/2010	2010-8/41
Environmental Quality, Drinking Water	33455	R309-100-7	NSC	03/29/2010	Not Printed
Environmental Quality, Drinking Water	33484	R309-300	5YR	03/22/2010	2010-8/46
Environmental Quality, Drinking Water	33482	R309-400	5YR	03/22/2010	2010-8/48
Environmental Quality, Drinking Water	33483	R309-405	5YR	03/22/2010	2010-8/49
<u>evaluation cycles</u>					
Judicial Performance Evaluation Commission, Administration	33385	R597-3	AMD	04/15/2010	2010-5/45
Judicial Performance Evaluation Commission, Administration	33578	R597-3-1	EMR	04/27/2010	2010-10/161
<u>experience</u>					
Commerce, Real Estate	33224	R162-104	AMD	01/27/2010	2009-24/33
<u>extended benefits</u>					
Workforce Services, Unemployment Insurance	33354	R994-402	R&R	04/01/2010	2010-4/57
<u>facilities use</u>					
Capitol Preservation Board (State), Administration	33364	R131-2	EXT	02/08/2010	2010-5/73
Capitol Preservation Board (State), Administration	33545	R131-2	5YR	04/07/2010	2010-9/42
Capitol Preservation Board (State), Administration	33151	R131-2-11	AMD	01/07/2010	2009-23/6
<u>falconry</u>					
Natural Resources, Wildlife Resources	33314	R657-20	EMR	01/12/2010	2010-3/65
Natural Resources, Wildlife Resources	33287	R657-20	AMD	02/22/2010	2010-2/22
Natural Resources, Wildlife Resources	33361	R657-20-11	NSC	02/24/2010	Not Printed
<u>family employment program</u>					
Workforce Services, Employment Development	33356	R986-200-214	AMD	04/01/2010	2010-4/56
Workforce Services, Employment Development	33296	R986-200-235	AMD	04/01/2010	2010-2/43
<u>fees</u>					
Human Services, Substance Abuse and Mental Health	33333	R523-1-25	NSC	02/11/2010	Not Printed
<u>filtration</u>					
Environmental Quality, Drinking Water	33491	R309-525	5YR	03/22/2010	2010-8/52
<u>financial assistance</u>					
Environmental Quality, Drinking Water	33502	R309-705	5YR	03/23/2010	2010-8/57
<u>financial institutions</u>					
Money Management Council, Administration	33359	R628-11	AMD	03/24/2010	2010-4/33
Money Management Council, Administration	33420	R628-11	AMD	04/27/2010	2010-6/14
<u>financial statements</u>					
Commerce, Securities	33011	R164-10-2	AMD	02/02/2010	2009-20/16
<u>fire marshal</u>					
Environmental Quality, Air Quality	33430	R307-202	5YR	03/04/2010	2010-7/52
<u>fire training</u>					
Public Safety, Fire Marshal	33358	R710-10-8	AMD	03/24/2010	2010-4/47
<u>fireplaces</u>					
Environmental Quality, Air Quality	33435	R307-207	5YR	03/04/2010	2010-7/55

<u>flocculation</u>						
Environmental Quality, Drinking Water	33491	R309-525	5YR	03/22/2010	2010-8/52	
<u>food inspections</u>						
Agriculture and Food, Animal Industry	33329	R58-10	5YR	01/14/2010	2010-3/87	
<u>food services</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33210	R392-100-2	AMD	03/15/2010	2009-24/61	
Health, Epidemiology and Laboratory Services, Environmental Services	33211	R392-101-9	AMD	03/15/2010	2009-24/63	
<u>food stamps</u>						
Workforce Services, Employment Development	33412	R986-900-902	AMD	05/01/2010	2010-6/24	
<u>foster care</u>						
Human Services, Child and Family Services	33257	R512-31	AMD	02/09/2010	2010-1/35	
<u>franchises</u>						
Tax Commission, Auditing	33643	R865-6F-28	NSC	05/27/2010	Not Printed	
<u>fuel composition</u>						
Environmental Quality, Air Quality	33431	R307-203	5YR	03/04/2010	2010-7/53	
<u>fuel oil</u>						
Environmental Quality, Air Quality	33431	R307-203	5YR	03/04/2010	2010-7/53	
<u>fugitive emissions</u>						
Environmental Quality, Air Quality	33433	R307-205	5YR	03/04/2010	2010-7/54	
<u>funding</u>						
Environmental Quality, Drinking Water	33501	R309-352	5YR	03/23/2010	2010-8/47	
<u>game laws</u>						
Natural Resources, Wildlife Resources	33271	R657-5-13	AMD	02/08/2010	2010-1/46	
Natural Resources, Wildlife Resources	33451	R657-17	AMD	05/10/2010	2010-7/24	
Natural Resources, Wildlife Resources	33331	R657-33	AMD	03/25/2010	2010-4/35	
<u>generating equipment</u>						
Public Service Commission, Administration	32881	R746-312	NEW	04/30/2010	2009-17/40	
Public Service Commission, Administration	32881	R746-312	CPR	04/30/2010	2010-1/64	
<u>geothermal natural bathing places</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	AMD	05/17/2010	2009-22/46	
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	CPR	05/17/2010	2010-6/28	
<u>geothermal pools</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	AMD	05/17/2010	2009-22/46	
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	CPR	05/17/2010	2010-6/28	
<u>geothermal spas</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	AMD	05/17/2010	2009-22/46	
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	CPR	05/17/2010	2010-6/28	
<u>geothermal steam</u>						
School and Institutional Trust Lands, Administration	33536	R850-27	5YR	04/01/2010	2010-8/65	
<u>gifted children</u>						
Education, Administration	33234	R277-711-4	NSC	01/04/2010	Not Printed	

RULES INDEX

government documents

Administrative Services, Records Committee	33335	R35-1-4	AMD	05/17/2010	2010-4/16
Administrative Services, Records Committee	33436	R35-1-4	NSC	05/17/2010	Not Printed
Administrative Services, Records Committee	33399	R35-1a	5YR	02/22/2010	2010-6/35

government hearings

Commerce, Administration	33150	R151-46b	AMD	01/07/2010	2009-23/7
Commerce, Administration	33149	R151-46b-5	AMD	01/07/2010	2009-23/11

governmental immunity caps

Administrative Services, Risk Management	33393	R37-4	AMD	06/01/2010	2010-6/6
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grant applications

Community and Culture, Arts and Museums	32949	R207-3	NEW	01/27/2010	2009-19/72
Community and Culture, Library	32936	R223-3	NEW	01/27/2010	2009-19/75

grant prioritizations

Community and Culture, Arts and Museums	32949	R207-3	NEW	01/27/2010	2009-19/72
Community and Culture, Library	32936	R223-3	NEW	01/27/2010	2009-19/75

grants

Community and Culture, Arts and Museums	32949	R207-3	NEW	01/27/2010	2009-19/72
Community and Culture, Library	32936	R223-3	NEW	01/27/2010	2009-19/75

gravel

School and Institutional Trust Lands, Administration	33532	R850-23	5YR	04/01/2010	2010-8/62
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grievance procedures

Tax Commission, Administration	33313	R861-1A-23	NSC	01/28/2010	Not Printed
Tax Commission, Administration	33637	R861-1A-42	NSC	05/27/2010	Not Printed
Tax Commission, Administration	33231	R861-1A-43	AMD	01/21/2010	2009-24/90

hardship grants

Environmental Quality, Drinking Water	33500	R309-700	5YR	03/23/2010	2010-8/56
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harmful behavior

Regents (Board Of), University of Utah, Administration	33146	R805-4	NEW	01/07/2010	2009-23/27
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hazardous waste

Environmental Quality, Solid and Hazardous Waste	32966	R315-1-1	AMD	01/15/2010	2009-19/92
Environmental Quality, Solid and Hazardous Waste	32967	R315-2	AMD	01/15/2010	2009-19/94
Environmental Quality, Solid and Hazardous Waste	32967	R315-2	CPR	01/15/2010	2009-23/32
Environmental Quality, Solid and Hazardous Waste	32968	R315-5	AMD	01/15/2010	2009-19/96
Environmental Quality, Solid and Hazardous Waste	33144	R315-7-27	AMD	01/15/2010	2009-23/16
Environmental Quality, Solid and Hazardous Waste	32969	R315-8	AMD	01/15/2010	2009-19/99
Environmental Quality, Solid and Hazardous Waste	32970	R315-13-1	AMD	01/15/2010	2009-19/103
Environmental Quality, Solid and Hazardous Waste	32971	R315-14-7	AMD	01/15/2010	2009-19/104
Environmental Quality, Solid and Hazardous Waste	33681	R315-16	5YR	05/27/2010	Not Printed
Environmental Quality, Solid and Hazardous Waste	32972	R315-50-1	AMD	01/15/2010	2009-19/105
Environmental Quality, Solid and Hazardous Waste	33682	R315-102	5YR	05/27/2010	Not Printed

hazing

Education, Administration	33253	R277-613-1	NSC	01/04/2010	Not Printed
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health care facilities

Health, Health Systems Improvement, Licensing	33221	R432-2-6	AMD	01/27/2010	2009-24/77
Health, Health Systems Improvement, Licensing	33137	R432-3	AMD	01/05/2010	2009-22/72
Health, Health Systems Improvement, Licensing	33136	R432-35-8	AMD	01/05/2010	2009-22/80

health effects

Environmental Quality, Drinking Water	33480	R309-220	5YR	03/22/2010	2010-8/45
Environmental Quality, Drinking Water	33458	R309-220-5	NSC	03/29/2010	Not Printed

health facilities

Health, Health Systems Improvement, Licensing	33186	R432-4-26	AMD	02/04/2010	2009-24/79
Health, Health Systems Improvement, Licensing	33187	R432-5-17	AMD	02/04/2010	2009-24/80

