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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/>

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Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Environmental Quality Air Quality

State of Utah 110(a)(2) SIP Infrastructure Elements for Lead

Section 110(a)(2)(A): Emission Limits and Other Control Measures

Requirement Summary

"Each such plan shall [. . .] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter."

Utah's Infrastructure

SIP Section 1 (*Legal Authority*) identifies the statutory provisions that allow adoption of standards and limitations for attainment and maintenance of national standards. This section of the SIP was codified at R307-110-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section IX Part F (*Control Measures for Area and Point Sourced: Lead*) identifies Control Measures for Sources of Lead. This section of the SIP was developed in the late 1970's. The SIP determined that the combination of the reduction on lead in gasoline in the Federal Motor Vehicle Program, and the new smelter that had been installed in 1977 by Kennecott Copper Corporation were sufficient to meet the lead NAAQS. Therefore the SIP did not establish any emission limitations or control strategies for lead. SIP Section IX Part F was codified at R307-110-15, and EPA approved the SIP most recently on June 25, 2003 at 68 FR 37744.

SIP Section II (*Review of New and Modified Air Pollution Sources*) provides that new or modified sources of air pollution must submit plans to the Utah Division of Air Quality and receive approval orders before operating. SIP Section II was codified at R307-110-3, and EPA approved the SIP most recently on June 25, 2003 at 68 FR 37744. The Utah Air Quality Rule R307-401 establishes a minor source permitting program in the state for new and modified sources, and was most recently approved by EPA on May 5, 1995 at FR 60 FR 22277.

SIP Section VIII (*Prevention of Significant Deterioration*) was established as required by the Clean Air Act and applies to all air pollutants regulated under the CAA. SIP Section VIII was codified at R307-110-9 and R307-405, and EPA approved it most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon this submittal.

Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Requirement Summary

"Each such plan shall [. . .] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator."

Utah's Infrastructure

SIP Section IV (*Ambient Air Monitoring Program*) outlines Utah's air quality surveillance network that meets the provisions of 40 CFR Part 58. This section of the SIP was codified at R307-110-5, and EPA approved it most recently on June 25, 2003 at 68 FR 37744. Utah prepares an Annual Network Review as required by 40 CFR 58.10. The plan is made available for public comment and is submitted to EPA by July 1st of each year. DAQ submits data to EPA's Air Quality System (AQS) as required by 40 CFR Part 58.

The lead monitoring rule requires source-oriented monitoring and monitoring in large urban areas. Utah currently has one industrial facility, the Kennecott smelter, that exceeds the 1 ton per year threshold for lead monitoring. The Division of Air Quality (DAQ) has placed an air quality monitor near this facility at Magna, and all monitoring is measured using EPA approved methods. Utah will begin monitoring for lead at the Hawthorne NCore site by December 27, 2011 to measure general population exposure. DAQ will submit all data from these monitors to EPA's Air Quality System (AQS) in accordance with 40 CFR Part 58. DAQ will also submit annual monitoring plans to describe its compliance with monitoring requirements and to propose any

changes to the network. DAQ also provides EPA with prior notification of any planned changes to monitoring sites and the network plan.

Late in 2010, DAQ discovered a problem with quality assurance checks which could lead to invalidation of the year's lead data. The error may have caused an increase of up to 12% in our measured concentrations of lead, bringing the maximum rolling average to 0.067µg/m³ or 45% of the NAAQS. DAQ worked with the instrument manufacturer to identify the cause and a solution to the problem. As a result changes to the operation and QA procedures of the sampler were implemented. DAQ fully expects that the lead data collected in the future will meet all quality assurance requirements.

Section 110(a)(2)(C): Programs for Enforcement, PSD, and NSR

Requirement Summary

"Each such plan shall [. . .] include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter."

Utah's Infrastructure

SIP Section I (*Legal Authority*) identifies the statutory provisions that allow DAQ to prevent construction, modification or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements (See I.A.1.d). SIP Section I was codified at R307-110-2, and EPA most recently approved the SIP on June 25, 2003 at 68 FR 37744.

SIP Section II (*Review of New and Modified Air Pollution Sources*) provides that new or modified sources of air pollution must submit plans to the Utah Division of Air Quality and receive approval orders before operating. SIP Section II was codified at R307-110-3, and EPA approved the SIP most recently on June 25, 2003 at 68 FR 37744. The Utah Air Quality Rule R307-401 establishes a minor source permitting program in the state for new and modified sources. R307-401 was most recently approved by EPA on May 5, 1995 at FR 60 FR 22277.

SIP Section VIII (*Prevention of Significant Deterioration*) was established as required by the Clean Air Act and applies to all air pollutants regulated under the CAA. SIP Section VIII was codified at R307-110-9 and R307-405, and EPA approved it most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon this submittal.

Utah's permitting rules require sources to install best available control technology (BACT) for all pollutants, including lead.

Section 110(a)(2)(D)(i): Interstate Transport Provisions

Requirement Summary

"Each such plan shall [. . .] contain adequate provisions: prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality to protect visibility."

Utah's Infrastructure

SIP Section VIII (PSD) and Utah Air Quality Rule R307-405 hold new major sources and major source modifications subject to the Prevention of Significant Deterioration program outlined at 40 CFR 51.166. SIP Section VIII was codified at R307-110-9, and EPA approved it and rule most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon this submittal.

Utah has one Pb source that meets the 0.5 tpy threshold. The site is located further than two miles from the Utah state border, and therefore does not contribute Pb emissions that impact neighboring states. Furthermore, there are no nonattainment areas in neighboring states that could be potentially affected by sources in Utah.

Section 110(a)(2)(D)(ii): Interstate and International Transport Provisions**Requirement Summary**

"Each such plan shall [. . .] contain adequate provisions insuring compliance with the applicable requirements of sections 115 or 126 (b) that involve Pb emissions (relating to interstate and international pollution abatement)."

Utah's Infrastructure

EPA has not identified any Pb sources in Utah that endanger public health or the welfare of a foreign country. Therefore, Utah is not subject to Section 115 of the Clean Air Act.

SIP Section VIII (*Prevention of Significant Deterioration*) was established as required by the Clean Air Act and applies to all air pollutants regulated under the CAA. In accordance with 40 CFR 51.166(q)(2)(iv), SIP Section VIII requires new or modified Pb sources to notify neighboring states of potential impacts from the source. SIP Section VIII was codified at R307-110-9 and R307-405, and EPA approved it most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon these revisions. The PSD SIP and R307-405 contain adequate provisions to be in compliance with Section 126 of the Clean Air Act.

There is one source in Salt Lake County with emissions greater than 0.5 tons/yr of Pb. Significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. There are no Class I Areas within 100 miles of these sources; therefore, emissions from these sources will not interfere with measures to protect visibility.

Section 110(a)(2)(E)(i): Adequate Personnel, Funding, and Authority**Requirement Summary**

"Each such plan shall [. . .] provide: (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof)"

Utah's Infrastructure

SIP Section V (*Resources*) commits to implement program activities in relation to resources provided by the annual State/EPA Agreement and Section 105 grant applications. SIP Section V (*Resources*) was codified at R307-110-6, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

Utah Air Quality Rule R307-414, *Permits: Fees for Approval Orders*, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued.

Section 110(a)(2)(E)(ii): Adequate Personnel, Funding, and Authority**Requirement Summary**

"Each such plan shall [. . .] provide [. . .](ii) requirements that the state comply with the requirements respecting state boards under section 128."

Utah's Infrastructure

SIP Section I (*Legal Authority*) identifies the statutory provisions that implement the provisions of Section 128 of the Clean Air Act respecting State Boards (See I.A.1.g). SIP Section I was codified at R307-110-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744. Authority for SIP Section I is located at Section 19-2-104, UCA.

Section 110(a)(2)(E)(iii): Adequate Personnel, Funding, and Authority

Requirement Summary

"Each such plan shall [. . .] provide [. . .] (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision."

Utah's Infrastructure

SIP Section VI (*Intergovernmental Cooperation*) lists federal, state, and local agencies involved in protecting air quality in Utah. SIP Section VI was codified at R307-110-7, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

Section 110(a)(2)(F): Stationary Source Monitoring and Reporting

Requirement Summary

"Each such plan shall [. . .] require, as may be prescribed by the Administrator:

- (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,*
- (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source*
- (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection."*

Utah's Infrastructure

SIP Section III (*Source Surveillance*) describes Utah's programs to monitor sources, including emission inventories, plant inspections, and emission testing. SIP Section III is codified at R307-110-4, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

R307-150 requires sources to submit periodic emission inventories for criteria pollutants and their precursors and hazardous pollutants. R307-150 was most recently approved by EPA on July 17, 1997, 62 FR 38215. Utah has submitted numerous changes to the inventory rule since that date to incorporate new federal requirements, such as the Consolidated Emission Reporting Rule (CERR), and EPA has not yet acted on any of these submittals.

R307-165 requires sources to conduct periodic tests to assure compliance with the emissions limitations established in approval orders or the SIP. R307-165 was most recently approved by EPA on February 14, 2006 at 71 FR 7679.

R307-170 requires certain large sources to install and maintain continuous emission monitors to assure compliance with emission limitations established in approval orders and the SIP. R307-170 was most recently approved by EPA on September 2, 2008, 73 FR 51222.

SIP Section II (*Review of New and Modified Air Pollution Sources*) provides that new or modified sources of air pollution must submit plans to the Utah Division of Air Quality and receive approval orders before operating. SIP Section II was codified at R307-110-3, and EPA approved it most recently on June 25, 2003 at 68 FR 37744. The Utah Air Quality Rule R307-401 establishes a minor source permitting program in the state for new and modified sources. R307-401 was most recently approved by EPA on May 5, 1995 at FR 60 FR 22277.

SIP Section VIII (*Prevention of Significant Deterioration*) was established as required by the Clean Air Act and applies to all air pollutants regulated under the CAA. SIP Section VIII was codified at R307-110-9 and R307-405, and EPA approved it most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon this submittal.

Section 110(a)(2)(G): Emergency Episodes

Requirement Summary

"Each such plan shall provide for authority comparable to that in section 303 of this title and adequate contingency plans to implement such authority."

Utah's Infrastructure

SIP Section I (*Legal Authority*) identifies the statutory provisions to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons (See I.A.1.g). The legal authority to implement SIP Section I is contained in the Utah Air Conservation Act Section 19-2-112. SIP Section I was codified at R307-110-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section VII (*Prevention of Air Pollution Emergency Episodes*) provides the basis for taking action to prevent air pollutant concentrations from reaching levels which could endanger the public health or to abate such concentrations should they occur. The legal authority to implement SIP Section VII is contained in the Utah Air Conservation Act Section 19-2-112. SIP Section VII was codified at R307-110-8, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

Section 110(a)(2)(H): Future SIP revisions**Requirement Summary**

"Each such plan shall [. . .] provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter (CAA)."

Utah's Infrastructure

SIP Section I (*Legal Authority*) identifies the statutory provisions that allow the Utah Division of Air Quality to revise its plans to take account of revisions of national ambient air quality standard and to adopt expeditious methods of attaining and maintaining such standard (See I.A.1.a). The legal authority to implement SIP Section I is contained in the Utah Air Conservation Act Section 19-2-112. SIP Section I was codified at R307-110-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

Section 110(a)(2)(J): Consultation with Government Officials**Requirement Summary**

"meet the applicable requirements of section 121 (relating to consultation)"

Utah's Infrastructure

SIP Section I (*Legal Authority*) adopts requirements for transportation consultation (Section 174, Clean Air Act) (See I.A.2). SIP Section I was codified at R307-110-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section VI (*Intergovernmental Cooperation*) provides a listing of federal, state, and local agencies involved in protecting air quality in Utah. SIP Section VI was codified at R307-110-7, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section XII (*Transportation Conformity Consultation*) establishes the consultation procedures on transportation conformity issues when preparing state plans. SIP Section XII was codified at R307-110-20, and EPA approved it most recently on September 2, 2008 at 73 FR 51222.

Section 110(a)(2)(J): Public Notification**Requirement Summary**

"meet the applicable requirements of section 127 of this title (relating to public notification)"

Utah's Infrastructure

SIP Section XVI (*Public Notification*) includes provisions to notify the public when NAAQS have been exceeded as per Section 127 of the CAA. SIP Section XVI was codified at R307-110-24, and EPA last approved it on June 25, 2003 at 68 FR 37744.

Section 110(a)(2)(J): PSD and Visibility Protection

Requirement Summary

"meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection)"

Utah's Infrastructure

SIP Section VIII (*PSD*) describes the program to prevent significant deterioration of areas of the state where the air is clean. SIP Section VIII was codified at R307-110-9 and R307-405, and EPA approved SIP Section VIII and R307-405 most recently on July 15, 2011 at 76 FR 41712. Utah has also submitted further revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010, and EPA has not yet acted on these revisions.

SIP Section XVII (*Visibility Protection*) describes the program to protect visibility, especially within the boundaries of the five national parks located in Utah. Authority for this section is located in Sections 19-2-101 and 104, UCA. SIP Section XVII was codified at R307-110-25, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section XX (*Regional Haze*) addresses the requirements in Part C of the CAA relating to regional haze. The SIP was based on the recommendations of the Grand Canyon Visibility Transport Commission established by Section 169B(f) of the CAA. Authority for this section is located in Section 19-2-104, UCA. SIP Section XX was codified at R307-110-28. The Utah Division of Air Quality (DAQ) originally submitted this Regional Haze SIP to EPA on December 12, 2003. DAQ has sent subsequent revisions to the SIP on August 8, 2004; May 8, 2006; September 9, 2008, and May 26, 2011. EPA has not yet acted on any of these revisions.

Section 110(a)(2)(K): Air Quality Modeling/Data

Requirement Summary

"Each such plan shall [. . .] provide for -- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator."

Utah's Infrastructure

Utah Air Quality Rule R307-405-13 incorporates the air quality model provisions of 40 CFR 52.21(i), which includes the air quality model requirements of appendix W of 40 CFR part 51. R307-110-9 codifies SIP Section VIII (*PSD*). EPA approved SIP Section VIII and R307-405 most recently on July 15, 2011 at 76 FR 41712. On April 14, 2011 Utah submitted revisions to R307-405 to incorporate the federal Tailoring Rule provisions that were promulgated on June 3, 2010. EPA has not yet acted upon this submittal.

SIP Section II (*Review of New and Modified Air Pollution Sources*) provides that new or modified sources of air pollution must submit plans to the Division of Air Quality and receive an Approval Order before operating. SIP Section II was codified at R307-110-3, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

R307-410 establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401. EPA approved R307-410 most recently on July 8, 1994 at 59 FR 35036.

Section 110(a)(2)(L): Permitting Fees

Requirement Summary

"Each such plan shall require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover -- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter (title) V of this chapter."

Utah's Infrastructure

SIP Section I (*Legal Authority*) identifies the statutory authority to charge a fee to major sources to cover permit and enforcement expenses (See I.A.1.h). SIP Section I was codified at R307-10-2, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

Utah Air Quality Rule R307-414, *Permits: Fees for Approval Orders*, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued. EPA approved R307-414 most recently on February 14, 2006 at 71 FR 7679.

Utah's Title V Operating Permits Program (R307-415) was approved by EPA on June 8, 1995 at 60 FR 30192.

Section 110(a)(2)(M): Consultation/Participation by Affected Local Entities**Requirement Summary**

"Each such plan shall [. . .] provide for consultation and participation by local political subdivisions affected by the plan."

Utah's Infrastructure

SIP Section VI (*Intergovernmental Cooperation*) lists federal, state, and local agencies involved in protecting air quality in Utah. SIP Section VI was codified at R307-110-7, and EPA approved it most recently on June 25, 2003 at 68 FR 37744.

SIP Section XII (*Transportation Conformity Consultation*) establishes the consultation procedures on transportation conformity issues when preparing state plans. SIP Section XII was codified at R307-110-2, and EPA approved it most recently on September 2, 2008 at 73 FR 51222.

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 November 02, 2011, 12:00 a.m., and November 15, 2011, 11:59 p.m. are included in this, the December 01, 2011 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 January 3, 2012. 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 March 30, 2012, 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, Occupational and
Professional Licensing
R156-20a
Environmental Health Scientist Act
Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35430

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Environmental Health Scientist Licensing Board are proposing amendments to clarify educational requirements, and professional continuing education is expanded into professional arenas in which licensees practice. The filing also makes various technical corrections and statute citation amendments.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, various statute citations have been updated and the term "Division" capitalized where appropriate. In Section R156-20a-302a, added "public health science" as an additional educational program relating to the practice of environmental health science. In Section R156-20a-304, the amendment changes the period during which professional continuing education must be obtained for renewal of the license so that it corresponds to the renewal cycle for this license type. An amendment also clarifies who may sponsor, teach, or approve professional continuing education courses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-20a-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 licensees provided in Title 58, Chapter 20a, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments. However, the proposed amendments may provide additional potential licensees with expanded qualifications to fill potential employment opportunities within a local government.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensees provided in Title 58, Chapter 20a, and applicants for licensure in those classifications. A licensed environmental health scientist is generally employed by a company or government entity rather than in an office owned by a licensee; however, expansion of the educational

opportunities to qualify for licensure would positively impact licensure. The Division is not able to determine an exact cost or savings impact due to the varying circumstances or frequency involving potential employment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensees provided in Title 58, Chapter 20a, and applicants for licensure in those classifications. The proposed amendments will expand the potential educational opportunities of a licensee to the benefit and safety of the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensees provided in Title 58, Chapter 20a, and applicants for licensure in those classifications. The Division anticipates the proposed amendments should have no increased compliance cost or impact for licensed environmental health scientists.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing adds public health science programs to the list of acceptable programs to meet the education requirement, updates the continuing education requirement to coincide with the license renewal period, and adds any local, state or federal agency as an acceptable provider of continuing education. Any fiscal impact to businesses resulting from such changes would likely be positive in nature.

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:

◆ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at [sstewart@utah.gov](mailto:ssstewart@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-20a. Environmental Health Scientist Act Rule.
R156-20a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 20a, as used in Title 58, Chapters 1 and 20a or this rule:

(1) "Qualified professional continuing education," as used in this rule, means professional continuing education that meets the standards set forth in Section R156-20a-304.

(2) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 20a, is further defined, in accordance with Subsection 58-1-203(~~5~~1)(e), in Section R156-20a-502.

R156-20a-103. Authority - Purpose.

This rule is adopted by the ~~(d)~~Division under the authority of Subsection 58-1-106(1)(a) to enable the ~~(d)~~Division to administer Title 58, Chapter 20a.

R156-20a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-20a-302(1)(d), (2)(d) and (3)(d), an applicant shall satisfy the education requirement as follows:

(1) submit evidence of a bachelor's or master's degree from an environmental health program accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC); or

(2) submit evidence of a bachelor's or master's degree from an accredited program in a college or university with major study in one of the following:

- (a) agronomy;
- (b) biology;
- (c) botany;
- (d) chemistry;
- (e) environmental health science;
- (f) geology;
- (g) microbiology;
- (h) physics;
- (i) physiology;
- (j) public health science;
- (k) sanitary engineering;~~[-or]~~

~~(k)~~ zoology; or

(3) submit evidence of a bachelor's or master's degree from an accredited program in a college or university including:

(a) a college or university level algebra or math course;

and

(b) 30 semester hours or 45 quarter hours from at least three of the areas of study listed in Subsection (2).

R156-20a-302c. Qualifications for Licensure - Supervision Requirements.

In accordance with Subsections 58-1-203(~~2~~1)(b) and 58-20a-302(3)(f), an applicant when licensed as an environmental health scientist-in-training shall practice under the general supervision of a supervising licensed environmental health scientist for a minimum of six months, except for an applicant who has completed an environmental health science program accredited by EHAC as set forth in Subsection R156-20a-302a(1).

R156-20a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 20a is established by rule in Section R156-1-308a.

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

R156-20a-304. Professional Continuing Education.

(1) In accordance with Section 58-20a-304, during each two year period commencing ~~January~~June 1 of each ~~even~~odd numbered year, an environmental health scientist or environmental health scientist-in-training shall be required to complete not less than 30 hours of qualified professional continuing education directly related to the licensee's professional practice.

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

(3) Qualified professional continuing education under this section shall:

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

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

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

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

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

(4) Credit shall be recognized for professional continuing education on an hour for hour basis as a student completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, labs, or specific environmental conferences approved, taught or sponsored by:

(a) Utah Environmental Health Association;

(b) Bureau of Environmental Services;

(c) Utah Department of Environmental Quality;

(d) Bureau of Epidemiology;

(e) State Food Program;

(f) National Environmental Health Association;

(g) Food and Drug Administration;

(h) Center for Disease Control and Prevention;

(i) any local, state or federal ~~health~~ agency; and

(j) a college or university which provides courses in or related to environmental health science.

(5) A maximum of 15 hours of credit may be recognized for a person who teaches continuing professional education on an hour for hour basis completed in block of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences which meet the requirements in Subsections (3) and (4).

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

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

KEY: licensing, environmental health scientist, sanitarian, environmental health scientist-in-training

Date of Enactment or Last Substantive Amendment: [~~July 9, 2009~~2012]

Notice of Continuation: July 6, 2010

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-20a-101

Community and Culture, Home Energy Assistance Target (HEAT)

R195-1

Energy Assistance: General Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35403

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
No fiscal impact on the business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-1. Energy Assistance: General Provisions.

R195-1-4. Client Rights and Responsibilities.

1. Any client may apply or reapply at any time for the HEAT program by completing and signing an application and turning it in at the correct office.

2. If the client needs help to apply, help will be given by the local HEAT office staff.

3. HEAT workers will identify themselves.

4. The client will be treated with courtesy, dignity and respect.

5. Verification and information will be requested clearly and courteously.

6. If the client must be visited after working hours, an appointment will be made.

7. The client's home will not be entered without permission.

8. Clients may have an agency conference to talk about their case.

9. Clients may look at information concerning their case except confidential information.

10. Anyone may look at a copy of the program manuals located at any local HEAT office or the State energy Assistance Lifeline web site.

11. The client must give complete and correct information and verification.

12. The client must immediately report any address change while under the protection of the moratorium.

13. The client is responsible for repaying any overpayments of assistance.

R195-1-5. Information.

The department shall require compliance with 63G-2.

1. Client may review and copy anything in their case record unless it is confidential.

a. The Client requests for release of information shall be in writing and include:

- i. the date;
- ii. the name of the person receiving the information;
- iii. the time period covered by the information.

b. Information classified as confidential shall not be used in a hearing.

c. Information classified as confidential shall not be used to close, deny or reduce benefits.

d. Clients may copy information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

e. The client cannot take the case record from the office.

2. Releasing information to sources other than the client.

a. Information will not be released when it is to be used for a commercial or political purpose.

b. The client's permission will be obtained before sharing any information regarding their case record.

i. Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

ii. Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

3. Information released without the client's permission.

a. Information, with the exception of confidential information, may be released without the clients permission when that information is to be used in:

i. The administration of any federal or state means-tested program.

ii. Any audit or review of expenditures in connection with the HEAT or Moratorium program.

iii. Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

4. If a case file is subpoenaed by an outside source, ~~legal counsel for the department will ask the court to disallow the confidential information from the case record.~~ the State HEAT Program Manager is contacted immediately. The State Program manager will consult with the legal counsel for the Department of Community and Culture.

KEY: client rights, hearings, confidentiality of information

Date of Enactment or Last Substantive Amendment: [1987]2012

Notice of Continuation: September 9, 2011

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-2

Energy Assistance Programs Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35404

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-2. Energy Assistance Programs Standards.

R195-2-1. Opening and Closing Dates for HEAT Program.

~~1. Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.~~

~~2. The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.~~

R195-2-2. U.S. Residence.

~~1. To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:~~

~~a. Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.~~

~~b. Be lawfully admitted into the US for permanent residence as evidenced by an Immigration and Naturalization Service (INS) form I-151 or I-551.~~

~~c. Be lawfully admitted into the US as a Refugee as evidenced by an INS form I-94 stamped "Admitted under the Refugee Act of 1980".~~

~~d. Be lawfully admitted into the US as a conditional entrant as evidenced by an INS form I-94 stamped "Conditional Entrant".~~

~~e. Be lawfully admitted into the US as a special agricultural worker as evidenced by a green colored INS form I-688 stamped PL 99-603 Sec. 210.~~

~~2. Persons not eligible to participate in the HEAT program are:~~

~~a. Persons who hold INS I-94 who are admitted as temporary entrants.~~

~~b. Persons who hold an INS I-688 Sec. 210A (RAWS).~~

~~c. Persons who hold an INS I-688 Sec. 245A (AMNESTY).~~

~~d. Persons who hold an INS I-688A Sec. 210, 210A, or 245A (SAWS, RAWS, and AMNESTY).~~

~~e. Persons who have no registration card.]]. To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:~~

~~a. Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.~~

~~b. Be lawfully admitted into the US for permanent residence as evidenced by an Immigration and Naturalization Service (INS) form I-151 or I-551.~~

~~c. Be lawfully admitted into the US as a Refugee as evidenced by an INS form i_94 stamped "Admitted under Section 207 of the INA."~~

~~d. Be lawfully admitted into the US as a conditional entrant as evidenced by INS form I-94 stamped "Conditional Entrant".~~

~~e. Be lawfully admitted into the US as a special agricultural worker as evidenced by a green colored INS form I-688 stamped PL 99-603 Sec 210.~~

~~2. Persons not eligible to participate in the HEAT program are:~~

~~a. Persons who hold INS I-94 who are admitted as temporary entrants.~~

~~b. Aliens who have no other USCIS document.~~

~~c. Persons possessing an Individual Taxpayer Identification Number (ITIN).~~

R195-2-3. Utah Residence.

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

R195-2-4. Local Residence.

1. A household's completed HEAT application must be maintained in the office in the area where they reside.

2. Native American Residents of Beaver, Daggett, Duchesne, Iron, Millard, Piute, Sevier, [and—]Utah, and Washington Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

3. ~~[Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.~~

~~4.]Residents living on the Navajo Indian Reservation in San Juan county [may]must apply for utility assistance through the Navajo Tribe or through the [State-]HEAT [P]program but not both. They cannot receive assistance through [both programs in-]the [same]state HEAT program [year]except through special provision of the State HEAT Office.~~

R195-2-5. Vulnerability.

1. An eligible household must be vulnerable to home heating costs.

a. The following households are considered responsible for home heating costs:

- i. Households who are presently paying heating costs directly to energy suppliers on currently active accounts.
 - ii. Households who are currently paying energy costs indirectly through rent.
2. Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:
- a. Nursing homes;
 - b. Hospitals;
 - c. Prisons and jails;
 - d. Institutions;
 - e. Alcoholism and drug treatment centers;
 - f. Group homes administered under a contract with a government agency or administered by a government agency;
 - g. Households not connected to a heat source;
 - h. Households whose utility bills are paid regularly by an outside party, unless the outside party cannot or will not be able to continue to pay the household's utility bill and provides a statement to this effect;

R195-2-6. Subsidized Housing - Roomers And Boarders.

Eligibility for HEAT assistance: a household living in a federal, state, or local subsidized housing or anyone renting a room in a private house or apartment must pay an ~~[identifiable surcharge for heat in addition to their rent or they must pay a utility bill for heating costs directly to a utility provider.]~~ amount for rent based on a percentage of the household income. In order for a household living in government subsidized housing to be considered vulnerable and, thus eligible for the HEAT program, they must pay in one of two ways:

- a. Their rent must include a charge for heat, OR
- b. They must pay a utility bill for heat costs directly to a utility provider. This includes residents of subsidized college or university housing.

R195-2-7. Social Security Numbers.

1. Adults who apply for HEAT assistance must provide verification of their Social Security Numbers (SSN) or apply for SSN cards. ~~[Verification of]~~ Social Security Numbers are required for all household members before completing the application, if there is a question of household size and composition.
- a. There are four ways to provide a correct SSN. The client can submit one of these three documents.
 - i. An official SSN card
 - ii. Official documents from Social Security Administration including award letters, benefit checks or a Medicare card
 - iii. An SSA receipt form 5028 or 2880.
 - iv. Official document from another government agency or from an employer.

R195-2-8. Eligible HEAT Household.

- 1. Household members need not be related.
- 2. Multiple dwellings including duplexes and apartment buildings, are considered separate households.
- 3. The applicant must be living in the residence on the day of the application.

R195-2-9. Age and Emancipation.

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

R195-2-10. Weatherization Referrals.

Participation in the weatherization program is not a condition of eligibility for HEAT.

R195-2-11. Energy Crisis Intervention.

1. A crisis is any weather-related emergency, any supply shortage emergency, or any other household energy-related emergency as approved by the region or state office.

a. Examples of household energy-related emergencies may include energy costs above 25% of the client's gross income, arrearages when the client has demonstrated a good faith attempt to resolve the problem or repairs to prevent loss of energy from a dwelling.

b. Examples of household energy-related non-emergencies may include payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property.

c. Not making a good faith effort to pay monthly bills.

2. To be eligible for energy crisis intervention, a household must be eligible for HEAT during the same HEAT program year.

a. If the local office determines that a household is eligible to receive energy crisis intervention benefits and is in a life threatening situation, energy crisis intervention benefits will be provided within 18 hours. Regular energy crisis intervention benefits will be provided within 48 hours of eligibility determination.

b. ~~[The director or HEAT supervisor must approve all crisis intervention expenditures.]~~ The Regional HEAT Supervisor must approve all crisis intervention expenses.

c. HEAT payments are issued to the vendor. In emergencies a check may be issued to the client.

d. When an energy crisis requires work from an outside vendor, the client must obtain at least two bids before work may begin. The job order will go to the lowest bidder unless the reasons for accepting a higher bid is documented and approved by the supervisor or the state office.

~~[d.]e. [Energy crisis intervention payments are limited to a maximum of \$500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than \$500 per utility is obtained from the supervisor or state office.]~~ Each household may apply for HEAT Crisis assistance up to a maximum of \$500 per utility two separate utilities) per program year - October 1 through September 30. Any amount that adds up over \$500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year, must get prior approval from the State.

R195-2-12. Supplemental Programs.

Household who qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

R195-2-13. Security Deposits.

1. Public Service Commission (PSC) Regulated Utilities
 - a. A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium.
 - b. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.
2. Non Regulated Utilities
 - a. If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

R195-2-14. Consumer Complaints.

1. Public Service Commission (PSC) Regulated Utilities
 - a. Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.
2. Non Regulated Utilities
 - a. Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

R195-2-15. Credit Balances on Utility Accounts.

1. If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.
2. If the household elects to have the HEAT credit balance refunded directly to them, the disconnecting utility supplier will do so if the household still resides in Utah. The household must furnish, to the disconnecting utility supplier, their new address within 30 days after termination of service. [~~Otherwise, the credit balance shall be refunded to the HEAT Program.~~]
3. In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.
4. If the client fails within 30 days to give the disconnecting utility company the information for either option one or option two listed above, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.
5. Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

KEY: energy assistance, residency requirements, opening and closing dates, HEAT

Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~]2012

Notice of Continuation: June 22, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-3-3

Unearned Income

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35405

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

Community and Culture, Home Energy Assistance Target (HEAT) **R195-5** Energy Assistance: Program Benefits

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35406
FILED: 11/02/2011

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-3. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.

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R195-3-3. Unearned Income.

- 1. Countable unearned income is cash received by an individual for which no service is performed.
- 2. Sources of unearned income include the following:
 - a. Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;
 - b. Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;
 - c. Unemployment Compensation;
 - d. Strike or union benefits;
 - e. Veteran's benefits;
 - f. Child support and alimony;
 - g. Veteran's Educational Assistance intended for family members;
 - h. Trust payments;
 - i. Tribal fund gratuities unless excluded by law.
 - j. Money from sales contracts and mortgages;
 - k. Personal injury settlements;
 - l. Financial payments made by the Department of Workforce Services;
 - m. Income from Rental Property. If the client also manages the property, the income is earned.
 - n. Temporary Assistance to Needy Families (TANF)
 - o. Emergency Work Program (EWP)
 - p. Work allowances, included WHAT
 - q. Foster Care Payments
 - r. Severance pay paid out weekly.

.....

KEY: energy assistance, self-employment income, income eligibility, payment determination
Date of Enactment or Last Substantive Amendment: [January 12, 2005]2012
Notice of Continuation: June 22, 2007
Authorizing, and Implemented or Interpreted Law: 9-12-10

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

RULE ANALYSIS

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-5. Energy Assistance: Program Benefits.

R195-5-1. Program Benefits.

~~[Program benefits are limited to a one-time payment, per household, per program year. If an applicant household contains anyone who has already received a HEAT benefit in any other household during that program year, the application will be denied.]~~ Each household may apply for HEAT Crisis assistance up to a maximum of \$500 per utility (two separate utilities) per program year - October 1 through September 30. Any amount that adds up over \$500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year must get prior approval from the State.

R195-5-2. Standard Payment Levels.

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

R195-5-3. Benefit Payments.

1. Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

R195-5-4. Split Payments.

1. If the primary heat source's payment account is current, up to 50% of the HEAT payment may be made to the client. Payment disbursements may be split only in the percentages listed below:

- a. 100%
- b. 50%/50%
- c. 75%/25%

KEY: energy assistance, benefits

Date of Enactment or Last Substantive Amendment: ~~[January 2, 1996]~~ **2012**

Notice of Continuation: June 22, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-6

Energy Assistance: Eligibility Determination

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35407

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-6. Energy Assistance: Eligibility Determination.

R195-6-1. Eligibility Determination.

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

R195-6-2. Acceptable Verification.

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

R195-6-3. Determination of The Primary Fuel Type.

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

R195-6-4. Date of Application.

The date of application is the date the application is accepted at the correct HEAT office.

R195-6-5. Date of Approval or Denial.

The date of approval or denial is the action date of the application including applications forwarded by Outreach workers.

R195-6-6. Date of Payment.

The payment date is the date the HEAT check is actually issued.

KEY: energy assistance

Date of Enactment or Last Substantive Amendment: [1994]2012

Notice of Continuation: June 25, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-7

Energy Assistance: Records and Benefit Management

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35408

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule in line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).**R195-7. Energy Assistance: Records and Benefit Management.****R195-7-1. Records Management.**

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

R195-7-2. Notification.

1. The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

2. Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

R195-7-3. Checks.

1. All HEAT payments to clients or vendors are issued by check.

2. If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

3. Lost or stolen HEAT checks.

a. The client must report a lost or stolen check within 29 days of the issuance date. A check that is reported lost or stolen 30 days or more after the issuance date will not be replaced.

b. The client may report this by telephone or in person.

c. ~~Lost checks will be replaced after five mailing days from the issuance date.~~ When a report is received, the HEAT worker or supervisor should review all office information (payroll, energy screens, case file, etc) to verify the information.

d. A replacement HEAT check which is lost or stolen after the payee receives it will not be issued.

KEY: energy assistance, benefits, government documents, state HEAT office records

Date of Enactment or Last Substantive Amendment: [January 12, 2005]2012

Notice of Continuation: June 25, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

Community and Culture, Home Energy Assistance Target (HEAT)

R195-8

Energy Assistance: Special State Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35409

FILED: 11/02/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is subsequent to the division reviewing the rule to coincide with the Home Energy Assistance Target (HEAT) manual.

SUMMARY OF THE RULE OR CHANGE: The changes update the rule to coincide with the HEAT manual.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-12-10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

♦ **LOCAL GOVERNMENTS:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

♦ **SMALL BUSINESSES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No incremental change in cost. The agency is bringing the rule into line with the HEAT manual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business.

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

COMMUNITY AND CULTURE
HOME ENERGY ASSISTANCE TARGET (HEAT)
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Kolthoff by phone at 801-538-8756, by FAX at 801-538-8888, or by Internet E-mail at skolthoff@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Michael Hansen, Deputy Director

R195. Community and Culture, Home Energy Assistance Target (HEAT).

R195-8. Energy Assistance: Special State Programs.

R195-8-1. Moratorium.