Health, Health Systems Improvement, Licensing	33189	R432-6-211	AMD	02/04/2010	2009-24/81
Health, Health Systems Improvement, Licensing	33190	R432-7-7	AMD	02/04/2010	2009-24/83
Health, Health Systems Improvement, Licensing	33191	R432-8-8	AMD	02/04/2010	2009-24/84
Health, Health Systems Improvement, Licensing	33184	R432-9-7	AMD	02/04/2010	2009-24/85
Health, Health Systems Improvement, Licensing	33119	R432-10-8	AMD	01/05/2010	2009-22/74
Health, Health Systems Improvement, Licensing	33120	R432-11-7	AMD	01/05/2010	2009-22/75
Health, Health Systems Improvement, Licensing	33121	R432-12-25	AMD	01/05/2010	2009-22/76
Health, Health Systems Improvement, Licensing	33122	R432-13-8	AMD	01/05/2010	2009-22/77
Health, Health Systems Improvement, Licensing	33123	R432-14-6	AMD	01/05/2010	2009-22/78
Health, Health Systems Improvement, Licensing	33118	R432-16-16	AMD	01/05/2010	2009-22/79
Health, Health Systems Improvement, Licensing	33273	R432-30	NSC	01/04/2010	Not Printed
Health, Health Systems Improvement, Licensing	33283	R432-270	NSC	01/13/2010	Not Printed
Health, Health Systems Improvement, Licensing	33135	R432-700-30	AMD	01/05/2010	2009-22/81
<u>health insurance</u>					
Environmental Quality, Administration	33102	R305-5	NEW	02/16/2010	2009-22/30
Environmental Quality, Administration	33102	R305-5	CPR	02/16/2010	2010-2/48
Insurance, Administration	33595	R590-172	5YR	04/29/2010	2010-10/166
Insurance, Administration	33661	R590-199	5YR	05/20/2010	Not Printed
<u>health insurance filings</u>					
Insurance, Administration	33297	R590-220	AMD	02/22/2010	2010-2/12
Insurance, Administration	33401	R590-220	NSC	03/10/2010	Not Printed
<u>hearings</u>					
Environmental Quality, Air Quality	33428	R307-103	5YR	03/04/2010	2010-7/51
Environmental Quality, Drinking Water	33475	R309-115	5YR	03/22/2010	2010-8/42
<u>high quality ground water</u>					
Environmental Quality, Drinking Water	33487	R309-505	5YR	03/22/2010	2010-8/50
<u>higher education</u>					
Regents (Board Of), Administration	33461	R765-604	AMD	05/11/2010	2010-7/36
Regents (Board Of), Administration	33556	R765-626	5YR	04/13/2010	2010-9/48
<u>highways</u>					
Transportation, Operations, Construction	33396	R916-3	NSC	03/10/2010	Not Printed
Transportation, Operations, Construction	33452	R916-4	5YR	03/11/2010	2010-7/58
<u>historic preservation</u>					
Tax Commission, Auditing	33643	R865-6F-28	NSC	05/27/2010	Not Printed
Tax Commission, Auditing	33384	R865-9I-7	AMD	04/08/2010	2010-5/51
Tax Commission, Auditing	33349	R865-9I-13	AMD	04/08/2010	2010-4/49
Tax Commission, Auditing	33113	R865-9I-17	AMD	01/21/2010	2009-22/86
Tax Commission, Auditing	33348	R865-9I-44	AMD	04/08/2010	2010-4/50
Tax Commission, Auditing	33351	R865-9I-56	AMD	04/08/2010	2010-4/53
<u>holidays</u>					
Human Resource Management, Administration	33278	R477-7-2	AMD	02/08/2010	2010-1/32
<u>hospitals</u>					
Health, Epidemiology and Laboratory Services, Epidemiology	33183	R386-705-101	AMD	03/15/2010	2009-24/58
Health, Health Care Financing, Coverage and Reimbursement Policy	33215	R414-5	REP	02/16/2010	2009-24/69
<u>HOT lanes</u>					
Transportation Commission, Administration	33369	R940-1-3	EMR	02/10/2010	2010-5/67
Transportation Commission, Administration	33386	R940-1-3	AMD	04/07/2010	2010-5/52
<u>hot springs</u>					
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	AMD	05/17/2010	2009-22/46
Health, Epidemiology and Laboratory Services, Environmental Services	33076	R392-303	CPR	05/17/2010	2010-6/28

RULES INDEX

<u>housing</u>						
Community and Culture, History	33448	R212-11	5YR	03/10/2010	2010-7/51	
<u>human services</u>						
Human Services, Administration, Administrative Services, Licensing	33538	R501-19	5YR	04/05/2010	2010-9/46	
Human Services, Administration, Administrative Services, Licensing	33539	R501-20	5YR	04/05/2010	2010-9/46	
Human Services, Administration, Administrative Services, Licensing	33540	R501-21	5YR	04/05/2010	2010-9/47	
Human Services, Administration, Administrative Services, Licensing	33541	R501-22	5YR	04/05/2010	2010-9/47	
<u>hunting and fishing licenses</u>						
Natural Resources, Wildlife Resources	33451	R657-17	AMD	05/10/2010	2010-7/24	
<u>hunting guides</u>						
Commerce, Occupational and Professional Licensing	33265	R156-79	AMD	02/08/2010	2010-1/14	
<u>hydraulic modeling</u>						
Environmental Quality, Drinking Water	32978	R309-511	NEW	03/11/2010	2009-19/88	
Environmental Quality, Drinking Water	32978	R309-511	CPR	03/11/2010	2010-3/62	
<u>hydropneumatic systems</u>						
Environmental Quality, Drinking Water	33494	R309-540	5YR	03/22/2010	2010-8/53	
<u>identification cards</u>						
Public Safety, Driver License	33143	R708-41	AMD	01/25/2010	2009-23/23	
Public Safety, Driver License	33338	R708-41	AMD	03/24/2010	2010-4/40	
Public Safety, Driver License	33512	R708-41	5YR	03/25/2010	2010-8/61	
<u>illegal behavior</u>						
Regents (Board Of), University of Utah, Administration	33146	R805-4	NEW	01/07/2010	2009-23/27	
<u>illegal drug operation</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33410	R392-600	5YR	02/25/2010	2010-6/37	
<u>immunization data</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33562	R386-800	5YR	04/15/2010	2010-9/45	
<u>immunization data reporting</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33185	R386-800-8	AMD	03/15/2010	2009-24/59	
<u>immunizations</u>						
Health, Community and Family Health Services, Immunization	33181	R396-100-9	AMD	03/15/2010	2009-24/66	
<u>import restrictions</u>						
Natural Resources, Wildlife Resources	33449	R657-53	AMD	05/10/2010	2010-7/26	
<u>income</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33346	R414-303-3	AMD	04/01/2010	2010-4/30	
<u>income tax</u>						
Tax Commission, Auditing	33384	R865-9I-7	AMD	04/08/2010	2010-5/51	
Tax Commission, Auditing	33349	R865-9I-13	AMD	04/08/2010	2010-4/49	
Tax Commission, Auditing	33113	R865-9I-17	AMD	01/21/2010	2009-22/86	
Tax Commission, Auditing	33348	R865-9I-44	AMD	04/08/2010	2010-4/50	
Tax Commission, Auditing	33351	R865-9I-56	AMD	04/08/2010	2010-4/53	
<u>independent contractor</u>						
Workforce Services, Unemployment Insurance	33521	R994-204	5YR	03/31/2010	2010-8/65	

<u>independent foster care adolescent</u> Health, Health Care Financing, Coverage and Reimbursement Policy	33346	R414-303-3	AMD	04/01/2010	2010-4/30
<u>individual home booster pumps</u> Environmental Quality, Drinking Water	33494	R309-540	5YR	03/22/2010	2010-8/53
<u>industrial waste</u> Environmental Quality, Water Quality	33232	R317-1-1	AMD	04/01/2010	2009-24/43
Environmental Quality, Water Quality	33232	R317-1-1	CPR	04/01/2010	2010-4/66
<u>inspections</u> Agriculture and Food, Animal Industry	33217	R58-20-5	AMD	01/27/2010	2009-24/4
Agriculture and Food, Plant Industry	33080	R68-7	AMD	01/04/2010	2009-22/5
Agriculture and Food, Plant Industry	33315	R68-20	5YR	01/12/2010	2010-3/89
<u>insurance</u> Insurance, Administration	33404	R590-140	5YR	02/23/2010	2010-6/39
Insurance, Administration	33317	R590-160	AMD	03/10/2010	2010-3/46
Insurance, Administration	33467	R590-160-7	NSC	04/14/2010	Not Printed
Insurance, Administration	33388	R590-166-4	NSC	02/24/2010	Not Printed
Insurance, Administration	33498	R590-166-4	NSC	04/14/2010	Not Printed
Insurance, Administration	33678	R590-171	5YR	05/27/2010	Not Printed
Insurance, Administration	33387	R590-196	AMD	04/14/2010	2010-5/43
<u>insurance alternative coverage</u> Insurance, Administration	33260	R590-255	NEW	02/09/2010	2010-1/41
<u>insurance companies</u> Insurance, Administration	33319	R590-128	5YR	01/13/2010	2010-3/92
<u>insurance Internet portal</u> Insurance, Administration	33321	R590-256	NEW	03/10/2010	2010-3/52
Insurance, Administration	33499	R590-256-5	NSC	03/29/2010	Not Printed
<u>insurance law</u> Insurance, Administration	33318	R590-88	5YR	01/13/2010	2010-3/92
Insurance, Administration	33330	R590-132	5YR	01/19/2010	2010-4/81
Insurance, Administration	33453	R590-164	5YR	03/11/2010	2010-7/56
<u>interconnection</u> Public Service Commission, Administration	32881	R746-312	NEW	04/30/2010	2009-17/40
Public Service Commission, Administration	32881	R746-312	CPR	04/30/2010	2010-1/64
<u>interest buy downs</u> Environmental Quality, Drinking Water	33500	R309-700	5YR	03/23/2010	2010-8/56
<u>interstate compacts</u> Workforce Services, Unemployment Insurance	33114	R994-106-104	AMD	01/13/2010	2009-22/98
<u>investigations</u> Human Services, Administration	33628	R495-888	LNR	05/01/2010	2010-11/131
<u>investigators</u> Commerce, Administration	33336	R151-1	5YR	01/25/2010	2010-4/80
<u>investment advisers</u> Commerce, Securities	33006	R164-4-9	AMD	01/06/2010	2009-20/12
Commerce, Securities	33316	R164-4-9	AMD	03/11/2010	2010-3/14
Money Management Council, Administration	33620	R628-15	5YR	05/05/2010	2010-11/129
<u>iron and manganese control</u> Environmental Quality, Drinking Water	33493	R309-535	5YR	03/22/2010	2010-8/53
<u>irradiator</u> Environmental Quality, Radiation Control	33367	R313-34	5YR	02/10/2010	2010-5/70

RULES INDEX

Environmental Quality, Radiation Control	33368	R313-34-3	AMD	04/15/2010	2010-5/42
<u>IT bid committee</u>					
Technology Services, Administration	33334	R895-9	5YR	01/20/2010	2010-4/82
<u>IT standards council</u>					
Technology Services, Administration	33334	R895-9	5YR	01/20/2010	2010-4/82
<u>jail reimbursement</u>					
Governor, Criminal and Juvenile Justice (State Commission on)	33073	R356-1	NEW	01/04/2010	2009-22/41
Governor, Criminal and Juvenile Justice (State Commission on)	33237	R356-1-7	NSC	01/04/2010	Not Printed
<u>judges</u>					
Judicial Performance Evaluation Commission, Administration	33385	R597-3	AMD	04/15/2010	2010-5/45
Judicial Performance Evaluation Commission, Administration	33578	R597-3-1	EMR	04/27/2010	2010-10/161
<u>Judicial Conduct Commission</u>					
Judicial Conduct Commission, Administration	33322	R595-1	5YR	01/14/2010	2010-3/93
Judicial Conduct Commission, Administration	33323	R595-2	5YR	01/14/2010	2010-3/93
Judicial Conduct Commission, Administration	33324	R595-3	5YR	01/14/2010	2010-3/94
Judicial Conduct Commission, Administration	33325	R595-4	5YR	01/14/2010	2010-3/94
<u>judicial performance evaluations</u>					
Judicial Performance Evaluation Commission, Administration	33385	R597-3	AMD	04/15/2010	2010-5/45
Judicial Performance Evaluation Commission, Administration	33578	R597-3-1	EMR	04/27/2010	2010-10/161
<u>labor</u>					
Labor Commission, Antidiscrimination and Labor, Labor	33299	R610-3-22	CPR	03/24/2010	2010-4/75
<u>laboratories</u>					
Health, Epidemiology and Laboratory Services, Laboratory Improvement	33218	R444-14-8	AMD	03/15/2010	2009-24/86
<u>land manager</u>					
Environmental Quality, Air Quality	33432	R307-204	5YR	03/04/2010	2010-7/53
<u>land use planning</u>					
Natural Resources, Forestry, Fire and State Lands	33276	R652-90-600	AMD	02/24/2010	2010-1/44
<u>lead-based paint</u>					
Environmental Quality, Air Quality	33308	R307-840	R&R	04/08/2010	2010-3/17
Environmental Quality, Air Quality	33309	R307-841	NEW	04/08/2010	2010-3/24
Environmental Quality, Air Quality	33310	R307-842	NEW	04/08/2010	2010-3/32
<u>lead-based paint abatement</u>					
Environmental Quality, Air Quality	33310	R307-842	NEW	04/08/2010	2010-3/32
<u>lead-based paint renovation</u>					
Environmental Quality, Air Quality	33309	R307-841	NEW	04/08/2010	2010-3/24
<u>lease operations</u>					
School and Institutional Trust Lands, Administration	33533	R850-24	5YR	04/01/2010	2010-8/63
<u>lease provisions</u>					
School and Institutional Trust Lands, Administration	33530	R850-21	5YR	04/01/2010	2010-8/61
School and Institutional Trust Lands, Administration	33531	R850-22	5YR	04/01/2010	2010-8/62
School and Institutional Trust Lands, Administration	33534	R850-25	5YR	04/01/2010	2010-8/64
School and Institutional Trust Lands, Administration	33535	R850-26	5YR	04/01/2010	2010-8/64
School and Institutional Trust Lands, Administration	33536	R850-27	5YR	04/01/2010	2010-8/65

<u>leave benefits</u>						
Human Resource Management, Administration	33278	R477-7-2	AMD	02/08/2010	2010-1/32	
<u>license</u>						
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	33636	R722-310	5YR	05/12/2010	2010-11/130	
<u>license certificate</u>						
Public Safety, Driver License	33143	R708-41	AMD	01/25/2010	2009-23/23	
Public Safety, Driver License	33338	R708-41	AMD	03/24/2010	2010-4/40	
Public Safety, Driver License	33512	R708-41	5YR	03/25/2010	2010-8/61	
<u>licensing</u>						
Commerce, Occupational and Professional Licensing	33227	R156-1	AMD	03/25/2010	2009-24/18	
Commerce, Occupational and Professional Licensing	33402	R156-17b	5YR	02/23/2010	2010-6/35	
Commerce, Occupational and Professional Licensing	33266	R156-31b-701a	AMD	03/29/2010	2010-1/9	
Commerce, Occupational and Professional Licensing	33264	R156-37-301	AMD	02/08/2010	2010-1/11	
Commerce, Occupational and Professional Licensing	33307	R156-38a	5YR	01/07/2010	2010-3/90	
Commerce, Occupational and Professional Licensing	33293	R156-47b	AMD	02/22/2010	2010-2/6	
Commerce, Occupational and Professional Licensing	33400	R156-47b-102	NSC	03/10/2010	Not Printed	
Commerce, Occupational and Professional Licensing	33409	R156-55d	5YR	02/25/2010	2010-6/36	
Commerce, Occupational and Professional Licensing	33306	R156-60c	5YR	01/07/2010	2010-3/90	
Commerce, Occupational and Professional Licensing	33263	R156-77-102	AMD	02/08/2010	2010-1/12	
Commerce, Occupational and Professional Licensing	33265	R156-79	AMD	02/08/2010	2010-1/14	
Commerce, Real Estate	33372	R162-2c	NEW	04/12/2010	2010-5/7	
Commerce, Real Estate	33506	R162-2c-203	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33470	R162-2c-204	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33471	R162-2c-301	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33507	R162-2c-401	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33180	R162-102	AMD	01/27/2010	2009-24/30	
Human Services, Administration, Administrative Services, Licensing	33538	R501-19	5YR	04/05/2010	2010-9/46	
Human Services, Administration, Administrative Services, Licensing	33539	R501-20	5YR	04/05/2010	2010-9/46	
Human Services, Administration, Administrative Services, Licensing	33540	R501-21	5YR	04/05/2010	2010-9/47	
Human Services, Administration, Administrative Services, Licensing	33541	R501-22	5YR	04/05/2010	2010-9/47	
<u>liens</u>						
Commerce, Occupational and Professional Licensing	33307	R156-38a	5YR	01/07/2010	2010-3/90	
<u>life jackets</u>						
Natural Resources, Parks and Recreation	33424	R651-219-7	AMD	04/21/2010	2010-6/20	
<u>Life with Dignity Order</u>						
Health, Health Systems Improvement, Licensing	33282	R432-31	R&R	02/25/2010	2010-2/9	
Health, Health Systems Improvement, Licensing	33463	R432-31	NSC	04/14/2010	Not Printed	
<u>limitation on judgments</u>						
Administrative Services, Risk Management	33393	R37-4	AMD	06/01/2010	2010-6/6	
<u>limited-term license certificate</u>						
Public Safety, Driver License	33143	R708-41	AMD	01/25/2010	2009-23/23	
Public Safety, Driver License	33338	R708-41	AMD	03/24/2010	2010-4/40	
Public Safety, Driver License	33512	R708-41	5YR	03/25/2010	2010-8/61	
<u>liquefied petroleum gas</u>						
Public Safety, Fire Marshal	33357	R710-6	AMD	03/24/2010	2010-4/44	
Public Safety, Fire Marshal	33513	R710-6	AMD	05/24/2010	2010-8/28	
<u>livestock</u>						
Agriculture and Food, Animal Industry	33326	R58-7	5YR	01/14/2010	2010-3/87	
<u>loan origination</u>						
Commerce, Real Estate	33372	R162-2c	NEW	04/12/2010	2010-5/7	
Commerce, Real Estate	33506	R162-2c-203	NSC	04/14/2010	Not Printed	