The department shall require compliance with Section 9-12-201.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have applied for HEAT

e. Have applied for assistance through the American Red Cross

f. Have made a good faith effort to pay their utility bill on a consistent basis during the moratorium

~~[d. Have a written statement from the utility company stating that all methods of working out satisfactory payment arrangements have failed. A deferred payment agreement must have been offered to the utility customer. If the customer signs a deferred payment agreement, but does not have the money to activate it, the agreement is in immediate default. The written statement must include:~~

~~i. account name or the name of the customer applying for service;~~

~~ii. the residential address;~~

~~iii. account number, if there is one;~~

~~iv. indicate if the account is active or inactive;~~

~~v. the total amount owed on the account;~~

~~vi. indication that the client has applied for HEAT;~~

~~vii. indication that the client has applied for utility assistance through the Red Cross;~~

~~] [viii.]5. In addition they must[and must] indicate that the client meets at least one of the following criteria:~~

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

~~[ix. make a good faith effort to pay their utility bill on a consistent basis as specified below.~~

] 5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

c. The minimum allowed monthly payment is \$5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

KEY: energy assistance, energy industries

Date of Enactment or Last Substantive Amendment: [October 11, 2011]2012

Notice of Continuation: June 25, 2007

Authorizing, and Implemented or Interpreted Law: 9-12-10

**Education, Administration
R277-100
Rulemaking Policy**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35449

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated language and terminology, including providing for electronic communication and transmission of the rule.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule provide updated language and terminology to the entire rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-101 et seq. and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes provide updated language and terminology which do not result in costs or savings.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The changes update language and terminology and apply to rulemaking procedures at the state level.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule and the changes apply to Utah State Board of Education/Utah State Office of Education rulemaking procedures and do not affect businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule and the changes apply to Utah State Board of Education/Utah State Office of Education rulemaking procedures and update language and terminology.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule and the changes apply to Utah State Board of Education/Utah State Office of Education rulemaking procedures and update language and terminology.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-100. Rulemaking Policy.****R277-100-1. Definitions.**

A. "Board" means the Utah State Board of Education [~~Utah State Board for Applied Technology Education~~].

B. "Bulletin" means the Utah State Bulletin.

[E]C. "DAR" means the State Division of Administrative Rules.

[E]D. "Effective date" means the date on which a proposed rule becomes enforceable.

[D]E. "Hearing" means an administrative rulemaking hearing.

F. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[K]G. "[Executive]Leadership Committee" means the Executive Committee of the Board as defined in Board Bylaws.

[F]H. "Publication date" means the date of the Bulletin in which the rule or summary of the rule is printed.

[G]I. "Rule"

(1) means a statement made by the Board that applies to a general class of persons, rather than specific persons and:

(a) implements or interprets a statutory policy;

(b) prescribes the policy of the Board in policy consistent with Section 53A-1-401(3) [~~U.C.A. 1953~~]; or

(c) prescribes the administration of the Board's functions or describes its organization, procedures, and operations.

(2) does not include declaratory orders under Section 63G-4-503.

[E]J. "Standing [C]committee" means a [study] committee consisting of [two or more] Board members appointed [~~under rules of~~] by the Board Leadership Committee.

[H]K. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

[F]L. "USOE" means the Utah State Office of Education.

[F]M. "USOR" means the Utah State Office of Rehabilitation.

R277-100-2. Authority and Purpose.

A. [~~The Board derives its authority for making rules from~~] This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board. [~~This rule is authorized under~~] by Section 63G-3-101 et seq., the Utah Administrative Rulemaking Act, which specifies procedures for state agencies to follow in making rules.

and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its ~~[authority]~~responsibilities.

B. The purpose of this rule is to conform the rulemaking procedures of the Board and divisions supervised by the Board to those required under the Utah Administrative Rulemaking Act.

R277-100-3. Initiation, Amendment, or Repeal of a Rule.

A. The Board may make, amend, or repeal rules.

(1) Rulemaking is required by the Board when:

(a) explicitly or implicitly required by statutory or federal mandate; and either

(b) Board action affects a class of persons; or

(c) Board action affects the operations of another agency, except as provided in ~~[subs]Section R277-100-3A(2)(c)[of this section].~~

(2) Rulemaking is not required by the Board when:

(a) a procedure or standard is already described in statute;

(b) Board action affects an individual person, not a class of persons;

(c) Board action concerns only the internal management of the Board, USOR, or USOE ~~[- school districts, or of entities administered by the Board, USOR, USOE, or school districts, and does not affect private persons as a class, other agencies, or other governmental entities];~~ ~~[-or]~~

(d) ~~the Board or Agency action is a grammatical or other insignificant [rule changes]revision that does not affect policy or the application[-or results] of Board decisions[-]; or~~

~~(e) the Board or Agency action meets the standards of Section 63G-3-201(4).~~

B. Public Petition

(1) Any person may petition the Board to make, amend, or repeal a rule. The petition shall contain the name and address of the person submitting the rule, a written copy of the proposal, a statement concerning the Board's legal authority to act, and the reasons for the proposal. The petition is submitted to the Superintendent.

(2) The Superintendent reviews petitions prior to consideration by the Board. Within 30 days after receiving a petition, the Superintendent does one of the following:

(a) Notifies the petitioner ~~[by mail]~~that the petition has been denied and gives reasons for the denial; or

(b) Notifies the petitioner ~~[by mail]~~that the petition has been accepted, and specifies a date on which rulemaking procedures will be initiated. Changes in the petitioner's proposal suggested by the Superintendent are included in the notice.

(3) A petitioner may appeal a decision by the Superintendent by sending a signed request for consideration of the appeal, including a copy of the original proposal and copies of correspondence with the Superintendent, if any, to the Chair~~[man]~~ of the Board. The Chair~~[man]~~ presents the appeal to the Board. If the Board votes to review the proposal, it is scheduled for a future meeting of the Board. The decision of the Board is final.

R277-100-4. Procedures for Making, Amending, or Repealing a Rule.

A. Regular Rules

(1) Prior to submitting a proposed rule to the Board, the Superintendent shall ensure that reasonable efforts have been made to solicit information from ~~[school district]~~LEA officials,

professional associations, and other affected parties concerning the need for, and content of, the proposed rule.

(2) Upon receiving notice of a proposed rule, the ~~[Executive]Leadership~~ Committee of the Board assigns the proposed rule to a standing committee or to the entire Board.

(3) If a Board standing committee reads a proposed rule initially, the rule shall be read a second time before the entire Board and the second reading shall include discussion of the standing ~~[C]committee report; and~~

(4) After the entire Board reads a proposed rule, the Board may choose to:

(a) consider the rule again at ~~[its next]~~a future meeting with revisions incorporating Board suggestions, by directing the Superintendent to change the proposed rule;

(b) receive notice of the proposed rule in its final form on the next Board agenda, by directing the Superintendent to put the rule with its effective date on the consent calendar for the Board's next meeting;

(c) allow the rule to become effective 30 days after publication in the State Bulletin if the proposed rule is not rewritten to incorporate public comments or suggestions, by directing the Superintendent to send DAR notice of an effective date for the proposed rule. The date shall be no fewer than 30 days nor more than 90 days after the publication date of the proposed rule; or

(d) direct the Superintendent to take no further action on the rule.

(5) Following the Board's approval of a proposed rule, the Board directs the Superintendent to prepare a rule analysis form and file the form and a copy of the proposed rule with DAR.

The Superintendent shall also send a copy of the proposed rule or make the rule available electronically to:

(a) persons who have filed a timely request with the Superintendent;

(b) school district superintendents and charter school directors;

(c) persons who must be given notice by statutory or federal mandate; and

(d) other persons who, in the judgment of the Superintendent, should receive notice.

(6) The Board allows at least 30 days after publication in the Bulletin for public comment on the proposed rule.

(a) The Superintendent maintains a file containing a copy of the proposed rule and the rule analysis form, and makes the file available to the public during the regular business hours of the USOE upon request. Written comments, notes on verbal comments, information received electronically, and hearing records, if any, are kept in the file.

(b) Hearings may be held by the Board as described in Section R277-100-6.

(c) The Board may follow ~~[Subs]Sections R277-100-4B or R277-100-4C [of this section]~~to amend a rule after reviewing public comment.

(d) During the 30-day comment period, the Board may direct the Superintendent to take no further action on a rule. The proposed rule automatically expires 90 days after its publication date.

B. Nonsubstantive Changes in a Rule

(1) Nonsubstantive changes may be made in a rule under this section both before and after the effective date of the rule.

(2) A change is nonsubstantive if, in the opinion of the Superintendent, it does not affect Board policy, application of the rule, or results of Board action under the rule.

(3) To enact a nonsubstantive change, the Superintendent prepares a copy of the new version of the rule and files it with the DAR. The new version is effective upon filing.

C. Substantive Changes in a Proposed Rule

The Board may make a change in a previously published proposed rule prior to its effective date. The Board directs the Superintendent to:

(1) prepare a new rule analysis form describing the change, and file it and a copy of the revised proposal with DAR; and

(2) notify DAR of the effective date of the revised rule. The rule will automatically become effective 30 days after its new publication date if no other date is specified.

D. Emergency Rules

(1) An emergency rule may be adopted under this section if the Superintendent finds that delay resulting from following normal procedures will:

- (a) result in imminent peril to the public health, safety or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the Board in violation of federal or state law.

(2) The Superintendent notifies the Board Chair[~~man~~] of the need to enact an emergency rule.

(3) If the Board Chair[~~man~~] concurs in the recommendation, the Superintendent:

(a) prepares and files a copy of the proposed emergency rule and the rule analysis form with DAR, stating specific reasons for the adoption of the rule;

(b) notifies DAR of the effective date and the lapsing date for the proposed emergency rule. If no effective date is specified, the proposed emergency rule becomes effective on the filing date. If no lapsing date is specified, the proposed emergency rule lapses 120 days after the filing date. No emergency rule may remain in effect for more than 120 days; and

(c) mails a copy of the rule analysis form to the members of the Board and to persons specified in [subs]Section R277-100-4A(5)[~~of this section~~].

R277-100-5. Formal Adoption by the Board of Procedures, Handbooks, and Manuals, and Reference to those Documents in Rules.

A. Under Board direction, divisions under the supervision of the Board, periodically develop or amend various policy manuals or policy handbooks which may not necessarily qualify to be rules or are not suitable for the normal rulemaking procedures. These shall be presented to the Board for purposes of formal adoption or amendment.

B. [Districts]LEAs shall [~~be promptly notified of~~]have electronic access to such documents which are to be considered for adoption by the Board.

C. [~~Local school boards and school districts~~]LEAs shall comply with the provisions of such documents, after the formal adoption or amendment by the Board of a USOE policy manual or policy handbook.

D. Following formal review by the Board, the Board's designation of a handbook, manual, or similar document as a policy manual or policy handbook is conclusive for purposes of this rule.

R277-100-6. Hearings.

A. When to hold hearings

(1) The Board may hold hearings during a regular or special meeting.

(2) The Board shall hold hearings if:

(a) required by state or federal law; or

(b) an affected agency, ten persons, or an organization having not fewer than ten members submits a written request for a hearing to the Superintendent not more than 15 days after the publication date of the proposed rule, amendment, or rule repeal. The hearing shall be held within 30 days of receipt of the request.

B. Hearing Procedures

(1) Notice of hearing regarding proposed rules published in the Bulletin is provided by:

(a) publication of the hearing date, time, place, and subject matter in the Bulletin;

(b) posting of the notice of information contained on the rule analysis form in a place [~~in the USOE~~]frequented by the public consistent with Title 52, Chapter 4, Open and Public Meetings Act;

(c) sending persons who receive rule analysis forms under [s]Section R277-100-4A(5) written notice of any changes made in the notice information contained on the rule analysis form;

(d) giving further notice required by law or regulation; and

(e) sending notice to those requesting the hearing, if the hearing is requested under [s]Section R277-100-6A(2)(b).

(2) Notice of hearings held prior to proposing the rule is given by:

(a) posting the hearing date, time, place, and subject in a place [~~in the USOE~~]frequented by the public consistent with Title 52, Chapter 4, Open and Public Meetings Act; and

[~~—~~]~~(b) notifying a local media correspondent; and~~

[~~(e)~~]~~(b)~~ [~~mailing~~]providing the notice information to persons specified in [s]Section R277-100-4A([~~2~~])1.

C. The Board may hold the hearing itself, or appoint any person who can fairly conduct the hearing, other than the Superintendent, to be the hearing officer. The hearing officer shall know rulemaking procedures, but may not be directly responsible for administering the rule.

D. Conducting the Hearing

(1) Upon opening the hearing, the hearing officer explains the purpose of the hearing and invites orderly, germane comment[~~for a minimum of one hour~~]. The hearing officer may set time limits for speakers and otherwise control prudent use of time.

(2) The hearing officer rules on questions of relevance and redundancy. Oaths, cross-examination, and rules of evidence are not required. The hearing is conducted as an open, informal, orderly, and informative meeting.

(3) A person familiar with the rule at issue may be asked to be present at the hearing to respond to inquiries and to provide information.

(4) The hearing officer may invite[s] written comment to be submitted at the hearing or within a reasonable time thereafter.

Written comments shall include the name, address, and, if applicable, the organization represented by the person making the comments. Written comment or electronically received comment [is] shall be appended to the hearing minutes.

E. The Record

(1) The hearing officer or a person appointed to take minutes records the name, address, and organization represented by each person speaking at the hearing, and a brief summary of the remarks.

(2) In the alternative, a hearing may be recorded by audio or video.

([2]3) Hearing minutes, a hearing recording (if available), a copy of the proposed rule, written comments, the findings and recommendations of the hearing officer, the decision of the Board, and other pertinent documents constitute the record of the hearing. The record is maintained in a file available to the public at the USOE during regular business hours by appointment.

F. Findings and Recommendations

(1) The hearing officer makes written findings and recommendations, including any facts pertinent to the hearing, recommendations for Board action, and reasons for the recommendations.

(2) The hearing officer transmits the findings, recommendations, and the complete record of the hearing to the Board as soon as possible following the close of the hearing.

(3) When the Board conducts the hearing, the Chair~~man~~ prepares written findings, the decision, and reasons for the decision.

G. The Decision

(1) The Board issues a written decision as soon as possible after the close of the hearing and before the rule becomes effective. The decision states whether the proposed rule will be adopted, changed, or withdrawn; any alternative action such as whether a rule will be proposed on the subject matter of the hearing; and reasons for the decision. The written decision is included in the hearing record.

(2) If the hearing is held under ~~[subs]Section R277-100-6A(2)[of this section]~~, the Board mails a copy of or sends electronically the decision to the person who requested the hearing.

H. A decision of the Board may be appealed to a district court.

R277-100-7. Board Review of Rules.

A. Five Year Review

(1) The Board reviews each rule within five years of its effective date and at five year intervals thereafter.

(2) The Superintendent shall coordinate with DAR to ensure that all Administrative rules are adequately reviewed by the Board prior to the five year review deadline.

(3) All other paperwork shall be completed by the Superintendent to repeal or reenact the rules.

B. Declaratory Judgments on the Applicability of a Rule

(1) An interested person may petition the Board for a ruling on the applicability of a particular Board provision, rule, or order in a stated case by filing a petition for a declaratory judgment with the Superintendent.

(2) The petition shall contain the petitioner's name, address, and phone number; the Board provision, rule, or order; and a statement of the facts of the case. The petition shall be filed

within six months of the application of the rule to the interested party or to a person represented by the interested party.

(3) Within 15 days of the filing of the petition, the Superintendent makes a recommendation to the Board regarding the applicability of the provision, rule, or order to the case.

(4) Prior to issuing a decision, the Board may:

(a) conduct a hearing on the matter under Section R277-100-6. The hearing shall begin no sooner than 15 days and no later than 45 days after receiving the petition; or

(b) appoint a staff member to conduct an investigation of the case. The investigator makes a recommendation to the Board as soon as possible after the close of the investigation.

(5) The Board notifies the petitioner by certified mail of its decision to conduct a hearing or investigation. Notice includes the time, date, and place of the hearing and the name of the hearing officer; or, in the case of an investigation, the name of the staff member responsible for conducting the investigation.

(6) The Board issues a ruling regarding the applicability of the provision, rule, or order within 60 days of the filing of the petition, or if a hearing is held, as soon as possible after the close of a hearing. The Board's ruling includes reasons for the decision and is sent by certified mail to the petitioner.].

R277-100-8. Miscellaneous:]

~~[A-](7)~~ The Superintendent maintains a complete copy of the Board's current rules for public inspection at the Superintendent's Office during regular business hours.

~~[B. An applicable federal or professionally recognized uniform code rule may be incorporated by reference into Board rules if the Board:~~

~~_____ (1) includes both the federal or uniform rule in the rule;~~

~~_____ (2) states specifically in its rules which federal and uniform rules are incorporated by reference, and any Board deviation from them; and~~

~~_____ (3) maintains for public inspection at the USOE, USOR and DAR complete and current copies of federal and uniform rules incorporated by reference.~~

~~C. Deadlines for publication in the Bulletin are the first day of the month for the Bulletin issued on the fifteenth and the fifteenth day of the month for the first issue of the next month.~~

~~D. If any provision of this policy conflicts with an applicable provision of the Utah Administrative Rulemaking Act or a corresponding DAR regulation, the act or regulation controls.~~

R277-100-9. Rules Not Requiring Board Action:

~~A. Rules authorized or required of the USOE or USOR by previous Board action, or by state or federal law or regulation, may be adopted by the USOE or USOR without Board action. Procedures for USOE rulemaking are set forth in the Administrative Rulemaking Act, Chapter 46a of Title 63, Utah Code Annotated 1953, and applicable regulations promulgated by the DAR. The procedures are essentially the same as the foregoing for Board adoptions, with the following substitutions:~~

~~_____ (1) for "Board," read "USOE", "USOR", "Executive Director", or "Superintendent" as appropriate.~~

~~_____ (2) for "Superintendent," read "Executive Director" or "Associate Superintendent who administers the affected program."~~

~~B. Notice concerning rules to be adopted under this section shall be given to the Board within 30 days after commencement of rulemaking.]~~

KEY: administrative procedures, rules and procedures
Date of Enactment or Last Substantive Amendment: [1990]2012
Notice of Continuation: November 10, 2010
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 63G-3-101 et seq.; 53A-1-401(3)

Education, Administration
R277-104
 USOE ADA Compliant Procedure

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 35450
 FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the Utah State Office of Education (USOE) Human Resource Management that handles ADA complaints for the USOE falls under the State Department of Human Resource Management (DHRM) which currently has a rule in place regarding ADA complaint procedures.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 28 CFR 35 and 28 CFR 35.107 and 42 U.S.C. 12201 and Section 63G-2-302 and Section 63G-2-304 and Section 63G-2-305 and Section 67-19-32

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This rule is repealed because it duplicates a DHRM rule.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. This rule applies to ADA complaint procedures at the state level.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to the state ADA complaint procedures and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule duplicates a DHRM rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. DHRM has a rule in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

[R277-104. USOE ADA Compliant Procedure.

R277-104-1. Definitions.