RULES INDEX

Commerce, Real Estate	33470	R162-2c-204	NSC	04/14/2010	Not Printed
Commerce, Real Estate	33471	R162-2c-301	NSC	04/14/2010	Not Printed
Commerce, Real Estate	33507	R162-2c-401	NSC	04/14/2010	Not Printed
<u>loans</u>					
Agriculture and Food, Conservation and Resource Management	33305	R64-1	5YR	01/07/2010	2010-3/89
Environmental Quality, Drinking Water	33500	R309-700	5YR	03/23/2010	2010-8/56
Environmental Quality, Drinking Water	33502	R309-705	5YR	03/23/2010	2010-8/57
<u>local health departments</u>					
Health, Administration	33553	R380-40	5YR	04/08/2010	2010-9/44
<u>low quality ground water</u>					
Environmental Quality, Drinking Water	33487	R309-505	5YR	03/22/2010	2010-8/50
<u>maintenance</u>					
Capitol Preservation Board (State), Administration	33405	R131-8	EXT	02/24/2010	2010-6/43
Capitol Preservation Board (State), Administration	33549	R131-8	5YR	04/07/2010	2010-9/43
Capitol Preservation Board (State), Administration	33548	R131-8	NSC	04/26/2010	Not Printed
<u>management</u>					
Natural Resources, Forestry, Fire and State Lands	33276	R652-90-600	AMD	02/24/2010	2010-1/44
<u>massage therapy</u>					
Commerce, Occupational and Professional Licensing	33293	R156-47b	AMD	02/22/2010	2010-2/6
Commerce, Occupational and Professional Licensing	33400	R156-47b-102	NSC	03/10/2010	Not Printed
<u>material permits</u>					
School and Institutional Trust Lands, Administration	33533	R850-24	5YR	04/01/2010	2010-8/63
<u>Medicaid</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	33214	R414-1	AMD	01/27/2010	2009-24/67
Health, Health Care Financing, Coverage and Reimbursement Policy	33342	R414-1-5	AMD	04/01/2010	2010-4/17
Health, Health Care Financing, Coverage and Reimbursement Policy	33414	R414-1-28	AMD	05/01/2010	2010-6/8
Health, Health Care Financing, Coverage and Reimbursement Policy	33413	R414-3A	EMR	03/01/2010	2010-6/31
Health, Health Care Financing, Coverage and Reimbursement Policy	33215	R414-5	REP	02/16/2010	2009-24/69
Health, Health Care Financing, Coverage and Reimbursement Policy	33341	R414-7B	R&R	03/29/2010	2010-4/18
Health, Health Care Financing, Coverage and Reimbursement Policy	33415	R414-10-6	AMD	05/01/2010	2010-6/9
Health, Health Care Financing, Coverage and Reimbursement Policy	33416	R414-11-8	AMD	05/01/2010	2010-6/10
Health, Health Care Financing, Coverage and Reimbursement Policy	33216	R414-14A	AMD	01/28/2010	2009-24/70
Health, Health Care Financing, Coverage and Reimbursement Policy	33528	R414-19A	AMD	05/27/2010	2010-8/15
Health, Health Care Financing, Coverage and Reimbursement Policy	33680	R414-19A	5YR	05/27/2010	Not Printed
Health, Health Care Financing, Coverage and Reimbursement Policy	33514	R414-33	REP	05/24/2010	2010-8/17
Health, Health Care Financing, Coverage and Reimbursement Policy	33403	R414-33C	5YR	02/23/2010	2010-6/38
Health, Health Care Financing, Coverage and Reimbursement Policy	33343	R414-54-3	AMD	04/01/2010	2010-4/26
Health, Health Care Financing, Coverage and Reimbursement Policy	33417	R414-55-3	AMD	05/01/2010	2010-6/11
Health, Health Care Financing, Coverage and Reimbursement Policy	33344	R414-59-4	AMD	04/01/2010	2010-4/27
Health, Health Care Financing, Coverage and Reimbursement Policy	33418	R414-60-6	AMD	05/01/2010	2010-6/12

Health, Health Care Financing, Coverage and Reimbursement Policy	33407	R414-61	5YR	02/24/2010	2010-6/39
Health, Health Care Financing, Coverage and Reimbursement Policy	33419	R414-200-4	AMD	05/01/2010	2010-6/13
Health, Health Care Financing, Coverage and Reimbursement Policy	33345	R414-302-4	AMD	04/01/2010	2010-4/28
Health, Health Care Financing, Coverage and Reimbursement Policy	33466	R414-309	5YR	03/18/2010	2010-8/57
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	AMD	02/16/2010	2009-18/36
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	CPR	02/16/2010	2009-24/94
Health, Health Care Financing, Coverage and Reimbursement Policy	33529	R414-320-7	EMR	04/01/2010	2010-8/37
Health, Health Care Financing, Coverage and Reimbursement Policy	33304	R414-501	NSC	01/28/2010	Not Printed
<u>medical malpractice</u>					
Commerce, Occupational and Professional Licensing	33175	R156-78B-4	AMD	01/21/2010	2009-24/28
<u>medical transportation</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	33259	R414-306	AMD	02/22/2010	2010-1/23
<u>membrane technology</u>					
Environmental Quality, Drinking Water	33492	R309-530	5YR	03/22/2010	2010-8/52
<u>mental health</u>					
Commerce, Occupational and Professional Licensing	33306	R156-60c	5YR	01/07/2010	2010-3/90
<u>methadone programs</u>					
Human Services, Substance Abuse and Mental Health	33142	R523-21	AMD	01/20/2010	2009-23/21
<u>methamphetamine decontamination</u>					
Health, Epidemiology and Laboratory Services, Environmental Services	33410	R392-600	5YR	02/25/2010	2010-6/37
<u>midwife</u>					
Commerce, Occupational and Professional Licensing	33263	R156-77-102	AMD	02/08/2010	2010-1/12
<u>mineral classification</u>					
School and Institutional Trust Lands, Administration	33534	R850-25	5YR	04/01/2010	2010-8/64
<u>mineral leases</u>					
School and Institutional Trust Lands, Administration	33533	R850-24	5YR	04/01/2010	2010-8/63
<u>mineral resources</u>					
School and Institutional Trust Lands, Administration	33533	R850-24	5YR	04/01/2010	2010-8/63
<u>minimum sizing</u>					
Environmental Quality, Drinking Water	33488	R309-510	5YR	03/22/2010	2010-8/50
<u>mining</u>					
Environmental Quality, Air Quality	33433	R307-205	5YR	03/04/2010	2010-7/54
<u>minors</u>					
Commerce, Consumer Protection	33598	R152-39	5YR	04/29/2010	2010-10/165
Labor Commission, Antidiscrimination and Labor, Labor	33299	R610-3-22	CPR	03/24/2010	2010-4/75
<u>miscellaneous treatment</u>					
Environmental Quality, Drinking Water	33493	R309-535	5YR	03/22/2010	2010-8/53
<u>mortgage renewal license term</u>					
Commerce, Real Estate	33382	R162-211	REP	04/12/2010	2010-5/41

RULES INDEX

<u>motor carrier</u>						
Transportation, Motor Carrier, Ports of Entry	33675	R912-6	5YR	05/26/2010	Not Printed	
<u>motor vehicle record</u>						
Public Safety, Driver License	33518	R708-36	5YR	03/30/2010	2010-8/59	
<u>NetCare</u>						
Insurance, Administration	33260	R590-255	NEW	02/09/2010	2010-1/41	
<u>newborn hearing screening</u>						
Health, Community and Family Health Services, Children with Special Health Care Needs	33134	R398-2-7	AMD	03/15/2010	2009-22/53	
<u>non-traditional</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33419	R414-200-4	AMD	05/01/2010	2010-6/13	
<u>noncompliance</u>						
Education, Administration	33440	R277-114	NEW	05/12/2010	2010-7/2	
<u>notice of commencement</u>						
Commerce, Occupational and Professional Licensing	33366	R156-38b	5YR	02/08/2010	2010-5/69	
<u>notice of completion</u>						
Commerce, Occupational and Professional Licensing	33366	R156-38b	5YR	02/08/2010	2010-5/69	
<u>nurses</u>						
Commerce, Occupational and Professional Licensing	33266	R156-31b-701a	AMD	03/29/2010	2010-1/9	
<u>oath</u>						
Commerce, Administration	33336	R151-1	5YR	01/25/2010	2010-4/80	
<u>occupational licensing</u>						
Commerce, Occupational and Professional Licensing	33227	R156-1	AMD	03/25/2010	2009-24/18	
<u>OHV education standards</u>						
Natural Resources, Parks and Recreation	33421	R651-412	NEW	04/21/2010	2010-6/22	
<u>oil and gas and hydrocarbons</u>						
School and Institutional Trust Lands, Administration	33530	R850-21	5YR	04/01/2010	2010-8/61	
<u>oil and gas law</u>						
Natural Resources, Oil, Gas and Mining; Oil and Gas	33510	R649-3-31	NSC	04/14/2010	Not Printed	
Natural Resources, Oil, Gas and Mining; Oil and Gas	33508	R649-9-1	NSC	04/14/2010	Not Printed	
<u>oil shale</u>						
School and Institutional Trust Lands, Administration	33531	R850-22	5YR	04/01/2010	2010-8/62	
<u>onsite wastewater systems</u>						
Environmental Quality, Water Quality	33370	R317-4	5YR	02/10/2010	2010-5/71	
<u>open burning</u>						
Environmental Quality, Air Quality	33430	R307-202	5YR	03/04/2010	2010-7/52	
<u>operation and maintenance</u>						
Environmental Quality, Drinking Water	33490	R309-520	5YR	03/22/2010	2010-8/51	
<u>operation and maintenance requirements</u>						
Environmental Quality, Drinking Water	33486	R309-500	5YR	03/22/2010	2010-8/49	
<u>operations</u>						
School and Institutional Trust Lands, Administration	33530	R850-21	5YR	04/01/2010	2010-8/61	
<u>outfitters</u>						
Commerce, Occupational and Professional Licensing	33265	R156-79	AMD	02/08/2010	2010-1/14	

<u>outpatient treatment programs</u>						
Human Services, Administration, Administrative Services, Licensing	33540	R501-21	5YR	04/05/2010	2010-9/47	
<u>overflow and drains</u>						
Environmental Quality, Drinking Water	33495	R309-545	5YR	03/22/2010	2010-8/54	
<u>overpayments</u>						
Human Services, Recovery Services	33261	R527-332	AMD	02/09/2010	2010-1/39	
Workforce Services, Unemployment Insurance	33355	R994-406-203	AMD	04/01/2010	2010-4/62	
<u>ownership</u>						
Natural Resources, Water Rights	33347	R655-3	5YR	01/27/2010	2010-4/81	
<u>paint</u>						
Environmental Quality, Air Quality	33308	R307-840	R&R	04/08/2010	2010-3/17	
Environmental Quality, Air Quality	33309	R307-841	NEW	04/08/2010	2010-3/24	
Environmental Quality, Air Quality	33310	R307-842	NEW	04/08/2010	2010-3/32	
<u>parking spaces Capitol Hill Complex</u>						
Capitol Preservation Board (State), Administration	33298	R131-14	NEW	02/22/2010	2010-2/4	
<u>parks</u>						
Natural Resources, Parks and Recreation	33422	R651-206-3	AMD	04/21/2010	2010-6/17	
Natural Resources, Parks and Recreation	33424	R651-219-7	AMD	04/21/2010	2010-6/20	
Natural Resources, Parks and Recreation	33421	R651-412	NEW	04/21/2010	2010-6/22	
<u>patient safety</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33183	R386-705-101	AMD	03/15/2010	2009-24/58	
<u>PCN</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	AMD	02/16/2010	2009-18/36	
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	CPR	02/16/2010	2009-24/94	
Health, Health Care Financing, Coverage and Reimbursement Policy	33529	R414-320-7	EMR	04/01/2010	2010-8/37	
<u>penalties</u>						
Environmental Quality, Drinking Water	33483	R309-405	5YR	03/22/2010	2010-8/49	
Labor Commission, Industrial Accidents	33230	R612-13	NEW	01/21/2010	2009-24/89	
<u>per diem allowances</u>						
Administrative Services, Finance	33302	R25-7-10	AMD	04/21/2010	2010-3/12	
<u>performance standards</u>						
Health, Administration	33553	R380-40	5YR	04/08/2010	2010-9/44	
<u>permit provisions</u>						
School and Institutional Trust Lands, Administration	33532	R850-23	5YR	04/01/2010	2010-8/62	
<u>permit terms</u>						
School and Institutional Trust Lands, Administration	33534	R850-25	5YR	04/01/2010	2010-8/64	
<u>permits</u>						
Environmental Quality, Drinking Water	33486	R309-500	5YR	03/22/2010	2010-8/49	
Natural Resources, Forestry, Fire and State Lands	33268	R652-70-700	AMD	02/25/2010	2010-1/43	
Natural Resources, Forestry, Fire and State Lands	33537	R652-120	5YR	04/01/2010	2010-8/58	
Natural Resources, Wildlife Resources	33450	R657-62	AMD	05/10/2010	2010-7/28	
Transportation, Motor Carrier, Ports of Entry	33675	R912-6	5YR	05/26/2010	Not Printed	
<u>personnel files</u>						
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	33688	R606-6	5YR	05/28/2010	Not Printed	

RULES INDEX

<u>pesticides</u>						
Agriculture and Food, Plant Industry	33080	R68-7	AMD	01/04/2010	2009-22/5	
<u>pharmacies</u>						
Commerce, Occupational and Professional Licensing	33402	R156-17b	5YR	02/23/2010	2010-6/35	
<u>pharmacists</u>						
Commerce, Occupational and Professional Licensing	33402	R156-17b	5YR	02/23/2010	2010-6/35	
<u>physical and mental fitness testing</u>						
Public Safety, Driver License	33411	R708-39-4	AMD	04/21/2010	2010-6/23	
<u>plan of operations</u>						
School and Institutional Trust Lands, Administration	33535	R850-26	5YR	04/01/2010	2010-8/64	
School and Institutional Trust Lands, Administration	33536	R850-27	5YR	04/01/2010	2010-8/65	
<u>plan review</u>						
Environmental Quality, Drinking Water	33486	R309-500	5YR	03/22/2010	2010-8/49	
<u>planning-budgeting</u>						
Capitol Preservation Board (State), Administration	33365	R131-7	EXT	02/08/2010	2010-5/74	
Capitol Preservation Board (State), Administration	33547	R131-7	5YR	04/07/2010	2010-9/43	
Capitol Preservation Board (State), Administration	33546	R131-7	NSC	04/26/2010	Not Printed	
<u>plant diseases</u>						
Agriculture and Food, Plant Industry	33677	R68-12	5YR	05/27/2010	Not Printed	
<u>PM10</u>						
Environmental Quality, Air Quality	33429	R307-201	5YR	03/04/2010	2010-7/52	
Environmental Quality, Air Quality	33434	R307-206	5YR	03/04/2010	2010-7/55	
Environmental Quality, Air Quality	33435	R307-207	5YR	03/04/2010	2010-7/55	
<u>policies</u>						
Education, Administration	33253	R277-613-1	NSC	01/04/2010	Not Printed	
<u>policy</u>						
Capitol Preservation Board (State), Administration	33406	R131-9	EXT	02/24/2010	2010-6/43	
Capitol Preservation Board (State), Administration	33551	R131-9	5YR	04/07/2010	2010-9/44	
Capitol Preservation Board (State), Administration	33550	R131-9	NSC	04/26/2010	Not Printed	
<u>POLST</u>						
Health, Health Systems Improvement, Licensing	33282	R432-31	R&R	02/25/2010	2010-2/9	
Health, Health Systems Improvement, Licensing	33463	R432-31	NSC	04/14/2010	Not Printed	
<u>ports of entry</u>						
Transportation, Motor Carrier, Ports of Entry	33675	R912-6	5YR	05/26/2010	Not Printed	
<u>preliminary notice</u>						
Commerce, Occupational and Professional Licensing	33366	R156-38b	5YR	02/08/2010	2010-5/69	
<u>prelitigation</u>						
Commerce, Occupational and Professional Licensing	33175	R156-78B-4	AMD	01/21/2010	2009-24/28	
<u>preservation</u>						
Community and Culture, History	33448	R212-11	5YR	03/10/2010	2010-7/51	
<u>primary disinfectants</u>						
Environmental Quality, Drinking Water	33490	R309-520	5YR	03/22/2010	2010-8/51	
<u>privacy</u>						
Public Safety, Driver License	33518	R708-36	5YR	03/30/2010	2010-8/59	
<u>private investigators license</u>						
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	33567	R722-330	5YR	04/22/2010	2010-10/167	

<u>procurement</u>						
Capitol Preservation Board (State), Administration	33363	R131-1	EXT	02/08/2010	2010-5/73	
Capitol Preservation Board (State), Administration	33544	R131-1	5YR	04/07/2010	2010-9/41	
Capitol Preservation Board (State), Administration	33543	R131-1	NSC	04/26/2010	Not Printed	
<u>professional counselors</u>						
Commerce, Occupational and Professional Licensing	33306	R156-60c	5YR	01/07/2010	2010-3/90	
<u>program</u>						
Capitol Preservation Board (State), Administration	33406	R131-9	EXT	02/24/2010	2010-6/43	
Capitol Preservation Board (State), Administration	33551	R131-9	5YR	04/07/2010	2010-9/44	
Capitol Preservation Board (State), Administration	33550	R131-9	NSC	04/26/2010	Not Printed	
<u>program benefits</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33259	R414-306	AMD	02/22/2010	2010-1/23	
<u>programs</u>						
Education, Administration	33440	R277-114	NEW	05/12/2010	2010-7/2	
<u>prohibited items and devices</u>						
Human Services, Substance Abuse and Mental Health	33333	R523-1-25	NSC	02/11/2010	Not Printed	
<u>property casualty insurance filing</u>						
Insurance, Administration	33517	R590-225	AMD	05/26/2010	2010-8/19	
<u>public assistance</u>						
Workforce Services, Employment Development	33412	R986-900-902	AMD	05/01/2010	2010-6/24	
<u>public assistance programs</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33345	R414-302-4	AMD	04/01/2010	2010-4/28	
<u>public buildings</u>						
Capitol Preservation Board (State), Administration	33364	R131-2	EXT	02/08/2010	2010-5/73	
Capitol Preservation Board (State), Administration	33545	R131-2	5YR	04/07/2010	2010-9/42	
Capitol Preservation Board (State), Administration	33151	R131-2-11	AMD	01/07/2010	2009-23/6	
Capitol Preservation Board (State), Administration	33365	R131-7	EXT	02/08/2010	2010-5/74	
Capitol Preservation Board (State), Administration	33547	R131-7	5YR	04/07/2010	2010-9/43	
Capitol Preservation Board (State), Administration	33546	R131-7	NSC	04/26/2010	Not Printed	
<u>public health</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33210	R392-100-2	AMD	03/15/2010	2009-24/61	
Health, Epidemiology and Laboratory Services, Environmental Services	33211	R392-101-9	AMD	03/15/2010	2009-24/63	
Health, Epidemiology and Laboratory Services, Environmental Services	33212	R392-400-17	AMD	03/15/2010	2009-24/64	
<u>public information</u>						
Administrative Services, Archives	33320	R17-7-3	AMD	05/17/2010	2010-3/12	
<u>public investments</u>						
Money Management Council, Administration	33620	R628-15	5YR	05/05/2010	2010-11/129	
<u>public meetings</u>						
Natural Resources, Forestry, Fire and State Lands	33276	R652-90-600	AMD	02/24/2010	2010-1/44	
<u>public notification</u>						
Environmental Quality, Drinking Water	33480	R309-220	5YR	03/22/2010	2010-8/45	
Environmental Quality, Drinking Water	33458	R309-220-5	NSC	03/29/2010	Not Printed	
<u>public utilities</u>						
Public Service Commission, Administration	32881	R746-312	NEW	04/30/2010	2009-17/40	
Public Service Commission, Administration	32881	R746-312	CPR	04/30/2010	2010-1/64	