~~A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.~~

~~B. "The ADA Coordinator" means the designee of the State Board of Education, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans with Disabilities Act, or provisions of this rule.~~

~~C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:~~

- ~~(1) Office of Planning and Budget;~~
- ~~(2) Department of Human Resource Management;~~
- ~~(3) Division of Risk Management;~~
- ~~(4) Division of Facilities Construction Management; and~~
- ~~(5) Office of the Attorney General.~~

~~D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism; gender identity disorders not resulting from physical impairments; other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.~~

E. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

F. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOE or the State Board of Education, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

G. "Superintendent" means the State Superintendent of Public Instruction.

H. "USOE" means the Utah State Office of Education.

R277-104-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purpose of this rule is to establish a USOE procedure for filing complaints under the federal ADA law, provide an appeals procedure, and for appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE, or be subjected to discrimination by the USOE.

R277-104-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

- (1) include the individual's name and address;
- (2) include the nature and extent of the individual's disability;
- (3) describe the USOE's alleged discriminatory action in sufficient detail to inform the USOE of the nature and date of the alleged violation;
- (4) describe the action and accommodation desired; and
- (5) be signed by the individual or by his legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R277-104-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and

documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOE's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the USOE's budget and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R277-104-5. Issuance of Decision.

A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R277-104-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Superintendent.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Superintendent or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Superintendent shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Superintendent to direct an expenditure of funds which is not absorbable and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

G. If the Superintendent is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

R277-104-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be

~~classified as protected as defined under Section 63G-2-305, until the ADA coordinator or Superintendent issues the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Superintendent shall be classified as public information.~~

R277-104-8. Relationship to Other Laws.

~~This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provided equal or greater protection for the rights of individuals with disabilities.~~

KEY: ~~complaints, disabled persons~~

~~Date of Enactment or Last Substantive Amendment: 1993~~

~~Notice of Continuation: June 2, 2008~~

~~Authorizing, and Implemented or Interpreted Law: 28 CFR 35; 28 CFR 35.107; 42 U.S.C. 12201; 63G-2-305; 63G-2-302; 63G-2-304; 67-19-32]~~

Education, Administration
R277-470
 Charter Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35451

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide minor technical changes, remove several sections of the rule (which create a new rule) making this rule more manageable. (DAR NOTE: The proposed new Rule R277-481 is under DAR No. 35452 in this issue, December 1, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The amendment provides minor technical changes to the rule and removes several sections of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53-8-211 and Section 53A-1-301 and Section 53A-11-605 and Section 53A-1a-501.3 and Section 53A-1a-501.5 and Section 53A-1a-502.5 and Section 53A-1a-505 and Section 53A-1a-510 and Section 53A-1a-513 and Section 53A-1a-515 and Section 53A-1a-519 and Section 53A-1a-521 and Section 53A-1a-522 and Section 62A-4a-403 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Minor technical changes and removal of sections of the rule to make this rule more manageable do not result in a cost or savings to the state.

◆ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. Minor technical changes and removal of sections of the rule do not result in a cost or savings to local government.

◆ SMALL BUSINESSES: There are no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Minor technical changes and removal of sections of the rule do not result in a cost or savings to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Minor technical changes and removal of sections of the rule do not result in compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-470. Charter Schools - General Provisions.

R277-470-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).

C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515,

53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

~~_____D. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.~~

~~_____E. "Charter school deficiencies" means the following information:~~

~~_____ (1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;~~

~~_____ (2) a charter school is not providing required documentation following reasonable warning;~~

~~_____ (3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.~~

~~_____F. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.~~

~~_____ [G]D. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school [similar to a local board of education].~~

~~_____H. "Days" means calendar days, unless specifically designated.~~

~~_____ [F]E. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.~~

~~_____J. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.~~

~~_____K. "Northwest Accreditation Commission accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Accreditation Commission or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist. Accreditation ensures that the credits/diploma a student earns is the result of a quality educational experience. The purpose of accreditation is to ensure excellence in education by holding schools accountable to rigorous standards and a process of continued improvement.~~

~~_____L. "Neighborhood or traditional school" for purposes of this rule, means a public, non-charter school.~~

~~_____M. "New charter school" as provided in Section 53A-21-401(5)(d) means any charter school through the first day of its second year with students, or a satellite school that requires a new location/campus.~~

~~_____ [N]E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.~~

~~_____O. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.~~

~~_____ [P]G. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.~~

~~_____ [Q]H. "State Charter School Board" means the board designated in Section 53A-1a-501.5.~~

~~_____R. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.~~

~~_____S. "Urgent facility need" as provided in Section 53A-21-401(5)(d) means an unexpected exigency that affects the health and safety of students such as:~~

~~_____ (1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or~~

~~_____ (2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health or public school code.~~

~~_____ [F]I. "USOE" means the Utah State Office of Education.~~

~~_____J. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.~~

~~_____U. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.~~

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards and institutions of higher education may ~~not~~ approve ~~[district]-~~charter~~[ed]~~ schools ~~[unless they]~~by notifying the State Charter School Board by ~~[August 15]~~April 1 of the calendar year two years prior to opening of proposed ~~[district]-~~charter~~[ed]~~ schools, ~~[and estimated]~~including authorized numbers of students and other information as required in Sections 53A-1a-515 and 53A-1a-521.

B. The Board, in consultation with the State Charter School Board and chartering entities, may approve schools, expansions and satellite charter schools for the total number of students authorized under Section 53A-1a-502.5

C. The number of students requested from all chartering entities shall be considered as students are allocated by the State Charter School Board and approved by the Board.

~~R277-470-4. Charter School Orientation and Training.~~

~~A. All charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.~~

~~B. Orientation meetings shall be scheduled at least quarterly and be available electronically, as determined by the State Charter School Board.~~

~~C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.~~

~~D. Orientation/training sessions shall provide information including:~~

- ~~(1) charter school implementation requirements;~~
- ~~(2) charter school statutory and Board requirements;~~
- ~~(3) charter school financial and data management requirements;~~
- ~~(4) charter school legal requirements;~~
- ~~(5) federal requirements for charter school funding; and~~
- ~~(6) other items as determined by the State Charter School Board.~~

~~R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.~~

~~A. All charter schools opening or expanding by at least ten percent of overall enrollment or adding one or more grade levels shall notify all families consistent with the schools' outreach plans described in the charter agreements of:~~

- ~~(1) a new or expanding charter school's purpose, focus and governance structure, including names, qualifications, and contact information of governing board members;~~
- ~~(2) the number of new students that will be admitted into the school by grade;~~
- ~~(3) the proposed school calendar for the charter school including at a minimum the first and last days of school, scheduled holidays, pre-scheduled professional development days (no student attendance), and other scheduled non-school days;~~
- ~~(4) the charter school's timelines for acceptance or rejection of new students consistent with Section 53A-1a-506.5;~~
- ~~(5) the requirement and availability of a State-approved charter school student application;~~
- ~~(6) procedures for transferring to or from a charter school, together with applicable timelines; and~~
- ~~(7) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.~~

~~B. Charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 180 days before the proposed opening day of school.~~

~~C. Charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place. The completed charter school website shall be provided to the State Charter School Board at least 180 days~~

~~prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.~~

~~R277-470-6. Timelines - Charter School Starting Date.~~

~~A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.~~

~~B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.~~

~~C. A local or state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open. Each state-chartered school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).~~

~~D. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.~~

~~E. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.~~

~~F. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.~~

~~R277-470-7. Remediating Charter School Financial Deficiencies.~~

~~A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.~~

~~B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.~~

~~C. The State Charter School Board or the Board in absence of the State Charter School Board action may:~~

- ~~(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;~~
- ~~(2) immediately terminate the flow of state funds; or~~
- ~~(3) recommend cessation of federal funding to the school;~~
- ~~(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or~~
- ~~(5) any combination of the foregoing (1), (2), (3) and (4).~~

~~D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).~~

~~E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).~~

~~F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.~~

~~G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.~~

~~R277-470-8. Charter School Financial Practices and Training.~~

~~A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.~~

~~B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.~~

~~C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.~~

~~D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.~~

~~E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.~~

~~F. Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.~~

~~G. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.~~

~~H. Charter schools shall comply with R277-471, Oversight of School Inspections.~~

~~R277-470-9. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.~~

~~A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.~~

~~B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school.~~

~~C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.~~

~~D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:~~

~~(1) current board members and founding members;~~

~~(2) audit and financial records;~~

~~(a) record of state payments received;~~

~~(b) record of contributions received by the school from inception to date;~~

~~(c) test scores, including calendar of testing;~~

~~(d) current employees: identifying assignments and licensing status, if applicable;~~

~~(e) student lists, including home addresses or uniform student identifiers for current students;~~

~~(f) school calendar for previous school year and prospective school year;~~

~~(g) course offerings, if applicable;~~

~~(h) affidavits, signed by all board members providing or certifying (documentation may be required):~~

~~(i) the school's nondiscrimination toward students and employees;~~

~~(ii) the school's compliance with all state and federal laws;~~

~~(iii) that all information on application provided is complete and accurate;~~

~~(iv) that school meets/complies with all health and safety codes/laws;~~

~~(v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;~~

~~(vi) that the school is operating consistent with the school's charter;~~

~~(vii) the school's Annual Yearly Progress status under No Child Left Behind;~~

~~(viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;~~

~~(ix) that the previous local board of education supports or does not support conversion;~~

~~E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.~~

~~F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.~~

~~G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.~~

~~H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.~~

~~I. Final approval or denial of conversion is final administrative action by the Board.~~

~~]~~R277-470-~~[10]4. Charter Schools and NCLB Funds.~~

~~A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-~~[11]4.~~~~

~~B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Utah Consolidated Application (UCA) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.~~

~~C. If the school does not operate a federal school lunch program, the school:~~

~~(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying~~

students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-~~[H]~~5. Charter School Parental Involvement.

A. Charter schools shall encourage and provide opportunities for parental involvement in management decisions at the school level.

B. Charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds consistent with R277-477-3E.

~~[R277-470-12. Charter School Oversight and Monitoring.~~

~~A. The State Charter School Board shall provide direct oversight to the state's Board chartered schools, including:~~

~~(1) requiring and using a performance framework adopted by the State Charter School Board as a framework for measuring charter school quality;~~

~~(2) requiring that all charter schools shall be members of and accredited by Northwest Accreditation Commission;~~

~~(3) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;~~

~~(4) quarterly review of summary financial records and disbursements and student enrollment;~~

~~(5) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;~~

~~(6) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff;~~

~~(7) audits and investigations of claims of fraud or misuse of public assets or funds; and~~

~~(8) requiring that charter schools are in compliance with their charter agreement, as maintained by the USOE. It is presumed that the charter agreement maintained by the USOE is the final, official and complete agreement.~~

~~B. The Board may review or revoke charter school authorization based upon factors that may include:~~

~~(1) failure to meet measures of charter school quality which includes adherence to a performance framework required and monitored by the State Charter School Board;~~

~~(2) financial deficiencies or irregularities; or~~

~~(3) persistently low student achievement inconsistent with comparable schools; or~~

~~(4) failure of the charter school to comply with state law, Board rules, or directives; or~~

~~(5) failure to comply with currently approved charter commitments.~~

~~C. All charter schools shall amend their charters by January 1, 2011 to include the following statement:~~

~~To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all~~

~~other provisions of the charter school shall remain in full force and effect.~~

~~D. A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.~~

~~E. District charter school authorizers shall:~~

~~(1) visit a charter school at least once during its first year of operation;~~

~~(2) visit a charter school as determined in the review process; and~~

~~(3) provide written reports to the charter schools after the visits.~~

R277-470-13. Approved Charter School Expansion:

~~A. The following shall apply to requests for expansion for approved and operating charter schools:~~

~~(1) The school satisfies all requirements of state law and Board rule;~~

~~(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or~~

~~(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:~~

~~(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1a-505(1);~~

~~(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;~~

~~(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;~~

~~(d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;~~

~~(e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.~~

~~B. The charter school governing board shall file a request with the State Charter School Board for an expansion no later than April 1 two years prior to the date of the proposed implementation of the expansion.~~

~~C. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under 53A-1a-502.5(1).~~

R277-470-14. Satellite School for Approved Charter Schools:

~~A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 two years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:~~

~~(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;~~

~~_____ (2) The school has operated successfully for at least three years;~~

~~_____ (3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;~~

~~_____ (4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;~~

~~_____ (5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;~~

~~_____ (6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;~~

~~_____ (7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and~~

~~_____ (8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.~~

~~_____ (9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.~~

~~_____ B. The satellite school amendment request shall include the following:~~

~~_____ (1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;~~

~~_____ (2) A detailed explanation of the governance structure for the satellite school, including appointed or elected representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan;~~

~~_____ (3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;~~

~~_____ (4) A detailed financial plan for the satellite school;~~

~~_____ (5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;~~

~~_____ (a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-470-7C;~~

~~_____ (b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.~~

~~_____ (6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);~~

~~_____ (7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and~~

~~_____ (8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.~~

~~_____ C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.~~

~~_____ D. A charter school may not apply for more than three satellite locations.~~

~~]~~R277-470-[15]6. Transportation.

~~A. Charter schools are not eligible for to-and-from school transportation funds.~~

~~B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.~~

~~C. A school district may provide transportation for charter school students on a space-available basis on approved routes.~~

~~[_____ (1) School districts may not incur increased costs or displace eligible students to transport charter school students.~~

~~_____ (2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.~~

~~_____ (3) A charter school student shall board and leave the bus at the same stop each day.~~

~~] [(4)]D. Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.~~

~~]~~R277-470-16. Appeals Criteria and Procedures.

~~_____ A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.~~

~~_____ B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:~~

~~_____ (1) recommendation for termination of a charter;~~

~~_____ (2) recommendation for denial of expansions or satellite schools;~~

~~_____ (3) recommendation for denial of local charter board proposed changes to approved charters;~~

~~_____ (4) recommendation for denial or withholding of funds from local charter boards; and~~

~~_____ (5) recommendation for denial of a charter.~~

~~_____ C. No other issues may be appealed.~~

~~_____ D. Appeals procedures and timelines~~

~~_____ (1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:~~

~~_____ (a) provide written notice of denial to the charter school or approved charter school;~~

~~_____ (b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and~~

~~(e) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.~~

~~(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.~~

~~(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.~~

~~(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.~~

~~(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.~~

~~(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:~~

~~(a) a request for parties to provide a written explanation of the appeal and related information and evidence;~~

~~(b) a determination of time limits and scope of testimony and witnesses;~~

~~(c) a determination for recording the hearing;~~

~~(d) preliminary decisions about evidence; and~~

~~(e) decisions about representation of parties.~~

~~(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.~~

~~(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.~~

~~(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.~~

~~(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.~~

~~(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.~~

[R277-470-[17]7. Miscellaneous Provisions.

~~A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.~~

~~(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;~~

~~(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and~~

~~(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.~~

~~] [B]Δ. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety[;] or welfare of students consistent with Section 53A-1a-510(3).~~

~~(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with Sections 62A-4a-403 and 53A-11-605([4]3(a)).~~

~~(2) Additionally, [H]individuals may report threats to the health, safety[;] or welfare of students to the [~~local~~]charter school governing board.~~

~~(a) reports shall be made in writing;~~

~~(b) reports shall be timely;~~

~~(c) anonymous reports shall not be reviewed further.~~

~~(3) [~~Local~~]Charter school governing boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.~~

~~(4) [~~Local~~]Charter school governing boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.~~

~~C. The Board shall have authority for final approval of all charter schools. All charter schools shall be subject to accountability standards established by the Board and to monitoring and auditing by the Board.~~

KEY: education, charter schools

Date of Enactment or Last Substantive Amendment: ~~[February 22, 2011]~~**2012**

Notice of Continuation: **October 10, 2008**

Authorizing, and Implemented or Interpreted Law: **Art X, Sec 3; 53A-1a-515; 53A-1a-505; 53A-1a-513; [~~53A-1a-502;~~]53A-1-401(3); 53A-1a-510; [~~53A-1a-509; 41-6-115; 53A-1a-506; 53A-21-401;~~]53A-1a-519; [~~53A-1a-520;~~]53A-1a-501.5; 53A-1-301; 53A-1a-502.5; [~~53A-1a-506.5; 53A-12-103; 53A-11-504; 53A-11-903; 53A-11-904; 53A-1a-511; 53A-1-302 and 303; 53A-17a;109;]53-8-211; 62A-4a-403; 53A-11-605; 53A-1a-522; 53A-1a-521; 53A-1a-501.3~~**

Education, Administration **R277-481** Charter School Oversight, Monitoring and Appeals

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35452

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures for oversight and monitoring of charter agreements and charter schools to encourage compliance with minimum

standards. The majority of the language in this new rule consists of sections taken from Rule R277-470 in order to make Rule R277-470 more focused and manageable. (DAR NOTE: The proposed amendment to Rule R277-470 is under DAR No. 35451 in this issue, December 1, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, procedures for oversight, monitoring, training, remedying financial deficiencies, and appeals for charter schools.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-301 and Section 53A-17a-109 and Section 53A-1a-501.3 and Section 53A-1a-501.5 and Section 53A-1a-505 and Section 53A-1a-509 and Section 53A-1a-510 and Section 53A-1a-515 and Section 53A-1a-521 and Section 53A-3-302 and Section 53A-3-303 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This new rule provides standards and procedures for charter school oversight, monitoring and appeals, much of which were in another rule.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. This new rule provides standards and procedures for charter school oversight, monitoring and appeals, much of which were in another rule.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This new rule applies to public charter schools and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This new rule provides standards and procedures for charter school oversight, monitoring and appeals, much of which were in another rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This new rule provides standards and procedures for charter school oversight, monitoring and appeals, much of which were in another rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-481. Charter School Oversight, Monitoring and Appeals.
R277-481-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).
- C. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515, 53A-1a-521, and this rule or by the Board under Section 53A-1a-505.
- D. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.
- E. "Charter school deficiencies" means the following information:
 - (1) a charter school is not satisfying financial, academic or operational obligations as required in its charter agreement;
 - (2) a charter school is not providing required documentation after being placed on warning status;
 - (3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees. Fraud or misuse of funds need not rise to the minimal standard. It may include failure to properly account for funds received at the school; failure to follow regularly established accounting and receipting practices or failure to provide data, financial records or information as requested by the State Charter School Board or the Board.
- F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.
- G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.
- H. "Probation" means a formal process and time period during which a school is permitted to demonstrate its full compliance with its charter agreement and all applicable laws, rules and regulations.
- I. "State Charter School Board" means the board designated in Section 53A-1a-501.5.
- J. "Superintendent" means the State Superintendent of Public Instruction as designated under Section 53A-1-301.
- K. "USOE" means the Utah State Office of Education.
- L. "Warning status" means an informal status in which a school is placed through written notification from the USOE for the

school's failure to maintain compliance with its charter agreement, applicable laws, rules or regulations.

R277-481-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for oversight and monitoring charter agreements and charter schools for compliance with minimum standards. The rule also provides appeals criteria and a process for schools found out of compliance with State Charter School Board findings.

R277-481-3. State Charter School Board Oversight, Minimum Standards, and Consequences.

A. The State Charter School Board shall provide direct oversight to the state's Board chartered schools, including requiring all charter schools to:

(1) comply with their charter agreement containing clear and meaningful expectations for measuring charter school quality.

(2) be members of and fully accredited by the Northwest Accreditation Commission by the end of its fourth year of operation;

(3) annually review charter agreements, as maintained by the USOE;

(4) regularly review other matters specific to effective charter school operations as recommended by the USOE staff; and

(5) audit and investigate claims of fraud or misuse of public assets or funds.

B. All charter schools shall also meet the following minimum standards:

(1) charter schools shall have no unresolved material findings, financial condition findings or repeat significant findings in the school's independent financial audit, federal single audit or USOE audits;

(2) charter schools shall maintain a minimum of 30 days cash on hand or the cash or other reserve amount required in bond covenants, whichever is greater;

(3) charter schools shall have no violations of federal or state law or regulation, Board rules or Board directives;

(4) charter schools shall have all teachers properly licensed and endorsed for teaching assignments in CACTUS; and

(5) charter school governing boards shall ensure all employees and board members have criminal background checks on file.

C. Warning status

(1) A charter school that fails to meet any of the minimum standards or a significant number of the guidance provisions found in the Utah Charter School Best Practice Guidelines may be placed on warning status and notified in writing by the USOE.

(2) While a school is on warning status, the school may seek technical assistance from the USOE staff to remedy any deficiencies.

D. Probation status

(1) If any minimum standard or a significant number of the guidance provisions has not been met by an assigned date following designation of warning status, as evidenced by a second report identifying the same problem(s), the State Charter School Board shall notify the school in writing of the specific minimum standard(s) the school did not meet.

(2) Based on the State Charter School Board's review of the charter school's noncompliance, progress and response to technical assistance, the State Charter School Board may place the school on probation for up to one calendar year following the designation of warning status.

(3) Upon placing a school on probation, the State Charter School Board shall set forth a written plan outlining those provisions in the charter agreement, applicable laws, rules and regulations with which the school is not in full compliance. This written plan shall set forth the terms and conditions and the timeline that the school shall follow in order to be removed from probation.

(4) If the school complies with the written plan in a timely manner, the State Charter School Board shall remove the school from probation.

(5) While a school is on probation, it shall be required to satisfy certain requirements and conditions set forth by the State Charter School Board. If the school fails to satisfy specific requirements and conditions by a date established by the State Charter School Board, the State Charter School Board may terminate the school's charter.

(6) While a school is on probation, the school may seek technical assistance from the USOE staff to remedy any deficiencies.

(7) The State Charter School Board may, for good cause, or if the health, safety, or welfare of the students at the school is threatened at any time during the probationary period, terminate the charter immediately.

R277-481-4. Charter School Governing Board Compliance with Law.

A. The Board may review or terminate the charter based upon factors that may include:

(1) failure to meet measures of charter school quality which includes adherence to a charter agreement required and monitored by the State Charter School Board; or

(2) charter school deficiencies; or

(3) failure of the charter school to comply with federal or state law or regulation, Board rules or Board directives.

B. If a charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted to require compliance with such law or rule; all other provisions of the school's charter shall remain in full force and effect.

C. A charter school shall notify the Board and the chartering entity of any and all lawsuits filed against the charter school within 30 days of the filing of the lawsuit.

R277-481-5. Chartering Entity Oversight and Monitoring.

A. Local school board and institutions of higher education chartering entities shall:

(1) visit a charter school at least once during its first year of operation in order to ensure adherence to and implementation of approved charter and to finalize a review process;

(2) visit a charter school as determined in the review process; and

(3) provide written reports to a charter school after the visits that set forth strengths, deficiencies, corrective actions, timelines and the reason for charter termination, if applicable.

B. Chartering entities shall notify the Board within 20 days of charter school deficiencies that initiate corrective action by chartering entities.

R277-481-6. Charter School Financial Practices and Training.

A. Charter school business administrators shall attend USOE required business meetings for charter schools.

B. Charter school governing board members and school administrators shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools shall comply with the Utah State Procurement Code, Title 63G, Chapter 6.

G. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

R277-481-7. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds;

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for charter school deficiencies consistent with Section 53A-1a-509; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-481-8. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. The following State Charter School Board administrative decisions may be appealed to the Board:

(1) termination of a charter;

(2) denial of proposed amendments to charter agreement;

(3) denial or withholding of funds from charter school governing boards; and

(4) denial of a charter.

C. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the charter school governing board chair or authorized agent; and

(c) post information about the appeals process on the USOE website and provide training to charter school governing board members and authorized agents regarding the appeals procedure.

(2) A charter school governing board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action.

(3) The Superintendent shall, in consultation with Board Leadership, review the written appeal and determine if the appeal addresses an administrative decision by a chartering entity. If the Superintendent and Board Leadership determine that the appeal is appropriate, Board Leadership shall designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board and staff.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in his sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

KEY: charter schools, oversight, monitoring, appeals

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1a-501.3; 53A-1a-515; 53A-1a-521; 53A-1a-505; 53A-1a-501.5; 53A-1a-510; 53A-1a-509; 53A-1-301; 53A-3-302; 53A-3-303; 53A-17a-109

Education, Administration R277-482

Charter School Timelines and Approval Processes

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35453

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to establish procedures for timelines and approval processes for charter schools.

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, procedures for charter school applications and training, procedures for new or expanding charter school notification to prospective students and parents, times for charter school starting dates, procedures and timelines to change chartering entities, procedures for approved charter school expansion, and procedures for satellite school approval for charter schools.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1a-513 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The new rule provides timelines

and standards and procedures for approval processes, much of which were in another rule.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The new rule provides timelines and standards and procedures for approval processes, much of which were in another rule.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This new rule applies to public education and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The new rule provides timelines and standards and procedures for approval processes, much of which were in another rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The new rule provides timelines and standards and procedures for approval processes, much of which were in another rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-482. Charter School Timelines and Approval Processes.

R277-482-1. Definitions.

A. "Amendment," for purposes of this rule, means a change or addition to the charter agreement.

B. "Board" means the Utah State Board of Education.

C. "Chartering entities" means entities that authorize a charter school under Section 53A-1a-501.3(2).

D. "Charter schools" means schools acknowledged as charter schools by chartering entities under Sections 53A-1a-515,

53A-1a-521, and this rule or by the Board under Section 53A-1a-505.

E. "Charter school agreement (charter agreement)" means the terms and conditions for the operation of an approved charter school. The charter school agreement shall be maintained at the USOE and is considered the final, official and complete agreement.

F. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

G. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school.

H. "Expansion" means a proposed ten percent increase of students or adding grade level(s) in an operating charter school at a single location.

I. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

J. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area. The parent school and all satellites shall be considered a single local education agency (LEA) for purposes of public school funding and reporting.

K. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

L. "USOE" means the Utah State Office of Education.

R277-482-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for timelines and approval processes for charter schools.

R277-482-3. Charter School Application and Training.

A. All charter school applicants shall attend pre-application and planning year training sessions, as well as other training sessions designated by the State Charter School Board.

B. Pre-application training sessions shall be scheduled four times annually and may be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training sessions may receive priority for approval from the State Charter School Board and the Board.

D. Training sessions shall provide information including:

- (1) charter school implementation requirements;
- (2) charter school statutory and Board requirements;

(3) charter school financial and data management requirements;

(4) charter school legal requirements;

(5) federal requirements for charter school funding; and

(6) other items as determined by the State Charter School Board.

R277-482-4. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All new or expanding charter schools shall have available on its website and notify all families consistent with the schools' outreach plans described in the charter agreements of:

(1) the school's approved charter, purpose, focus and governance structure, including names, qualifications, and contact information of all governing board members;

(2) the number of new students that will be admitted into the school by grade;

(3) the proposed school calendar for the charter school, including at a minimum the first and last days of school, scheduled holidays, scheduled professional development days (no student attendance), and other scheduled non-school days;

(4) the charter school's timelines for acceptance of new students consistent with Section 53A-1a-506.5;

(5) the requirement and availability of a State-approved charter school student application;

(6) procedures for transferring to or from a charter school, together with applicable timelines; and

(7) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed \$5.00, consistent with Section 53A-12-103.

B. New or expanding charter schools shall provide written notice of the information in R277-482-4A consistent with the school's outreach plan and on the school's website at least 180 days before the proposed opening day of school.

C. New or expanding charter schools shall have an operative and readily accessible electronic website providing information required under R277-482-4A in place. The completed charter school website shall be provided to the State Charter School Board for review at least 210 days prior to the proposed opening day of school and prior to posting the websites publicly.

D. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, or provide an innovative educational program, service, or setting as determined by the State Charter School Board, among traditional public schools and operating charter schools.

(1) Underserved student populations may include economically disadvantaged students, students with disabilities, students with Limited English Proficient (LEP), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Innovative educational opportunities shall be described on the State Charter School Board's website;

(3) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(4) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

E. The Board shall have authority for final approval of all charter schools.

R277-482-5. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. Only charter schools approved within the state fiscal year two years prior to the state fiscal year it intends to serve students shall be eligible for state funds.

C. A state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open.

D. Each charter school shall submit any lease, lease-purchase agreement, or other contract or agreement relating to the charter school's facilities or financing the charter school facilities to its chartering entity for review and advice prior to the charter school entering into the lease, agreement, or contract, consistent with Section 53A-1a-507(9).

E. A state-chartered school that intends to lease a facility requiring only minimal renovation shall enter into a written agreement no later than May 1 of the calendar year the school is scheduled to open.

F. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

G. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under Section 53A-1a-511.

H. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-482-6. Procedures and Timelines to Change Chartering Entities.

A. A charter school may change chartering entities.

B. A charter school shall submit an application provided by the new chartering entity to the Board to request a new chartering entity at least three months prior to the proposed change.

C. The application may require some or all of the following, as determined by the new chartering entity:

(1) current board members and founding members;

(2) financial records, including most recent annual financial report (AFR), annual project report (APR) and audited financial statement;

(3) test scores, including U-PASS, Adequate Yearly Progress, and status under No Child Left Behind;

(4) current employees; identifying assignments and licensing status, if applicable;

(5) school calendar for previous school year and prospective school year;

(6) course offerings, if applicable;

(7) affidavits, signed by all board members providing or certifying (documentation may be required):

(a) the school's nondiscrimination toward students and employees;

(b) the school's compliance with all state and federal laws and regulations;

(c) that all information on application provided is complete and accurate;

(d) that school meets/complies with all health and safety codes/laws;

(e) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(f) that the school is operating consistent with the school's charter;

(g) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

D. A charter school seeking to change chartering entities shall submit a position statement from the current chartering entity about school status, compliance with the chartering entity requirements and any unresolved concerns to the proposed new chartering entity.

E. An application for changing a chartering entity shall be reviewed for acceptance by the new chartering entity within 60 days of submission of complete application, including all required documentation.

F. The Board shall consider an application to change chartering entities to the State Charter School Board within 60 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

G. Final approval or denial of changing chartering entities to the State Charter School Board is final administrative action by the Board.

R277-482-7. Approved Charter School Expansion.

A. The following shall apply to requests for expansion from approved and operating charter schools:

(1) The school satisfies all requirements of federal and state law, regulations, Board rule and charter agreement.

(2) The approved charter agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion and location of the school in the same manner as required in Section 53A-1a-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the securing of the building site shall be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C;

(d) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the expansion for at least one school year;

(e) written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the State Charter School board and school district of the specific school location;

(f) students at the school are performing on standardized assessments at or above the standard in the charter agreement; and

(g) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. If an expansion request requires a new facility, the request shall be submitted to the State Charter School Board before April 1 of the state fiscal year two state fiscal years prior to the date the school intends to expand.

C. If the expansion request does not require a new facility, the request shall be made before April 1 of the state fiscal year one state fiscal year prior to the intended expansion date.

D. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under Section 53A-1a-502.5(1).

R277-482-8. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 of the state fiscal year two state fiscal years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule;

(2) The school has operated successfully for at least three years meeting the terms of its charter agreement;

(3) Students at the school are performing on standardized assessments at or above the standard in the charter agreement;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite school;

(6) The school provides any additional information or documentation requested by the State Charter School Board or the Board.

(7) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of federal and state law, Board rule and charter agreement;

(2) A detailed explanation of the governance structure for the satellite school, including appointed or elected representation on the governing board;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy pursuant to R277-482-5C;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held to its own charter agreement, including academic and operational performance.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

KEY: training, timelines, expansion, satellite

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-513; 53A-1-401(3)

Education, Administration **R277-608**

Prohibition of Corporal Punishment in Utah's Public Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35454

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update definitions and terminology.

SUMMARY OF THE RULE OR CHANGE: The changes provide new definitions and update terminology throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Sections 53A-11-801 through 805 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes update definitions and terminology only.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The changes update definitions and terminology only and do not require anything more of a local education agency than what was previously required.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule and the amendments apply to public education and do not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes update definitions and terminology and do not require anything of individuals outside of the public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes update terminology and do not change compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-608. Prohibition of Corporal Punishment in Utah's Public Schools.

R277-608-1. Definitions.

~~[A. This rule uses the definitions of 53A-11-801.~~

~~] [B]A. "Board" means the Utah State Board of Education.~~

~~B. "Corporal punishment" means the intentional infliction of physical pain upon the body of a minor child as a disciplinary measure.~~

~~C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and the Utah Schools for the Deaf and the Blind.~~

~~[C]D. "USOE" means the Utah State Office of Education.~~

R277-608-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Sections 53A-11-801 through 53A-11-805 which provide[s] guidelines for the use of reasonable and necessary physical restraint or force in educational settings.

~~B. The purpose of this rule is to [prohibit the use of corporal punishment in the public schools of Utah]direct LEAs to have policies in place that prohibit corporal punishment consistent with the law.~~

R277-608-3. Reporting Requirements.

A. Each ~~[school district]LEA~~ shall incorporate in the ~~[district]LEA~~ plan submitted to the USOE annually, the prohibition of corporal punishment consistent with the law.

B. An ~~[district]LEA~~ policy shall incorporate a prohibition of corporal punishment consistent with the law, appropriate sanctions and appeal procedures for ~~[district]LEA~~ employees disciplined under this rule and the corresponding state statute.

R277-608-4. Special Education Exception(s) to this Rule.

~~[Districts]LEAs~~ shall have in place, as part of their ~~[district]LEA~~ special education plans, procedures or manuals, criteria and procedures for using appropriate behavior reduction intervention in accordance with state and federal law.

KEY: students' rights, disciplinary problems, teachers

Date of Enactment or Last Substantive Amendment: [1992]2012

Notice of Continuation: September 6, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-11-801 through 805

Environmental Quality, Air Quality

R307-405

Permits: Major Sources in Attainment
or Unclassified Areas (PSD)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35413

FILED: 11/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 05/16/2008, EPA finalized changes to the Prevention of Significant Deterioration (PSD) permitting regulations to include PM2.5. On 10/20/2010, EPA finalized increments, significant impact levels (SILs), and significant monitoring concentrations (SMCs) for PM2.5. On 12/21/2010, EPA finalized changes to Method 201a and Method 202. Now that EPA has finalized these changes, Utah can move forward with implementing the new requirements in its administrative rules.

SUMMARY OF THE RULE OR CHANGE: The proposed rule revision updates the incorporation by reference of 40 CFR 52.21 to the 07/01/2011 version. The update makes the following changes to Utah's Prevention of Significant Deterioration(PSD) program: 1) PM2.5 becomes a pollutant under the PSD program; 2) increments, significant impact levels (SILs), and significant monitoring concentrations (SMCs) for PM2.5 are established; and 3) the rule removes changes to the major source baseline date that were disapproved by EPA on 07/15/2011 and reverts back to the definition of major source baseline date in 40 CFR 52.21.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 40 CFR 51.166 and 40 CFR 52.21(a)(2) and Section 19-2-104

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 40 CFR 52, published by National Archives and Records Administration's Office of the Federal Register, July 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as pollution sources pay for the review of the prevention of significant deterioration (PSD) permits.
- ◆ **LOCAL GOVERNMENTS:** No costs or savings are anticipated with this rule amendment as no new requirements were created that affect local government.
- ◆ **SMALL BUSINESSES:** It is unlikely that there will be costs or savings to small business as applicants for permits are generally larger businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment only affects major sources in attainment or unclassifiable areas. As a result of this amendment, most sources will need to meet additional monitoring requirements, which will result in additional costs. Also, major sources required to obtain an approval order as a result of this amendment will incur additional costs. The exact costs are unknown. No additional savings are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment only affects major sources in attainment or unclassifiable areas. As a result of this amendment, most sources will need to meet additional monitoring requirements, which will result in additional costs. Also, major sources required to obtain an approval order as a result of this amendment will incur additional costs. The exact costs are unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment only affects major sources in attainment or unclassifiable areas. As a result of this amendment, most sources will need to meet additional monitoring requirements, which will result in additional costs. Also, major sources required to obtain an approval order as a result of this amendment will incur additional costs. The exact costs are unknown.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-4099, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 02/02/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).****R307-405-1. Purpose.**

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, ~~2008~~2011.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a)(i) ~~"Major Source Baseline Date" means:~~

~~(A) in the case of particulate matter:~~

~~(i) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;~~

~~(H) for all other areas of the State, January 6, 1975;~~

~~(B) in the case of sulfur dioxide:~~

~~(i) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;~~

~~(H) for all other areas of the State, January 6, 1975; and~~

~~(C) in the case of nitrogen dioxide, February 8, 1988.~~

~~(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:~~

~~(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and~~

~~(B) in the case of nitrogen dioxide, February 8, 1988.~~

~~(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:~~

~~(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and~~

~~(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.~~

~~(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.~~

~~(b)] In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".~~

~~(e)](b) "Reviewing Authority" means the executive secretary.~~

~~(d)](c)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).~~

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),

(B) 40 CFR 52.21(b)(37)(i),

(C) 40 CFR 52.21(b)(43),

(D) 40 CFR 52.21(b)(48)(ii)(c),

(E) 40 CFR 52.21(b)(50)(i),

(F) 40 CFR 52.21(l)(2),

(G) 40 CFR 52.21(p)(2), and

(H) 40 CFR 51.166(q)(2)(iv).