RULES INDEX

<u>pumps</u>						
Environmental Quality, Drinking Water	33494	R309-540	5YR	03/22/2010	2010-8/53	
<u>QEFAF</u>						
Community and Culture, Housing and Community Development, Community Services	33252	R202-101	NEW	02/22/2010	2010-1/16	
<u>Qualified Emergency Food Agency Fund</u>						
Community and Culture, Housing and Community Development, Community Services	33252	R202-101	NEW	02/22/2010	2010-1/16	
<u>quality control</u>						
Agriculture and Food, Regulatory Services	33074	R70-101	AMD	01/11/2010	2009-22/11	
Agriculture and Food, Regulatory Services	33542	R70-101	5YR	04/07/2010	2010-9/41	
<u>quality improvement</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33183	R386-705-101	AMD	03/15/2010	2009-24/58	
<u>quality standards</u>						
Environmental Quality, Drinking Water	33476	R309-200	5YR	03/22/2010	2010-8/43	
Environmental Quality, Drinking Water	33457	R309-200-2	NSC	03/29/2010	Not Printed	
<u>quarantine</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57	
<u>rabies</u>						
Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57	
<u>radiation</u>						
Environmental Quality, Radiation Control	33367	R313-34	5YR	02/10/2010	2010-5/70	
Environmental Quality, Radiation Control	33368	R313-34-3	AMD	04/15/2010	2010-5/42	
<u>radiation safety</u>						
Environmental Quality, Radiation Control	33367	R313-34	5YR	02/10/2010	2010-5/70	
Environmental Quality, Radiation Control	33368	R313-34-3	AMD	04/15/2010	2010-5/42	
<u>railroad</u>						
Transportation, Preconstruction	33274	R930-5	R&R	02/08/2010	2010-1/49	
<u>real estate appraisals</u>						
Commerce, Real Estate	33158	R162-101	AMD	01/27/2010	2009-24/29	
Commerce, Real Estate	33180	R162-102	AMD	01/27/2010	2009-24/30	
Commerce, Real Estate	33224	R162-104	AMD	01/27/2010	2009-24/33	
Commerce, Real Estate	33225	R162-105	AMD	01/27/2010	2009-24/39	
Commerce, Real Estate	33226	R162-106-1	AMD	02/03/2010	2009-24/42	
Commerce, Real Estate	33398	R162-106-7	AMD	04/28/2010	2010-6/7	
Commerce, Real Estate	33148	R162-110	NEW	01/07/2010	2009-23/13	
Commerce, Real Estate	33303	R162-110-1	NSC	01/28/2010	Not Printed	
<u>real estate business</u>						
Commerce, Real Estate	33526	R162-2-2	AMD	05/25/2010	2010-8/8	
<u>reclamation</u>						
Natural Resources, Oil, Gas and Mining; Coal	33394	R645-105	5YR	02/17/2010	2010-6/40	
Natural Resources, Oil, Gas and Mining; Coal	33509	R645-301-600	NSC	04/14/2010	Not Printed	
Natural Resources, Oil, Gas and Mining; Coal	33395	R645-400	5YR	02/17/2010	2010-6/40	
<u>records appeal hearings</u>						
Administrative Services, Records Committee	33335	R35-1-4	AMD	05/17/2010	2010-4/16	
Administrative Services, Records Committee	33436	R35-1-4	NSC	05/17/2010	Not Printed	
Administrative Services, Records Committee	33399	R35-1a	5YR	02/22/2010	2010-6/35	
<u>records retention</u>						
Administrative Services, Archives	33320	R17-7-3	AMD	05/17/2010	2010-3/12	

<u>regionalization</u>						
Environmental Quality, Drinking Water	33501	R309-352	5YR	03/23/2010	2010-8/47	
<u>registration</u>						
Commerce, Real Estate	33148	R162-110	NEW	01/07/2010	2009-23/13	
Commerce, Real Estate	33303	R162-110-1	NSC	01/28/2010	Not Printed	
<u>regulated contaminants</u>						
Environmental Quality, Drinking Water	33476	R309-200	5YR	03/22/2010	2010-8/43	
Environmental Quality, Drinking Water	33457	R309-200-2	NSC	03/29/2010	Not Printed	
<u>rehabilitation</u>						
Community and Culture, History	33448	R212-11	5YR	03/10/2010	2010-7/51	
<u>related parties</u>						
Human Services, Administration	33628	R495-888	LNR	05/01/2010	2010-11/131	
<u>renewable energy facilities</u>						
Public Service Commission, Administration	32881	R746-312	NEW	04/30/2010	2009-17/40	
Public Service Commission, Administration	32881	R746-312	CPR	04/30/2010	2010-1/64	
<u>reporting</u>						
Labor Commission, Industrial Accidents	33230	R612-13	NEW	01/21/2010	2009-24/89	
<u>reporting requirements and procedures</u>						
Health, Community and Family Health Services, Chronic Disease	33138	R384-100-10	AMD	03/15/2010	2009-23/21	
<u>reports</u>						
Education, Administration	33443	R277-484	AMD	05/12/2010	2010-7/8	
<u>repository</u>						
Technology Services, Administration	33334	R895-9	5YR	01/20/2010	2010-4/82	
<u>reptiles</u>						
Natural Resources, Wildlife Resources	33449	R657-53	AMD	05/10/2010	2010-7/26	
<u>research</u>						
Education, Administration	33443	R277-484	AMD	05/12/2010	2010-7/8	
<u>residential mortgage</u>						
Commerce, Real Estate	33372	R162-2c	NEW	04/12/2010	2010-5/7	
Commerce, Real Estate	33506	R162-2c-203	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33470	R162-2c-204	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33471	R162-2c-301	NSC	04/14/2010	Not Printed	
Commerce, Real Estate	33507	R162-2c-401	NSC	04/14/2010	Not Printed	
<u>residential mortgage loan origination</u>						
Commerce, Real Estate	33373	R162-201	REP	04/12/2010	2010-5/20	
Commerce, Real Estate	33374	R162-202	REP	04/12/2010	2010-5/21	
Commerce, Real Estate	33375	R162-203	REP	04/12/2010	2010-5/24	
Commerce, Real Estate	33376	R162-204	REP	04/12/2010	2010-5/26	
Commerce, Real Estate	33377	R162-205	REP	04/12/2010	2010-5/27	
Commerce, Real Estate	33378	R162-207	REP	04/12/2010	2010-5/29	
Commerce, Real Estate	33379	R162-208	REP	04/12/2010	2010-5/31	
Commerce, Real Estate	33380	R162-209	REP	04/12/2010	2010-5/35	
Commerce, Real Estate	33381	R162-210	REP	04/12/2010	2010-5/37	
<u>resolutions</u>						
Administrative Services, Facilities Construction and Management	33360	R23-26	5YR	02/01/2010	2010-4/79	
<u>respite</u>						
Human Services, Aging and Adult Services	33027	R510-401	R&R	01/19/2010	2009-21/35	

RULES INDEX

restaurants

Tax Commission, Auditing	33350	R865-12L-5	AMD	04/08/2010	2010-4/54
Tax Commission, Auditing	33352	R865-12L-6	AMD	04/08/2010	2010-4/55

right-of-way

Transportation, Preconstruction, Right-of-Way Acquisition	33311	R933-4	REP	03/10/2010	2010-3/56
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risk management

Administrative Services, Risk Management	33390	R37-1	AMD	06/01/2010	2010-5/2
Administrative Services, Risk Management	33392	R37-2	NSC	03/10/2010	Not Printed
Administrative Services, Risk Management	33393	R37-4	AMD	06/01/2010	2010-6/6

rules and procedures

Health, Community and Family Health Services, Immunization	33181	R396-100-9	AMD	03/15/2010	2009-24/66
Health, Epidemiology and Laboratory Services, Epidemiology	33182	R386-702-11	AMD	03/15/2010	2009-24/57

safety

Labor Commission, Boiler and Elevator Safety	33362	R616-2-3	AMD	04/07/2010	2010-5/48
Labor Commission, Boiler and Elevator Safety	33300	R616-4	NEW	03/11/2010	2010-3/54
Labor Commission, Boiler and Elevator Safety	33454	R616-4-3	NSC	03/29/2010	Not Printed
Labor Commission, Occupational Safety and Health	33280	R614-1-4	NSC	05/25/2010	Not Printed
Labor Commission, Occupational Safety and Health	33279	R614-7-1	AMD	02/22/2010	2010-2/20
Transportation, Preconstruction	33274	R930-5	R&R	02/08/2010	2010-1/49

sales tax

Tax Commission, Auditing	33350	R865-12L-5	AMD	04/08/2010	2010-4/54
Tax Commission, Auditing	33352	R865-12L-6	AMD	04/08/2010	2010-4/55

salons

Health, Epidemiology and Laboratory Services, Environmental Services	33213	R392-700-11	AMD	03/15/2010	2009-24/65
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sand

School and Institutional Trust Lands, Administration	33532	R850-23	5YR	04/01/2010	2010-8/62
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sanitation

Health, Epidemiology and Laboratory Services, Environmental Services	33210	R392-100-2	AMD	03/15/2010	2009-24/61
Health, Epidemiology and Laboratory Services, Environmental Services	33213	R392-700-11	AMD	03/15/2010	2009-24/65

scholarships

Regents (Board Of), Administration	33461	R765-604	AMD	05/11/2010	2010-7/36
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school enrollment

Education, Administration	33441	R277-419-3	AMD	05/12/2010	2010-7/3
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screening

Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health	33188	R388-804-9	AMD	03/15/2010	2009-24/60
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SDWA

Environmental Quality, Drinking Water	33502	R309-705	5YR	03/23/2010	2010-8/57
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secondary disinfectants

Environmental Quality, Drinking Water	33490	R309-520	5YR	03/22/2010	2010-8/51
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secondary education

Regents (Board Of), Administration	33461	R765-604	AMD	05/11/2010	2010-7/36
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securities

Commerce, Securities	33389	R164-2	5YR	02/16/2010	2010-5/69
Commerce, Securities	33006	R164-4-9	AMD	01/06/2010	2009-20/12
Commerce, Securities	33316	R164-4-9	AMD	03/11/2010	2010-3/14

Commerce, Securities	33010	R164-9	AMD	02/02/2010	2009-20/14
Commerce, Securities	33011	R164-10-2	AMD	02/02/2010	2009-20/16
Commerce, Securities	33014	R164-13	REP	02/02/2010	2009-20/22
<u>securities licensing requirements</u>					
Commerce, Securities	33006	R164-4-9	AMD	01/06/2010	2009-20/12
Commerce, Securities	33316	R164-4-9	AMD	03/11/2010	2010-3/14
<u>securities regulation</u>					
Commerce, Securities	33389	R164-2	5YR	02/16/2010	2010-5/69
Commerce, Securities	33006	R164-4-9	AMD	01/06/2010	2009-20/12
Commerce, Securities	33316	R164-4-9	AMD	03/11/2010	2010-3/14
Commerce, Securities	33010	R164-9	AMD	02/02/2010	2009-20/14
Commerce, Securities	33011	R164-10-2	AMD	02/02/2010	2009-20/16
Commerce, Securities	33012	R164-11-1	AMD	02/02/2010	2009-20/18
Commerce, Securities	33013	R164-12-1f	AMD	02/02/2010	2009-20/19
Commerce, Securities	33014	R164-13	REP	02/02/2010	2009-20/22
Commerce, Securities	33016	R164-18-6	AMD	02/02/2010	2009-20/23
Money Management Council, Administration	33620	R628-15	5YR	05/05/2010	2010-11/129
<u>sedimentation</u>					
Environmental Quality, Drinking Water	33491	R309-525	5YR	03/22/2010	2010-8/52
<u>septic tanks</u>					
Environmental Quality, Water Quality	33370	R317-4	5YR	02/10/2010	2010-5/71
<u>settlements</u>					
Administrative Services, Facilities Construction and Management	33360	R23-26	5YR	02/01/2010	2010-4/79
<u>sharing</u>					
Education, Administration	33147	R277-111	NEW	01/08/2010	2009-23/15
<u>skills tests</u>					
Public Safety, Driver License	33520	R708-37	5YR	03/30/2010	2010-8/60
<u>slow sand filtration</u>					
Environmental Quality, Drinking Water	33492	R309-530	5YR	03/22/2010	2010-8/52
<u>small game</u>					
Natural Resources, Wildlife Resources	33438	R657-21	5YR	03/09/2010	2010-7/57
Natural Resources, Wildlife Resources	33497	R657-21	AMD	06/01/2010	2010-8/27
<u>smoke</u>					
Environmental Quality, Air Quality	33432	R307-204	5YR	03/04/2010	2010-7/53
<u>sobriety tests</u>					
Health, Epidemiology and Laboratory Services, Laboratory Services	33087	R438-12-2	AMD	01/06/2010	2009-22/82
<u>solid waste management</u>					
Environmental Quality, Solid and Hazardous Waste	33391	R315-302-1	NSC	03/10/2010	Not Printed
Environmental Quality, Solid and Hazardous Waste	33145	R315-316	AMD	01/15/2010	2009-23/17
<u>source development</u>					
Environmental Quality, Drinking Water	33489	R309-515	5YR	03/22/2010	2010-8/51
Environmental Quality, Drinking Water	33462	R309-515-6	AMD	05/13/2010	2010-7/18
<u>source maintenance</u>					
Environmental Quality, Drinking Water	33489	R309-515	5YR	03/22/2010	2010-8/51
Environmental Quality, Drinking Water	33462	R309-515-6	AMD	05/13/2010	2010-7/18
<u>source monitoring</u>					
Environmental Quality, Drinking Water	33477	R309-205	5YR	03/22/2010	2010-8/43
Environmental Quality, Drinking Water	33456	R309-205-9	NSC	03/29/2010	Not Printed

RULES INDEX

<u>sovereign lands</u>						
Natural Resources, Forestry, Fire and State Lands	33268	R652-70-700	AMD	02/25/2010	2010-1/43	
<u>special events</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33212	R392-400-17	AMD	03/15/2010	2009-24/64	
<u>speech-language pathology services</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	33343	R414-54-3	AMD	04/01/2010	2010-4/26	
<u>stabilization</u>						
Environmental Quality, Drinking Water	33493	R309-535	5YR	03/22/2010	2010-8/53	
<u>state buildings</u>						
Capitol Preservation Board (State), Administration	33365	R131-7	EXT	02/08/2010	2010-5/74	
Capitol Preservation Board (State), Administration	33547	R131-7	5YR	04/07/2010	2010-9/43	
Capitol Preservation Board (State), Administration	33546	R131-7	NSC	04/26/2010	Not Printed	
<u>state employees</u>						
Administrative Services, Finance	33302	R25-7-10	AMD	04/21/2010	2010-3/12	
<u>state parole inmates</u>						
Governor, Criminal and Juvenile Justice (State Commission on)	33073	R356-1	NEW	01/04/2010	2009-22/41	
Governor, Criminal and Juvenile Justice (State Commission on)	33237	R356-1-7	NSC	01/04/2010	Not Printed	
<u>state probationary inmates</u>						
Governor, Criminal and Juvenile Justice (State Commission on)	33073	R356-1	NEW	01/04/2010	2009-22/41	
Governor, Criminal and Juvenile Justice (State Commission on)	33237	R356-1-7	NSC	01/04/2010	Not Printed	
<u>state records committee</u>						
Administrative Services, Records Committee	33335	R35-1-4	AMD	05/17/2010	2010-4/16	
<u>State Records Committee</u>						
Administrative Services, Records Committee	33436	R35-1-4	NSC	05/17/2010	Not Printed	
Administrative Services, Records Committee	33399	R35-1a	5YR	02/22/2010	2010-6/35	
<u>storage tanks</u>						
Environmental Quality, Drinking Water	33495	R309-545	5YR	03/22/2010	2010-8/54	
<u>stoves</u>						
Environmental Quality, Air Quality	33435	R307-207	5YR	03/04/2010	2010-7/55	
<u>student loans</u>						
Regents (Board Of), Administration	33556	R765-626	5YR	04/13/2010	2010-9/48	
<u>supervision</u>						
Commerce, Occupational and Professional Licensing	33227	R156-1	AMD	03/25/2010	2009-24/18	
<u>supplemental water rights</u>						
Natural Resources, Water Rights	33066	R655-16	NEW	04/07/2010	2009-21/62	
Natural Resources, Water Rights	33066	R655-16	CPR	04/07/2010	2010-5/58	
<u>surface water treatment</u>						
Environmental Quality, Drinking Water	33487	R309-505	5YR	03/22/2010	2010-8/50	
<u>surface water treatment plant monitoring</u>						
Environmental Quality, Drinking Water	33479	R309-215	5YR	03/22/2010	2010-8/45	
<u>survey</u>						
Environmental Quality, Radiation Control	33367	R313-34	5YR	02/10/2010	2010-5/70	
Environmental Quality, Radiation Control	33368	R313-34-3	AMD	04/15/2010	2010-5/42	

<u>surveys</u>						
Judicial Performance Evaluation Commission, Administration	33385	R597-3	AMD	04/15/2010	2010-5/45	
Judicial Performance Evaluation Commission, Administration	33578	R597-3-1	EMR	04/27/2010	2010-10/161	
<u>tailings</u>						
Environmental Quality, Air Quality	33433	R307-205	5YR	03/04/2010	2010-7/54	
<u>tanning beds</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33213	R392-700-11	AMD	03/15/2010	2009-24/65	
<u>tax credits</u>						
Community and Culture, History	33448	R212-11	5YR	03/10/2010	2010-7/51	
<u>tax returns</u>						
Tax Commission, Auditing	33384	R865-9I-7	AMD	04/08/2010	2010-5/51	
Tax Commission, Auditing	33349	R865-9I-13	AMD	04/08/2010	2010-4/49	
Tax Commission, Auditing	33113	R865-9I-17	AMD	01/21/2010	2009-22/86	
Tax Commission, Auditing	33348	R865-9I-44	AMD	04/08/2010	2010-4/50	
Tax Commission, Auditing	33351	R865-9I-56	AMD	04/08/2010	2010-4/53	
<u>taxation</u>						
Tax Commission, Administration	33313	R861-1A-23	NSC	01/28/2010	Not Printed	
Tax Commission, Administration	33637	R861-1A-42	NSC	05/27/2010	Not Printed	
Tax Commission, Administration	33231	R861-1A-43	AMD	01/21/2010	2009-24/90	
Tax Commission, Auditing	33643	R865-6F-28	NSC	05/27/2010	Not Printed	
Tax Commission, Auditing	33350	R865-12L-5	AMD	04/08/2010	2010-4/54	
Tax Commission, Auditing	33352	R865-12L-6	AMD	04/08/2010	2010-4/55	
<u>technology best practices</u>						
Technology Services, Administration	33334	R895-9	5YR	01/20/2010	2010-4/82	
<u>temporary mass gatherings</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33212	R392-400-17	AMD	03/15/2010	2009-24/64	
<u>time</u>						
Labor Commission, Antidiscrimination and Labor, Labor	33299	R610-3-22	CPR	03/24/2010	2010-4/75	
<u>tolls</u>						
Transportation Commission, Administration	33369	R940-1-3	EMR	02/10/2010	2010-5/67	
Transportation Commission, Administration	33386	R940-1-3	AMD	04/07/2010	2010-5/52	
<u>tollways</u>						
Transportation Commission, Administration	33369	R940-1-3	EMR	02/10/2010	2010-5/67	
Transportation Commission, Administration	33386	R940-1-3	AMD	04/07/2010	2010-5/52	
<u>trainees</u>						
Commerce, Real Estate	33148	R162-110	NEW	01/07/2010	2009-23/13	
Commerce, Real Estate	33303	R162-110-1	NSC	01/28/2010	Not Printed	
<u>training</u>						
Education, Administration	33253	R277-613-1	NSC	01/04/2010	Not Printed	
<u>transmission and distribution pipelines</u>						
Environmental Quality, Drinking Water	33496	R309-550	5YR	03/22/2010	2010-8/55	
<u>transportation</u>						
Administrative Services, Finance	33302	R25-7-10	AMD	04/21/2010	2010-3/12	
Transportation, Operations, Construction	33452	R916-4	5YR	03/11/2010	2010-7/58	
Transportation, Preconstruction	33274	R930-5	R&R	02/08/2010	2010-1/49	
Transportation Commission, Administration	33369	R940-1-3	EMR	02/10/2010	2010-5/67	
Transportation Commission, Administration	33386	R940-1-3	AMD	04/07/2010	2010-5/52	