~~(e)](d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:~~

~~(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),~~

~~(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),~~

~~(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),~~

~~(iv) the definition of "fixed capital cost" in 40 CFR 52.21(b)(57), and~~

~~(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).~~

(f) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and

sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs (d) through (e) of this section.

(b) For purposes of paragraphs (c) through (e) of this section, the term "tons per year (tpy) CO₂ equivalent emissions (CO₂e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO₂e.

(c) The term "emissions increase" as used in paragraphs (d) through (e) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO₂e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO₂e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO₂e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO₂e or more; and,

(e) Beginning July 1, 2011, in addition to the provisions in paragraph (d) of this section, the pollutant GHGs shall also be subject to regulation:

(i) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO₂e; or

(ii) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO₂e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO₂e or more.

.....

KEY: air pollution, PSD, Class I area, greenhouse gases
Date of Enactment or Last Substantive Amendment: ~~January 1, 2011~~ 2012
Notice of Continuation: February 5, 2009
Authorizing, and Implemented or Interpreted Law: 19-2-104

Environmental Quality, Environmental Response and Remediation

R311-201

Underground Storage Tanks: Certification Programs and UST Operator Training

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35447

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are made to allow individuals to contract with Underground Storage Tank (UST) owners to act as a Class B operator without becoming a certified UST inspector. UST inspectors act under the direction of the Executive Secretary (UST) to perform inspections of UST facilities to determine their level of compliance with the UST rules and regulations. Because UST operator inspections are not done to determine the level of compliance, and are not done under the direction of the Executive Secretary, the requirements for UST inspectors are changed to refer directly to the statutory citation allowing the Executive Secretary to authorize employees or representatives to conduct UST inspections. This allows individuals who can demonstrate knowledge, training, and competency equivalent to an UST inspector to become third-party Class B operators. Individuals who are certified as general installers or installer technicians typically have achieved these levels of training and expertise, and it is appropriate to allow them to qualify as third-party Class B operators. Individuals who take training equivalent to that required for an UST inspector, and can demonstrate an appropriate level of acceptable financial responsibility through insurance, also will be able to qualify as third-party Class B operators.

SUMMARY OF THE RULE OR CHANGE: In Subsection R311-201-2(b), modifies the requirement for certification of UST inspectors to refer to the statutory citation (Subsection 19-6-404(2)(c)) that gives the Executive Secretary (UST) the authority to conduct UST inspections to determine compliance. In Subsection R311-201-12(e), changes the requirements for an individual who is not an owner or employee to act as a Class B operator. In Subsection R311-201-12(f), changes the requirements for individuals who contract to act as Class B operators. Two groups may qualify as third-party Class B operators: those who are certified as a general UST installer or UST installer technician, and those who meet the training requirements for a UST inspector and document an appropriate level of financial responsibility through liability insurance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-6-105 and Section 19-6-402 and Section 19-6-403 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No anticipated costs or savings. The rule broadens qualifications for individuals qualified to provide services as a Third-party Class B Operator. There are no costs or savings associated with these changes.

◆ **LOCAL GOVERNMENTS:** No costs are anticipated, but there may be some savings resulting from this change for local governments that own regulated underground storage tanks. This change broadens the population of individuals who qualify to provide services as a third-party Class B Operator. The increase in the number of individuals who provide these services may reduce the cost for those local governments that choose to meet the operator training requirement by outsourcing this service. The total savings would depend on the level of cost reduction achieved by increased competition among third-party Class B operators and the number of tank owners who would contract for the service.

◆ **SMALL BUSINESSES:** No costs are anticipated but there may be some savings resulting from this change for small businesses that own regulated underground storage tanks. This change broadens the population of individuals who qualify to provide services as a third-party Class B Operator. The increase in the number of individuals who provide these services may reduce the cost for those businesses that choose to meet the operator training requirement by outsourcing this service. The total savings would depend on the level of cost reduction achieved by increased competition among third-party Class B operators and the number of tank owners who would contract for the service. In addition, some small businesses may have employees that will qualify as third-party Class B Operators and may expand their business operations to offer these services for a fee. If this occurs, the businesses would save the cost of becoming a UST inspector (approximately \$600). Aggregate savings would depend on the number of individuals who would qualify as third-party Class B Operators.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs are anticipated but there may be some savings resulting from this change for persons other than small businesses, businesses, or local government entities. This change broadens the population of individuals who qualify to provide services as a third-party Class B Operator. The increase in the number of individuals who provide these services may reduce the cost for those entities that choose to meet the operator training requirement by outsourcing this service. The total savings would depend on the level of cost reduction achieved by increased competition among third-party Class B operators and the number of tank owners who would contract for the service. In addition, some businesses may have employees that will qualify as third-party Class B Operators and may expand their business operations to offer

these services for a fee. If this occurs, the businesses would save the cost of becoming a UST inspector (approximately \$600). Aggregate savings would depend on the number of individuals who would qualify as third-party Class B Operators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed change allows individuals to qualify to be third-party Class B operators without the cost of becoming a UST inspector (approximately \$600). The cost of training and registration as a Class B operator (approximately \$250) is already in place and will not change from this rule change. An individual who wants to become a third-party Class B Operator will have the cost of training, either the inspector-equivalent training or training to become a general installer or installer technician. An individual who qualifies by taking the inspector-equivalent training would also have to pay the costs to acquire financial responsibility coverage in the form of liability insurance. In reality, most individuals who are likely to qualify as third-party Class B Operators already are certified as a general installer or technician, so there would be no additional expense for those individuals to register as a third Party Class B Operator.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes should not have any material fiscal impact on businesses. They will provide a way for individuals who are already trained and have experience in installing and servicing underground storage tank systems and associated equipment to be able to contract with UST owners to provide the services of a Class B operator. They already have the necessary training, and would be able to qualify as a third-party Class B operator without having to incur the added expense to become a certified UST inspector.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE AND
 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 12/20/2011 01:30 PM, MSOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/13/2012

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. After December 31, 1995, no person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Executive Secretary shall contain the Certified UST Consultant's signature. After December 31, 1995, any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Executive Secretary.

(b) UST Inspector. After December 31, 1989, no person shall conduct underground storage tank inspection [~~for determining compliance with Utah underground storage tank rules~~] as authorized in Subsection 19-6-404(2)(c) without having certification to conduct these activities. [~~After December 31, 1989, no owner or operator shall allow any underground storage tank inspections for determining compliance with Utah underground storage tank rules to be conducted on a tank under their ownership or operation unless the person conducting the tank inspection is certified according to Rule R311-201.~~]

(c) UST tester. After December 31, 1989, no person shall conduct UST testing without having certification to conduct such activities. After December 31, 1989, no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Executive Secretary under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Executive Secretary to be equivalent to the manufacturer training. The Executive Secretary may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for

determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Executive Secretary may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

.....

R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Executive Secretary to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner or employee who has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator shall:

(1) have a general knowledge of UST systems;

(2) ensure that UST records are properly maintained according to 40 CFR 280;

(3) ensure that yearly UST fees are paid;

(4) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(5) make financial responsibility documents available to the Executive Secretary as required; and

(6) ensure that Class B and Class C operators are trained and registered.

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, employee, or ~~[contractor working for the UST owner or]~~ third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

~~(f) [An individual who contracts to act as a Class B operator for an UST owner or operator, or performs UST operator inspections according to Subsection R311-201-12(h), and is not the owner or operator, or an employee of the owner or operator, shall be certified as an UST inspector according to Section R311-201-2, and shall meet all requirements of an UST inspector.]~~ After January 1, 2012, any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(j) and shall:

(1) be a current certified UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an

immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Executive Secretary.

(2) The UST operator inspection shall document that:

(A) release detection systems are properly operating and maintained;

(B) spill, overfill, vapor recovery, and corrosion protection systems are in place and operational;

(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;

(D) the tag or other identifying method issued under Subsection 19-6-411(7) is properly in place on each tank;

(E) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and

(F) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated April 30, 2009, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Executive Secretary may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Executive Secretary, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy

Policy Act, Class A, B, and C operator responsibilities, spill prevention, overflow prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Executive Secretary, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Executive Secretary, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Executive Secretary determines that the operator meets all the requirements for registration, the Executive Secretary shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility;

or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h);

(C) failure to have the tag or other identifying method issued under Subsection 19-6-411(7) properly in place on each tank; or

(D) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Executive Secretary.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Executive Secretary within 30 days of the re-training. If the documentation is not received, the Executive Secretary may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Executive Secretary within six months of the date of determination of non-compliance, the Class A or B operator's registration will lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Executive Secretary determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures
Date of Enactment or Last Substantive Amendment: [~~August 29, 2011~~]2012
Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

**Environmental Quality, Radiation
Control
R313-17
Administrative Procedures**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35416
FILED: 11/10/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the June 2011 meeting, the Radiation Control Board held a discussion about changing Rule R313-17 so that notices concerning public comment and an opportunity to provide comment involved certain types of radioactive material licensees with major licensing actions.

SUMMARY OF THE RULE OR CHANGE: This amendment to Rule R313-17 defines what licensing actions are considered to be major actions and the amendment requires that a public notice be issued and a public comment period be held for license categories 2b and c, 4a, b, c, d, and 6 as identified in Section R313-70-7. The amendment also allows the Executive Secretary to give a public notice of and provide an opportunity to comment on other licensing actions of interest.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Agency budget may face expenditures up to \$1,000 per calendar year to issuing public notices. The costs for responding to comments received on a major licensing action are unknown as the number and extent of comments cannot be predicted.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings for local governments since they are not impacted by this rulemaking.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings for small businesses since they are not affected by this rulemaking.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings for persons other than small businesses, businesses, or local government entities since they are not impacted by this rulemaking.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The budget of the Utah Department of Environmental Quality Division of Radiation Control is the only affected entity and the costs are the same as those discussed above, under "state budget".

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Agency budget may face expenditures up to \$1,000 per calendar year to issuing public notices. The costs for responding to comments received on a major licensing action are unknown as the number and extent of comments cannot be predicted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/12/2012

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation.

R313-17. Administrative Procedures.

R313-17-1. Authority.

The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205.

R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary shall give public notice of [;] and provide an opportunity to comment on the following [~~actions~~]:

- (a) A [P] proposed major licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in Section R313-70-7 [~~or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal~~].

(i) Major licensing actions include:

- (A) Pending issuance of a new license.
(B) Pending issuance of a license renewal.
(C) Pending approval of a license termination.
(D) An increase in process, storage, or disposal capacity.
(E) A geographic expansion.
(F) A change in engineering design, construction, or process controls that will more than likely cause an individual to receive a higher total effective dose equivalent or increase the annual quantity of radioactive effluents released to the environment.
(G) A decrease in environmental monitoring or sampling frequency.
(H) Pending approval of reclamation, decontamination or decommissioning plans.
(I) Pending approval of corrective actions to control or remediate existing radioactive material contamination, not already authorized by a license.
(J) A licensing issue the Executive Secretary deems is of significant public interest.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) The Executive Secretary may elect to give public notice of and provide an opportunity to comment on licensing actions that do not include the actions in Subsection R313-17-2(1)(a)(i), for all license categories identified in Section R313-70-7.

([2]3) Public notice shall allow at least 30 days for public comment.

([3]4) Public notice may describe more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

([4]5) Public notice shall be given by one or more of the following methods:

(a) Publication in a newspaper of general circulation in the area affected by the proposed action,

(b) Publication on the Division of Radiation Control website, or

(c) Distribution by an electronic mail server.

R313-17-3. Administrative Procedures.

Administrative proceedings under the Radiation Control Act are governed by Rule R305-6.

KEY: administrative procedures, comments, hearings, adjudicative proceedings

Date of Enactment or Last Substantive Amendment: [~~August 31, 2011~~]2012

Notice of Continuation: July 7, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 63G-4-102; 63G-4-201 through 63G-4-205

Environmental Quality, Radiation Control

R313-22-75

Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35417

FILED: 11/10/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for amending this rule is to maintain compatibility between the Utah Radiation Control Rules and regulations promulgated by the U.S. Nuclear Regulatory Commission.

SUMMARY OF THE RULE OR CHANGE: Subsection R313-22-75(9)(b)(v) omitted some text that is found in 10 CFR 32.72(b)(5)(iv). To maintain the necessary level of compatibility between federal and state requirements for the transboundary regulation of radioactive materials, the Board needs to insert: (1) "or Commission master materials permittee" before "of broad scope" and (2) "or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist" after "of broad scope ..."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-3-108

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because this amendment clarifies what information a licensee is to submit to the Executive Secretary.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because this amendment clarifies what information a licensee is to submit to the Executive Secretary. There are no local governments with a radioactive materials license affected by this rulemaking.

♦ **SMALL BUSINESSES:** There are less than six small businesses involving the human use of radioactive material that may be affected by this rulemaking. In those cases where a licensee must send the required information to the Executive Secretary, the cost is expected to be less than \$5 per licensee.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because there are no such entities with a radioactive material license and affected by this rulemaking.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In those cases where an affected licensee must send the required information to the Executive Secretary, the cost is expected to be less than \$5 per licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact this rule may have on businesses is very small. In those cases where an affected licensee must submit required information to the Executive Secretary, the cost is estimated to be less than \$5 per licensee.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/12/2012

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

.....

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Executive Secretary:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices

containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Executive Secretary for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(e) in determining the acceptable interval for test of leakage of radioactive material, the Executive Secretary shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

- (v) form of contained radioactive material,
- (vi) maximum temperature withstood during prototype tests,
- (vii) maximum pressure withstood during prototype tests,
- (viii) maximum quantity of contained radioactive material,
- (ix) radiotoxicity of contained radioactive material, and
- (x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

.....

KEY: specific licenses, decommissioning, broad scope, radioactive materials
Date of Enactment or Last Substantive Amendment:
~~December 14, 2010~~ 2012
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control
R313-36
Special Requirements for Industrial Radiographic Operations

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 35418
 FILED: 11/10/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A five-year review of this rule was recently completed and it was noted that substantive changes are needed. One important change involves updating the date of materials incorporated by reference. Other changes add clarity to the rule.

SUMMARY OF THE RULE OR CHANGE: The date of 10 CFR 34, which is incorporated by reference in Rule R313-36, is to be changed from 2006 to 2011. There are other changes that clarify the specific sections of 10 CFR 34 being incorporated by reference, clarify what is being excluded from the incorporation, and add clarity to the wording or rule references involving substitutions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Section 19-3-108

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Updates 10 CFR 34, published by Government Printing Office, 01/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because this amendment does not add to or remove elements from the regulatory program administered by the Executive Secretary.
- ♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government budgets because there are no local government entities with a radioactive material license affected by this rulemaking.
- ♦ **SMALL BUSINESSES:** There are approximately ten small businesses with a radioactive material license impacted by this rulemaking. However, there is no anticipated cost or savings for small businesses because this amendment does not add to or remove elements from the regulatory program administered by the Executive Secretary.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because there are no such entities with a radioactive material license affected by this rulemaking.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs or savings for affected persons because this amendment does not add to or remove elements from the regulatory program administered by the Executive Secretary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment does not add to or remove elements from the regulatory program administered by the Executive Secretary, so there are no fiscal impacts on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/12/2012

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.**R313-36. Special Requirements for Industrial Radiographic Operations.****R313-36-1. Purpose and Authority.**

(1) The rules in R313-36 prescribe requirements for the issuance of licenses and establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of R313-36 are in addition to, and not in substitution for, the other requirements of these rules.

R313-36-2. Scope.

(1) The requirements of R313-36 shall apply to licensees using radioactive materials to perform industrial radiography.

(2) The requirements of R313-36 shall not apply to persons using electronic sources of radiation to conduct industrial radiography.

R313-36-3. Clarifications or Exceptions.

For purposes of R313-36, 10 CFR 34.3; 34.13; 34.20(a) (1); 34.20(b) through 34.41(b); 34.42(a) through 34.42(c); 34.43(a) (1); 34.43(b) through 34.45(a)(8); 34.45(a)(10) through 34.101 ([2006]2011), [is]are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) [~~10 CFR sections: "34.1", "34.5", "34.8", "34.11", "34.121", and "34.123";~~

(2) The exclusion of "10 CFR 34.45(a)(9)";

(3) The exclusion of the following 10 CFR references within 10 CFR 34: "21", "Sec. 21.21", "30.7", "30.9", and "30.10";

(4) The exclusion of "offshore" in 10 CFR 34.3 definition for "offshore platform radiography"]In 10 CFR 34.3, exclude definitions for "Lay-barge radiography," "Offshore platform radiography," and "Underwater radiography";

(b) In 10 CFR 34.27(d), exclude "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation."; and

(c) In 10 CFR 34.27(e), exclude "Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph."

([5]2) The substitution of the following wording:

(a) "radioactive materials" for references to "byproduct materials";

(b) "Utah Radiation Control Rules" for [the-]references to:

(i) "Commission's regulations" [~~except as stated in R313-36-3(5)(f)];~~

(ii) "Federal regulations";

(iii) "NRC regulations"; and

(iv) "Commission regulations." [this chapter" as stated in 10 CFR 34.101(1)(a)];

([b]c) "Executive Secretary" for [the-]references to: ["Commission", except as stated in 10 CFR 34.20 and R313-36-3(5)(e)(iv);]

(i) "Commission";

(ii) "appropriate NRC regional office listed in Section 30.6(a)(2)";

(iii) "Director, Office of Federal and State Materials and Environmental Management Programs" except as used in 10 CFR 34.43(a)(1); and

(iv) "NRC's Office of Federal and State Materials and Environmental Management Programs";

([e]d) "Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State" for references to:

(i) "NRC or an Agreement State"; and

(ii) ["Commission or by an Agreement State";

— and (iii) —] "Commission or an Agreement State"; [and

— and (iv) —] "Commission" in 10 CFR 34.43(a)(2);]

([d]e) "Executive Secretary, the U.S. Nuclear Regulatory Commission, or by an Agreement State" for references to "Commission or by an Agreement State";

(f) "License(s)" for references to "NRC license(s)"; ["License" for reference to "NRC license(s)";]

([e]g) "NRC or Agreement State License" for references to "Agreement State license"; and

(h) "the Utah Radiation Control Rules" for references to "this chapter, such as Section 21.21." [In 10 CFR 34.27(d), "reports of test results for leaking or contaminated sealed sources shall be made pursuant to R313-15-1208."; for reference to the following statements:

(i) "A report must be filed with the Director of Nuclear Material Safety and Safeguards, by an appropriate method listed in Sec. 30.6(a) of this chapter, the report to be filed within 5 days of any test with results that exceed the threshold in this paragraph (d); and to describe the equipment involved, the test results, and the corrective action taken."; and

(ii) "A copy of the report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission's Regional Office listed in appendix D of 10 CFR part 20 of this chapter "Standards for Protection Against Radiation.";

(f) In 10 CFR 34.27(d), "R313-15-401(6)" for the reference to "Commission regulations";

(g) In 10 CFR 34.43(a)(1), "10 CFR 30.6" for the reference to "Sec. 30.6(a) of this chapter";

(h) In 10 CFR 34.89, "a U.S. Nuclear Regulatory Commission or an Agreement State" for the reference to "the Agreement State";

(i) In 10 CFR 34.101(a), "Executive Secretary" for the following wording:

"NRC's Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, by an appropriate method listed in Sec. 30.6(a) of this chapter";

(j) In 10 CFR 34.101(e), "Executive Secretary" for the reference to "appropriate NRC regional office listed in 10 CFR 30.6(a)(2) of this chapter";

(k) In Item 12, Section I of Appendix A to 10 CFR 34, "Executive Secretary, the U.S. Nuclear Regulatory Commission and other independent certifying organizations and/or Agreements States" for the reference to "Commission and other independent certifying organizations and/or Agreement States";

(l) In Item 1, Section II of Appendix A to 10 CFR 34, "equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations" for the reference to "equivalent Agreement State regulations"; and

(m) In Item 2(e), Section II of Appendix A to 10 CFR 34, "a Utah, U.S. Nuclear Regulatory Commission, or an Agreement State licensee" for the reference to "an Agreement State or a NRC licensee"; and]

([6]3) The substitution of the following rule [R313-]references for specific 10 CFR-]references:

(a) ["R313-12-55(1)"] for reference to "10 CFR 34.111"] in 10 CFR 34.51, "R313-12" for references to "10 CFR part 20 of this chapter";

(b) "R313-15" for [the-]references to "10 CFR part 20" and "10 CFR part 20 of this chapter" except as found in 10 CFR 34.51;

(c) "R313-15-601(1)(a)" for [the-]references to "[40-CFR]Section 20.1601(a)(1) of this chapter";

(d) "R313-15-902(1) and (2)" for [the-]references to "10 CFR 20.1902(a) and (b) of this chapter";

(e) "R313-15-903" for [the-]references to "[40-CFR]Section 20.1903 of this chapter";

(f) "R313-15-1203" for [the-]references to "10 CFR 20.2203" and "Section 20.2203 of this chapter";

(g) ["R313-18" for the reference to "10 CFR 19"] "R313-12-110" for references to "Section 30.6(a) of this chapter" except as used in 10 CFR 34.43(a)(1);

(h) "R313-19-30" for [the-]references to "[40-CFR]Section 150.20 of this chapter";

(i) "R313-19-50" for [the-]references to "[See-]Section 30.50";

(j) "R313-19-100" for [the-]references to "10 CFR part 71", ["10-CFR 71.5",] and "49 CFR parts 171 [to]- 173";

(k) "R313-22-33" for [the-]references to "[40-CFR]Section 30.33 of this chapter"; [and]

(l) "R313-36" for [the-]references to ["40-CFR-34-."] "NRC regulations contained in this part";

(m) "R313-19-100(5)" for references to "Section 71.5 of this chapter"

(n) "R313-19-5" for references to "Sections 30.7, 30.9, and 30.10 of this chapter."

KEY: industry, radioactive material, licensing, surveys

Date of Enactment or Last Substantive Amendment: [~~March 16, 2007~~]2012

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Solid and Hazardous Waste

R315-16

Standards for Universal Waste Management

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35431

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) provides for delegation of the hazardous waste program to states to administer in lieu of the U.S. Environmental Protection Agency (EPA). In order to receive authorization from EPA for the hazardous waste program, states must have and demonstrate equivalent legal authorities and regulations to those of the federal government for the management of hazardous waste. Changes to the federal hazardous waste laws and regulations require states to update and amend their laws and rules in order to maintain program equivalency for state primacy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.

♦ **LOCAL GOVERNMENTS:** The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.

♦ **SMALL BUSINESSES:** The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3097

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Allan Moore by phone at 801-536-0211, by FAX at 801-536-0222, or by Internet E-mail at allanmoore@utah.gov
 ◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/20/2012

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.**R315-16. Standards for Universal Waste Management.****R315-16-1. General.**

1.1 SCOPE

(a) This rule establishes requirements for managing the following:

- (1) Batteries as described in section 1.2;
- (2) Pesticides as described in section 1.3;
- (3) ~~Thermostats~~ Mercury-containing equipment as described in section 1.4; and

(4) Mercury-containing lamps as described in section 1.5.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

1.2 APPLICABILITY - BATTERIES

(a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section 1.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under R315-14-6.

(2) Batteries, as described in section 1.9, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section 1.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(2) An unused battery becomes a waste on the date the handler decides to discard it.

1.3 APPLICABILITY - PESTICIDES

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section 1.9, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b),

including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-7. R315-5-7 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a) (2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not

decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

1.4 APPLICABILITY - MERCURY[~~THERMOSTATS~~]-CONTAINING EQUIPMENT

(a) [~~Thermostats~~Mercury-containing equipment covered under R315-16. The requirements of this section apply to persons managing [~~thermostats~~mercury-containing equipment, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) [~~Thermostats~~Mercury-containing equipment not covered under R315-16. The requirements of this section do not apply to persons managing the following [~~thermostats~~mercury-containing equipment:

(1) [~~Thermostats~~Mercury-containing equipment that are not yet wastes under R315-2. Paragraph (c) of this section describes when [~~thermostats~~mercury-containing equipment becomes wastes.

(2) [~~Thermostats~~Mercury-containing equipment that are]is not hazardous waste. [~~A thermostat~~Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste [~~thermostats~~mercury-containing equipment.

(1) [~~A u~~]Used [~~thermostat~~mercury-containing equipment becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) [~~An u~~]Unused [~~thermostat~~mercury-containing equipment becomes a waste on the date the handler decides to discard it.

1.5 APPLICABILITY - LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of R315-16 do not apply to persons managing the following lamps:

(1) Lamps that are not yet wastes under R315-2 as provided in paragraph (c) of this section.

(2) Lamps, that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9(a) and (d) - (g).

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused lamp becomes a waste on the date the handler decides to discard it.

1.8 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section 1.9; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section 1.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

1.9 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(c) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

(d) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(e) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or [~~thermostats~~mercury-containing equipment, calculated collectively, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(g) "Mercury-containing equipment" means a device or part of a device, including thermostat, but excluding batteries and lamps, that contains elemental mercury integral to its function.

([g]h) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

([h]i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

(~~i~~) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or [~~thermostats~~]mercury-containing equipment, calculated collectively, at any time.

(~~j~~) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

(~~k~~) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

- (1) Batteries as described in section 16-1.2;
- (2) Pesticides as described in section 16-1.3;
- (3) [~~Thermostats~~]mercury-containing equipment as described in section 16-1.4; and
- (4) Lamps as described in section 16-1.5.

(~~l~~) "Universal Waste Handler":

- (1) Means:
 - (i) A generator, as defined in this section, of universal waste;

or

- (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

- (i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or

- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(~~m~~) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

(~~n~~) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: [~~August 15, 2002~~]2012

Notice of Continuation: May 27, 2010

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste R315-312-1 Recycling and Composting Facility Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35432

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Executive Secretary no longer requires a compliance schedule for applicable facilities of this section.

SUMMARY OF THE RULE OR CHANGE: This rule change eliminates the requirement that Recycling and Composting facilities be placed on a compliance schedule. All existing facilities have approved plans of operation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-108

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no cost or savings impact for the state budget as there are no facilities to which this rule would apply.

- ◆ **LOCAL GOVERNMENTS:** There will be no cost or savings impact for the local government as there are no facilities to which this rule would apply.

- ◆ **SMALL BUSINESSES:** There will be no cost or savings as there are no facilities to which this rule would apply.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings as there are no facilities to which this rule would apply.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change removes parts of the rule which do not effect any facilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses as no facilities exist that will be affected by the change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ♦ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/20/2012

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-312. Recycling and Composting Facility Standards.

R315-312-1. Applicability.

(1) The standards of Rule R315-312 apply to any facility engaged in recycling or utilization of solid waste on the land including:

- (a) composting;
- (b) utilization of organic sludge, other than domestic sewage sludge and septage, and untreated woodwaste on land for beneficial use; and
- (c) accumulation of wastes in piles for recycling or utilization.

(2) These standards do not apply to:

(a) animal feeding operations, including dairies, that compost exclusively manure and vegetative material and meet the composting standards of a Comprehensive Nutrient Management Plan;

(b) other composting operations in which waste from on-site is composted and the finished compost is used on-site; or

(c) hazardous waste.

(3) These standards do not apply to any facility that recycles or utilizes solid wastes solely in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers.

(4) The composting of domestic sewage sludge, on the site of its generation, is exempt from the requirements of Rule R315-312 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality. [

~~(5) Effective dates. An existing facility recycling or composting solid waste shall be placed upon a compliance schedule to assure compliance with the requirements of Rule R315-312 on or before a date established by the Executive Secretary.]~~

KEY: solid waste management, waste disposal

Date of Enactment or Last Substantive Amendment: [February 1, 2007] 2012

Notice of Continuation: February 14, 2008

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

Environmental Quality, Solid and Hazardous Waste **R315-315-5** Special Waste Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35433

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The ban on disposal of free liquids is in another part of the rule and not needed here.

SUMMARY OF THE RULE OR CHANGE: This rule change eliminates certain requirements for disposal of sludge in a landfill.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Because disposal of free liquids exists elsewhere in rule, removing the duplicate requirement creates no costs or savings.

♦ **LOCAL GOVERNMENTS:** Because disposal of free liquids exists elsewhere in rule, removing the duplicate requirement creates no costs or savings.

♦ **SMALL BUSINESSES:** Because disposal of free liquids exists elsewhere in rule, removing the duplicate requirement creates no costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because disposal of free liquids exists elsewhere in rule, removing the duplicate requirement creates no costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because disposal of free liquids exists elsewhere in rule, removing the duplicate requirement creates no costs or savings and there will be change in compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ♦ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/20/2012

AUTHORIZED BY: Scott Anderson, Director

**R315. Environmental Quality, Solid and Hazardous Waste.
 R315-315. Special Waste Requirements.
 R315-315-5. Sludge Requirements.**

- (1) [~~Sludges containing free liquids may not be disposed in a landfill with other solid waste.~~
- (2)] Sludges, if they contain no free liquids, may be placed in the landfill working face and covered with other solid waste or other suitable cover material.
- (3) (2) Disposal of any type of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

KEY: solid waste management, waste disposal
Date of Enactment or Last Substantive Amendment: [May 15, 2009] 2012
Notice of Continuation: February 14, 2008
Authorizing, and Implemented or Interpreted Law: 19-6-105

**Environmental Quality, Solid and
 Hazardous Waste
 R315-320-2
 Definitions**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 35434
 FILED: 11/15/2011**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To eliminate a definition used in the Waste Tire Transporter and Recycler Requirements.

SUMMARY OF THE RULE OR CHANGE: This rule change eliminates the definition of the vehicle identification number. The term is defined in other rules and not needed here.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-819

- ANTICIPATED COST OR SAVINGS TO:
- ♦ THE STATE BUDGET: Because this definition is found elsewhere in rule, removing the duplicate definition creates no costs or savings.
 - ♦ LOCAL GOVERNMENTS: Because this definition is found elsewhere in rule, removing the duplicate definition creates no costs or savings.
 - ♦ SMALL BUSINESSES: Because this definition is found elsewhere in rule, removing the duplicate definition creates no costs or savings.
 - ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this definition is found elsewhere in rule, removing the duplicate definition creates no costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this definition is found elsewhere in rule, removing the duplicate definition creates no costs or savings impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov
 ♦ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmm Mercer@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/20/2012

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.**R315-320. Waste Tire Transporter and Recycler Requirements.****R315-320-2. Definitions.**

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 19-6-803. In addition, for the purpose of Rule R315-320, the following definitions apply:

(1) "Demonstrated market" or "market" means the legal transfer of ownership of material derived from waste tires between a willing seller and a willing buyer meeting the following conditions:

(a) total control of the material derived from waste tires is transferred from the seller to the buyer;

(b) the transfer of ownership and control is an "arms length transaction" between a seller and a buyer who have no other business relationship or responsibility to each other;

(c) the transaction is done under contract which is documented and verified by orders, invoices, and payments; and

(d) the transaction is at a price dictated by current economic conditions.

(e) the possibility or potential of sale does not constitute a demonstrated market.]

~~(2) "Vehicle identification number" means the identifying number assigned by the manufacturer or by the Utah Motor Vehicle Division of the Utah Tax Commission for the purpose of identifying the vehicle.]~~

~~(3)~~(2) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

KEY: solid waste management, waste disposal

Date of Enactment or Last Substantive Amendment: [February 1, 2007]2012

Notice of Continuation: February 17, 2009

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-819

Health, Disease Control and
Prevention, Environmental Services
R392-100
Food Service Sanitation

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 35445

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to incorporate the most recent science on food safety as reflected in the 2009 Food and Drug Administration (FDA) model food code which has been adopted by FDA and was approved by academia, regulatory, and industry representatives at the Conference for Food Protection. The Conference meets every two years to consider changes to the model food code, and send recommendations to FDA to consider in their update of the code which occurs every four years. The current Utah rule is based on the 2005 FDA Model Food Code.

SUMMARY OF THE RULE OR CHANGE: The proposed rule will adopt the FDA 2009 model food code by reference, with minor amendments including a reference to clarify the requirement of food handlers to hold a permit issued by the local health department and a safety requirement for food service facilities to secure carbon dioxide tanks from falling over. These two amendments were previously in the Utah rule and are currently being enforced through local and occupational safety and health regulation, and have been added back into state food service rule. There are four plumbing amendments which update the FDA reference to the latest International Plumbing code which is in effect in Utah. The FDA model code outlines three risk categories of violations: Core, Priority, and Priority Foundation. To avoid confusion with industry, the Utah code will continue to use the current terms of critical and non critical. Core will be referred to as Non Critical, Priority will be Critical 1, and Priority Foundation will be Critical 2. The amendments noted in chapter 8 are made to keep the enforcement of the code the same as is now enforced in rule. Some changes in the FDA 2009 model code are incorporated as a result of the findings of recent food-borne illness investigations which will help to prevent future outbreaks. The changes include cut leafy greens to now be categorized as a food which requires time or temperature control for safety (TCS) and meats that are mechanically tenderized to now be heated to 155 for 15 seconds before serving. Additional changes include outlining the requirements for noncontinuous cooking, modifying the requirements for the storage of raw and ready to eat foods, not allowing the sale of undercooked meat from a children's menu, clarifying that a variance is required when operating a molluscan shellfish life support system display tank, clarifying the variance requirements for Reduced Oxygen Packaging methods, requiring a Hazardous Analysis Critical Control Point Plan for cook-chill and sous vide cooking methods, and enhancing or clarifying requirements related to the effective cleaning and sanitizing of equipment and surfaces.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates FDA 2009 model food code, published by United States Public Health Services, United States Food and Drug Administration, 11/10/2009

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The adoption of the new amendment will not cause additional work to the state, and will not impose additional costs to the state budget.

◆ **LOCAL GOVERNMENTS:** Local health departments will need to train their inspectors on the new requirements. There will be some costs to train employees to the new version of the food code, however, it will be minimal. The training can be included within existing staff training meetings already held on a continuing basis.

◆ **SMALL BUSINESSES:** Almost all food service establishments employ less than 50 persons. There will be some costs to train employees to the new version of the food code, however, it will be minimal as food establishments already are required by the current food code to train employees on a continuing basis. The training can be included within existing staff training meetings already held at food service establishments.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be some costs to train employees to the new version of the food code, however, it will be minimal as food establishments already are required by the current food code to train employees on a continuing basis. The training can be included within existing staff training meetings already held at food service establishments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the food service establishments have no additional costs, there are not expected additional costs for an individual person or any individual entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Prior to recommending that the food code be updated to adopt the 2009 FDA model food code, Department of Health personnel met with local health departments, the Utah Department of Agriculture and Food, and a standing advisory committee which includes representatives from the Utah Restaurant Association, Associated Foods, Kroger Foods, McDonalds, and Harmons. Public input to date supports the cost analysis as being neutral and that adoption of the 2009 code is beneficial to business, with the Utah modifications reflected in the rule. This will be carefully evaluated again after the public comment period.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:

◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.

R392-100. Food Service Sanitation.

R392-100-1. Authority and Purpose.

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 200[5]2, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-[8]205.40, and 8-[8]209.20; and

(2) with the following additions or amendments:

(a) In section 1-201.10, insert a new paragraph after paragraph (2) under Core Item to read: "(3) 'Core Item' will also be referred to as 'non-critical' in the state rule."

(b) In section 1-201.10 under Priority Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and insert a new paragraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."

(c) In section 1-201.10 under Priority Foundation Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and add a new paragraph after paragraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."

(d) After section 2-102.11 paragraph (17), add a new section to read: "2-102-12 Food Employee Training.

Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food handler's permit issued by a local health department."

(e) After section 4-204-123 paragraph (B), add a section to read: "4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over. Food managers shall be trained and certified as required under 26-15a and R392-101."