RULES INDEX

<u>trespassing</u>						
Regents (Board Of), University of Utah, Administration	33146	R805-4	NEW	01/07/2010	2009-23/27	
<u>trucking industries</u>						
Tax Commission, Auditing	33643	R865-6F-28	NSC	05/27/2010	Not Printed	
<u>trucks</u>						
Transportation, Motor Carrier, Ports of Entry	33675	R912-6	5YR	05/26/2010	Not Printed	
<u>tuberculosis</u>						
Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health	33188	R388-804-9	AMD	03/15/2010	2009-24/60	
<u>ultraviolet light safety</u>						
Health, Epidemiology and Laboratory Services, Environmental Services	33213	R392-700-11	AMD	03/15/2010	2009-24/65	
<u>unemployment compensation</u>						
Human Services, Recovery Services	33243	R527-412	AMD	02/09/2010	2010-1/40	
Workforce Services, Unemployment Insurance	33114	R994-106-104	AMD	01/13/2010	2009-22/98	
Workforce Services, Unemployment Insurance	33521	R994-204	5YR	03/31/2010	2010-8/65	
Workforce Services, Unemployment Insurance	33522	R994-205	5YR	03/31/2010	2010-8/66	
Workforce Services, Unemployment Insurance	33523	R994-206	5YR	03/31/2010	2010-8/66	
Workforce Services, Unemployment Insurance	33527	R994-206-101	NSC	04/14/2010	Not Printed	
Workforce Services, Unemployment Insurance	33354	R994-402	R&R	04/01/2010	2010-4/57	
Workforce Services, Unemployment Insurance	33355	R994-406-203	AMD	04/01/2010	2010-4/62	
<u>unemployment experience rating</u>						
Workforce Services, Unemployment Insurance	33524	R994-304	5YR	03/31/2010	2010-8/67	
<u>uninsured motorist database</u>						
Public Safety, Driver License	33511	R708-32	5YR	03/25/2010	2010-8/58	
<u>universal health insurance application</u>						
Insurance, Administration	33505	R590-247-3	EMR	03/24/2010	2010-8/39	
<u>UPP</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	AMD	02/16/2010	2009-18/36	
Health, Health Care Financing, Coverage and Reimbursement Policy	32925	R414-320	CPR	02/16/2010	2009-24/94	
Health, Health Care Financing, Coverage and Reimbursement Policy	33529	R414-320-7	EMR	04/01/2010	2010-8/37	
<u>utilities access</u>						
Transportation, Preconstruction	33312	R930-6	NSC	01/28/2010	Not Printed	
<u>utility rules</u>						
Transportation, Preconstruction	33312	R930-6	NSC	01/28/2010	Not Printed	
<u>vacations</u>						
Human Resource Management, Administration	33278	R477-7-2	AMD	02/08/2010	2010-1/32	
<u>wages</u>						
Labor Commission, Antidiscrimination and Labor, Labor	33299	R610-3-22	CPR	03/24/2010	2010-4/75	
<u>waste disposal</u>						
Environmental Quality, Solid and Hazardous Waste	33391	R315-302-1	NSC	03/10/2010	Not Printed	
Environmental Quality, Solid and Hazardous Waste	33145	R315-316	AMD	01/15/2010	2009-23/17	
Environmental Quality, Water Quality	33232	R317-1-1	AMD	04/01/2010	2009-24/43	
Environmental Quality, Water Quality	33232	R317-1-1	CPR	04/01/2010	2010-4/66	
<u>waste water</u>						
Environmental Quality, Water Quality	33370	R317-4	5YR	02/10/2010	2010-5/71	

<u>water conservation</u>						
Environmental Quality, Drinking Water	33488	R309-510	5YR	03/22/2010	2010-8/50	
<u>water hauling</u>						
Environmental Quality, Drinking Water	33496	R309-550	5YR	03/22/2010	2010-8/55	
<u>water pollution</u>						
Environmental Quality, Water Quality	33232	R317-1-1	AMD	04/01/2010	2009-24/43	
Environmental Quality, Water Quality	33232	R317-1-1	CPR	04/01/2010	2010-4/66	
Environmental Quality, Water Quality	33233	R317-2	AMD	04/01/2010	2009-24/45	
Environmental Quality, Water Quality	33233	R317-2	CPR	04/01/2010	2010-4/68	
<u>water quality</u>						
Environmental Quality, Drinking Water	33481	R309-225	5YR	03/22/2010	2010-8/46	
<u>water quality standards</u>						
Environmental Quality, Water Quality	33233	R317-2	AMD	04/01/2010	2009-24/45	
Environmental Quality, Water Quality	33233	R317-2	CPR	04/01/2010	2010-4/68	
<u>water rights</u>						
Natural Resources, Water Rights	33347	R655-3	5YR	01/27/2010	2010-4/81	
Natural Resources, Water Rights	33632	R655-6	NSC	05/27/2010	Not Printed	
Natural Resources, Water Rights	33619	R655-14-14	NSC	05/27/2010	Not Printed	
Natural Resources, Water Rights	33066	R655-16	NEW	04/07/2010	2009-21/62	
Natural Resources, Water Rights	33066	R655-16	CPR	04/07/2010	2010-5/58	
<u>water rights procedures</u>						
Natural Resources, Water Rights	33629	R655-2	NSC	05/27/2010	Not Printed	
<u>water system rating</u>						
Environmental Quality, Drinking Water	33482	R309-400	5YR	03/22/2010	2010-8/48	
<u>watershed management</u>						
Environmental Quality, Drinking Water	33473	R309-105	5YR	03/22/2010	2010-8/41	
<u>wildland fire</u>						
Environmental Quality, Air Quality	33432	R307-204	5YR	03/04/2010	2010-7/53	
<u>wildlife</u>						
Natural Resources, Wildlife Resources	33271	R657-5-13	AMD	02/08/2010	2010-1/46	
Natural Resources, Wildlife Resources	33439	R657-15	5YR	03/09/2010	2010-7/56	
Natural Resources, Wildlife Resources	33451	R657-17	AMD	05/10/2010	2010-7/24	
Natural Resources, Wildlife Resources	33314	R657-20	EMR	01/12/2010	2010-3/65	
Natural Resources, Wildlife Resources	33287	R657-20	AMD	02/22/2010	2010-2/22	
Natural Resources, Wildlife Resources	33361	R657-20-11	NSC	02/24/2010	Not Printed	
Natural Resources, Wildlife Resources	33438	R657-21	5YR	03/09/2010	2010-7/57	
Natural Resources, Wildlife Resources	33497	R657-21	AMD	06/01/2010	2010-8/27	
Natural Resources, Wildlife Resources	33331	R657-33	AMD	03/25/2010	2010-4/35	
Natural Resources, Wildlife Resources	33272	R657-37-9	AMD	02/08/2010	2010-1/47	
Natural Resources, Wildlife Resources	33449	R657-53	AMD	05/10/2010	2010-7/26	
Natural Resources, Wildlife Resources	33676	R657-55	5YR	05/26/2010	Not Printed	
Natural Resources, Wildlife Resources	33450	R657-62	AMD	05/10/2010	2010-7/28	
<u>wildlife law</u>						
Natural Resources, Wildlife Resources	33438	R657-21	5YR	03/09/2010	2010-7/57	
Natural Resources, Wildlife Resources	33497	R657-21	AMD	06/01/2010	2010-8/27	
<u>wildlife management</u>						
Natural Resources, Wildlife Resources	33439	R657-15	5YR	03/09/2010	2010-7/56	
<u>wildlife permits</u>						
Natural Resources, Wildlife Resources	33676	R657-55	5YR	05/26/2010	Not Printed	
<u>woodburning</u>						
Environmental Quality, Air Quality	33435	R307-207	5YR	03/04/2010	2010-7/55	

RULES INDEX

workers' compensation

Administrative Services, Risk Management	33392	R37-2	NSC	03/10/2010	Not Printed
Labor Commission, Industrial Accidents	33230	R612-13	NEW	01/21/2010	2009-24/89

workers' compensation insurance

Insurance, Administration	33617	R590-231	5YR	05/04/2010	2010-11/129
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youth mentor

Human Services, Child and Family Services	33256	R512-10	AMD	02/09/2010	2010-1/33
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