(f) At the end of section 5-101.12, add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

~~(g) At the end of section 5-202.13, add: "Where the distance to the adjacent wall is closer than three pipe diameters, the air gap shall not be less than 1-1/2 inch."~~

~~(h) After the the reference to the section number "5-202.13" in section 5-203.15 paragraph (A), delete the article "a" and insert: "an American Society of Safety Engineers (ASSE) 1022".~~

~~(i) After the reference to paragraph (B) in section 5-402.11 paragraph (A), delete the comma; insert the word "and"; and delete the text, ", and (D)" that follows the reference to paragraph (C).~~

~~(j) Delete paragraph (D) from section 5-402.11.~~

~~([a]k) Amend section 8-103.10 to read:~~

~~"8-103.10 Modifications and Waivers.~~

~~(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.~~

~~(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.~~

~~(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."~~

~~([b]l) Amend section 8-103.11 to add:~~

~~"(D) In addition, a variance from section 3-301.11 may be issued only when:~~

~~(1) the variance is limited to a specific task or work station;~~

~~(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;~~

~~(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and~~

~~(4) the applicant can demonstrate active management control of this risk factor at all times."~~

~~([e]m) Amend Section 8-302.14 (C) to read:~~

~~"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."~~

~~[~~(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).~~~~

~~([e]n) Amend section 8-304.10 paragraph (A) to read:~~

~~"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."~~

~~[~~(f) Amend section 8-304.11(J) to read:~~~~

~~Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:~~

~~(g) Amend section 8-304.11(K) to read:~~

~~Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and~~

~~([h]o) Amend section 8-401.10 paragraph (A) to read:~~

~~"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."~~

~~([i]p) Amend section 8-501.10 paragraph (B) to read:~~

~~"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and"~~

~~([j]q) Add ~~[section]a paragraph after 8-501.10 paragraph ([C]B) to read:~~~~

~~"(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."~~

~~([k]r) Amend section 8-601.10 to read:~~

~~"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."~~

~~([l]s) Amend section ~~[8-701.30]8-801.30 to read:~~~~

~~"Service is effective at the time the notice is served or when service is made as specified in section ~~[8-701.20]8-801-20 paragraph (B)."~~~~

~~([m]t) Amend section ~~[8-803.10]8-903.10 to read:~~~~

~~"~~[8-803.10]8-903.10 Impoundment of Adulterated Food Products Authorized.~~~~

~~(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.~~

~~(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,~~

~~(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and~~

~~(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping."~~

~~([n]u) Amend section ~~[8-803.60]8-903.60 to read:~~~~

~~"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."~~

~~([o]v) Amend section ~~[8-803.90]8-903.90 to read:~~~~

~~"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."~~

~~([p]w) Amend section ~~[8-804.30]8-904.30~~~~

~~number/catchline to read: ~~[8-804.30]8-904.30 Contents of the Summary Suspension Notice."~~~~

~~([q]x) Amend section ~~[8-805.10]8-905.10 paragraph (A)~~~~

~~to read: ~~"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."~~~~

~~([r]y) Amend section ~~[8-805.20]8-905.20 to read:~~~~

~~"A response to a hearing notice or a request for a hearing as specified in section ~~[8-805.10]8-905.10 shall be in written form and contain the following:~~~~

(A) Response to a notice of hearing must include:
 (1) An admission or denial of each allegation of fact;
 (2) A statement as to whether the respondent waives the right to a hearing;
 (3) A statement of defense, mitigation, or explanation concerning all claims; and
 (4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section ~~[8-805.30]~~8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

([s]z) Amend section ~~[8-805.50]~~8-905.50 paragraph (A) (1) to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

([t]aa) Adopt subsections ~~[8-805.50]~~8-905.50 paragraphs(A)(1)(a) through (c) without changes.

([v]ab) Amend subsection ~~[8-805.50]~~8-905.50 paragraph(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section ~~[8-805.10]~~8-905.10(C) or for matters as determined necessary by the regulatory authority."

([w]ac) Amend section ~~[8-805.60]~~8-905.60 number/catchline to read:

"~~[8-805.60]~~8-905.60 Notice of Hearing Contents."

([w]ad) Amend section ~~[8-805.80]~~8-905.80 number/catchline to read:

"~~[8-805.80]~~8-905.80 Expedient and Impartial Hearing."

([x]ae) Amend section ~~[8-805.90]~~8-905.90 number/catchline to read:

"~~[8-805.90]~~8-905.90 Confidentiality of Hearing and Proceedings."

([y]af) Amend section ~~[8-805.90]~~8-905.90 paragraph (A) to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(ag) Delete section 8-905.90 subparagraphs (A)(1) and (2).

([z]ah) Amend section ~~[8-806.30]~~8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

([aa]ai) Adopt subsection[s] ~~[8-806.30]~~8-906.30 paragraphs (B)(1) through (2) without changes.

([ab]aj) Amend section ~~[8-807.60]~~8-907.60 to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

([ae]ak) Amend section ~~[8-808.20]~~8-908.20 to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

([af]al) Amend section ~~[8-811.10]~~8-911.10 paragraph (B) to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6."

([ae]am) Amend section ~~[8-813.10]~~8-913.10 number/catchline to read:

"~~[8-813.10]~~8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

([af]an) Amend section ~~[8-813.10]~~8-913.10 paragraph (B) to replace the phrase "(designate amount)" with the phrase,

"\$5,000".

([ag]ao) Add paragraph ~~[8-813.10]~~8-913.10(D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

(3) ~~[The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-56-701(1)(e), and R156-56-803 are adopted and incorporated by reference]~~All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature under. A copy of the construction code is available at the office of the local building inspector.

KEY: public health, food services, sanitation

Date of Enactment or Last Substantive Amendment: ~~[March 15, 2010]~~2012

Notice of Continuation: March 22, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-305** Resources

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35437

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify language in the text and to make other minor corrections.

SUMMARY OF THE RULE OR CHANGE: This change clarifies provisions in the rule to make certain sections consistent. It also makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies certain provisions in the rule text.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not determine Medicaid eligibility or fund Medicaid services.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies certain provisions in the rule text.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only clarifies certain provisions in the rule text.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to Medicaid recipient because this change only clarifies certain provisions in the rule text.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Although no cost is predicted by the Department analysis, by making the rule internally consistent and making the other corrections, compliance should be facilitated and the regulatory burden minimized.

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 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-305. Resources.****R414-305-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.**

(1) To determine resource eligibility of an individual on the basis of being aged, blind or disabled, the Department incorporates by reference 42 CFR 435.840, 435.845, 2010 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, 2010 ed. The Department incorporates by reference Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 2011. The eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency applies the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is \$2,000 for a one-person household and \$3,000 for a two-person household.

(4) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is \$15,000. This limit applies whether the household size is one or more than one.

(5) The eligibility agency shall base non-institutional and institutional Medicaid eligibility on all available resources owned by the individual, or considered available to the individual from a spouse or parent. The eligibility agency may not grant eligibility based upon the individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 2010 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

(6) The eligibility agency may not count any resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act. Any money from the resource that is given to the child as unearned income is a countable resource that begins the month after the child receives it.

(7) The eligibility agency shall count the resources of a ward that are controlled by a legal guardian as the ward's resources.

(8) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(9) If a resource is available, but a legal impediment exists, the eligibility agency may not count the resource until it becomes available. The individual must take appropriate steps to

make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource exists:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(10) Water rights attached to the home and the lot on which the home sits are exempt as long as the home is the individual's principal place of residence.

(11) For an institutionalized individual, the eligibility agency may not consider a home or life estate to be an exempt resource.

(12) To determine eligibility for nursing facility or other long-term care services, the eligibility agency shall exclude the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

(13) Even if the conditions in Subsection R414-305-3(12) are met, an individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds \$500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services.

(14) For A, B and D Medicaid, the eligibility agency may not count up to \$6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(15) The eligibility agency may retroactively designate for burial a previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231, and thereby exempt the resource effective the first day of the month in which it was designated for burial or intended for burial. The eligibility agency may not exempt the funds more than two years retroactively before the date of application. The eligibility agency shall treat the resources as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

(16) One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

(17) The eligibility agency may not count resources of an SSI recipient who has a plan for achieving self-support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self-support goals.

(18) The eligibility agency may not count an irrevocable burial trust as a resource. Nevertheless, if the owner is institutionalized or on home and community-based waiver Medicaid, the value of the trust, which exceeds \$7,000, is considered a transferred resource.

(19) The eligibility agency may not count business resources that are required for employment or self-employment.

(20) For the Medicaid Work Incentive Program, the eligibility agency may not count the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

(21) After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the resources described in Subsection R414-305-3(20) to allow the individual to qualify for other Medicaid programs for the aged, blind or disabled, and not solely the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

(22) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(23) The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(24) The eligibility agency may not count as ~~income~~ resource any federal tax refund and refundable credit that an individual receives between ~~January~~ April 1, 201~~0~~1, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296. During that time period, the eligibility agency may not count state tax refunds as a resource for 12 months after the month of receipt.

(25) The eligibility agency may not count the following resources that an individual receives after December 31, 2012:

(a) Amounts that an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt;

(b) Amounts that an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt;

(c) Tax credits described in 20 CFR 416.1235 that relate to child tax credits and earned income tax credits for nine months after the month of receipt;

(d) Amounts that an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(26) The eligibility agency may not count as ~~income~~ resource, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account

Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count ~~[as income]~~the following as countable resources~~[-the following resources]~~:

(a) The value of any reduction in Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(b) Certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation~~[-]~~; ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources)~~[-]~~; and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(28) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

(29) Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in Subsection R414-305-3(12).

(c) The individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the individual and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the individual's age. ~~[This figure is used]~~The eligibility agency uses this figure to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700

18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771

93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-4. Family Non-Institutional and Institutional Medicaid Resource Provisions.

(1) [The]To determine resource eligibility for an individual for family-related Medicaid programs, the Department incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), 2010 ed. The Department incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2011. The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2011, the resource limit is \$2,000 for a one-person household, \$3,000 for a two-person household and \$25 for each additional household member. For pregnant women defined above, the resource limit is defined in Section R414-303-11.

(4) Except for the exclusion for a vehicle, the eligibility agency shall use the same methodology for treatment of resources for all medically needy and categorically needy individuals.

(5) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(6) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(7) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(8) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(9) Except for determining countable resources for Family Medicaid under Section 1931 of the Act, the agency shall exclude a maximum of \$1,500 in equity value of one vehicle.

(10) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds \$1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(11) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(12) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(29) shall apply.

(13) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(14) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13), (14), and (29) shall apply to the individual's home or life estate.

(15) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(16) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(17) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(18) The eligibility agency shall count as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(19) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to \$1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The agency shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest

earned on exempt burial funds that is left to accumulate. If an individual uses exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are withdrawn.

(20) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(22) The eligibility agency shall count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(23) For Family Medicaid households who are eligible under Section 1931 of the Act, the eligibility agency may only count as a resource either the equity value of one vehicle that meets the definition of a passenger vehicle as defined in Subsection 26-18-2(6) or \$1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(24) For eligibility under Family-related Medicaid programs, the eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(25) The eligibility agency may not count as ~~[income]~~ a resource any federal tax refund and refundable credit that an individual receives between ~~[January]~~ April 1, 201~~[0]~~, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296. During that time period, the eligibility agency may not count state tax refunds as a resource for 12 months after the month of receipt.

(26) The eligibility agency may not count the following resources that an individual receives after December 31, 2012:

(a) Funds that an individual receives from the Child Tax credit or the Earned Income Tax credit for nine months after the month of receipt. The agency may not count any remaining funds as a resource in the tenth month after receipt;

(b) Amounts that an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt;

(c) Amounts that an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt;

(d) Amounts that an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009,

Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(27) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(28) The eligibility agency may not count as income the following resources:

(a) The value of any reduction in COBRA premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115[-];

(b) Certain property and rights of federally-recognized American Indians including:

(i) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;[-]

(ii) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(iii) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(29) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

KEY: Medicaid, resources

Date of Enactment or Last Substantive Amendment: ~~[June 16, 2011]~~ **2012**

Notice of Continuation: January 31, 2008

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-308
Application, Eligibility Determinations
and Improper Medical Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35441

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to include provisions that treat certain actions by a recipient as an

application for medical assistance, and to not require a recipient to complete a new application form.

SUMMARY OF THE RULE OR CHANGE: This change includes provisions that treat certain actions by a recipient as an application for medical assistance when a recipient cannot complete a timely request for verification. It also clarifies the limitations for these circumstances and clarifies agency procedure for eligibility when a recipient reports a change. It also makes other technical changes to the rule text.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Adds 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960, published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this amendment does not add new services or increase the number of Medicaid eligible individuals.
 ♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not determine Medicaid eligibility or provide Medicaid services.
 ♦ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment does not add new services or increase the number of Medicaid eligible individuals.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment does not add new services or increase the number of Medicaid eligible individuals. In addition, it does not impose new costs on Medicaid recipients or reduce Medicaid coverage. It also creates an easier application process for Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this amendment does not add new services or increase the number of Medicaid eligible individuals. In addition, it does not impose new costs on a Medicaid recipient or reduce Medicaid coverage. This change also creates an easier application process for a Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should simplify application processes for recipients and have no measurable fiscal impact on providers or others.

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 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-308. Application, Eligibility Determinations and Improper Medical Assistance.

R414-308-3. Application and Signature.

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for ~~[Medicaid, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, or Qualified Individuals]~~ medical assistance and delivering it to the ~~[Medicaid]~~ eligibility agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the ~~[Medicaid]~~ eligibility agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) ~~[For]~~When completing an on-line application[s], the individual must either send the ~~[Medicaid]~~ eligibility agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the ~~[Medicaid]~~ eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The ~~[Medicaid]~~ eligibility

agency may assign someone to act as the authorized representative when the individual requires help to apply and is unable to appoint a representative.

(2) The application date is the day that the eligibility agency receives the request or verification from the recipient. The eligibility agency treats the following situations as a new application without requiring a new application form. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency.

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the open enrollment period requirement during that calendar month for programs subject to open enrollment.

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request in the calendar month that follows the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment.

(d) Except for PCN and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 days after it denies the application. The recipient must complete a new application to reapply for medical assistance.

(e) For PCN and UPP applicants, the eligibility agency treats all verification as a new application during an open enrollment period when it receives the verification within 30 days after sending the denial notice. If the eligibility agency stops enrollment, the applicant must wait for an open enrollment period to reapply.

(3) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply.

(2)4) The [Medicaid]-eligibility agency [will]shall process low-income subsidy application data transmitted from the Social Security Administration in accordance with 42 U.S.C. Sec. 1935(a)(4) as an application for Medicare cost sharing programs. The eligibility agency [will]shall take appropriate steps to gather the required information and verification[s] from the applicant to determine the applicant's eligibility.

(a) Data transmitted from [s]Social [s]Security is not an application for Medicaid.

(b) An [F]individual[s] who wants to apply for Medicaid when contacted for information to process the application for Medicare cost-sharing programs must complete and sign [a Medicaid]a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the [Medicaid]-eligibility agency receives the application for Medicaid.

(3)5) [The Medicaid eligibility agency determines the date of application as follows:]The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday. The following rules apply in determining the application date:

(a) [The date of application is the date that the Medicaid eligibility agency receives a completed application by the close of normal business hours on a week day that is not a Saturday, Sunday or state holiday.]If the eligibility agency receives an application [is received]after the [normal]close of business[hours on a weekday that is not a Saturday, Sunday or state holiday], the date of application is the next [weekday that is not a Saturday, Sunday or state holiday]business day[-];

(b) [The Medicaid eligibility agency determines the application date for applications delivered to an outreach location as follows:

(i) —]If the applicant delivers the application [is delivered]to an outreach location [at a time when the outreach staff is working at that location]during normal business hours, the date of application is th[e]at business da[te]y when[the] outreach staff receive[s] the application[-];

(i) +] If the applicant delivers the application [is delivered] on a non-business day or after normal business hours,[at a time when the outreach office is closed] the date of application is the [last]next business day that a staff person from the [state Medicaid]-eligibility agency [was available to]-receives or picks up the application[s] from that location[-];

(e)c) When the [state]eligibility agency receives application data transmitted from [s]Social [s]Security Administration pursuant to the requirements of 42 U.S.C. Sec. 1396u-5(a)(4), the [Medicaid]-eligibility agency shall use[s] the date that the individual submit[te]d[s] for the low-income subsidy application to the Social Security Administration as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the [Medicaid]-eligibility agency receives the transmitted data[from social security]. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs.

—(d) An applicant must provide the verifications needed to process an application and determine eligibility no later than the close of business on the last day of the application period. If the last day of the application processing period falls on a day of the week when the Medicaid eligibility office is closed, then the applicant has until the close of business on the next day that the Medicaid eligibility agency is open immediately following the last day of the application processing period. An applicant may request more time to provide verifications. The request must be made by the last day of the application processing period.

)] (4)6) The [Medicaid]-eligibility agency shall accept[s] a signed application that an applicant sends [sent via]by facsimile as a valid application[and does not require it to be signed again].

(5)7) If an applicant submits an unsigned[-] or incomplete application form to the [Medicaid]-eligibility agency, the [Medicaid]-eligibility agency [will]shall notify the applicant that he[or she] must sign and complete the application no later than the last day of the application processing period. The [Medicaid]-eligibility agency [will]shall send a signature page to the applicant and give the applicant at least [+0]ten days to sign and return the signature

page. When the application is incomplete, the ~~[Medicaid]~~eligibility agency ~~[will]~~shall notify the applicant of the need to complete the application ~~[through an interview process, by mail, or by coming to an office to complete the form]~~and offer ways to complete the application.

(a) ~~The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application. [I]f the [Medicaid eligibility] agency receives a signed signature page [signed by the applicant, and the applicant completes the] and completed application within the application processing period, the date of application will be the date the Medicaid eligibility agency received the application form that was not complete or signed.~~

(b) If the ~~[Medicaid]~~eligibility agency does not receive a signed signature page~~, and the applicant does not complete the] and completed application form within the application processing period, the application is void and the [Medicaid]~~eligibility agency ~~[will]~~shall send a denial notice to the applicant.~~[The previous application date will not be protected.]~~

(c) ~~[If the Medicaid eligibility agency receives a signed signature page and the completed application after the application processing period but during the 30 calendar days immediately after the denial notice is mailed, the Medicaid eligibility agency will contact the applicant to ask if the applicant wants to reapply for medical assistance. If the applicant wants to reapply, the Medicaid eligibility agency may use the previous application form it received, but the application date will be the date the Medicaid eligibility agency receives both the signed signature page and completed application form according to the same provisions in Subsection R414-308-3(2).] If the eligibility agency receives the signed signature page and completed application within 30 days after the notice of denial date, the date of receipt is the new application date and the provisions of Section R414-308-6 apply.~~

(d) If the ~~[Medicaid]~~eligibility agency receives a signed signature page and ~~[the]~~completed application more than 30 calendar days after it sends the denial notice~~[is sent]~~, the applicant ~~[will need to]~~must reapply by completing and submitting a new application form.~~[The original application date is not retained.]~~ The new application date ~~[will be]~~is the date that the ~~[Medicaid]~~eligibility agency receives a new application.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960, 2010 ed., which are incorporated by reference.

(a) The eligibility agency ~~[will]~~shall provide the ~~[client]~~applicant or recipient a written request of the needed verification.

(b) The ~~[client]~~applicant or recipient has at least ~~[+0]~~ten calendar days from the date that the eligibility agency gives or ~~[mails]~~sends the verification request ~~[to the client]~~ to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request~~[to the client, but not less than 10 calendar days from the date such request is given to or mailed to the client].~~

~~(d) An applicant or recipient must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.~~

~~([d]e) The eligibility agency shall allow the [client]~~additional~~applicant or recipient~~ more time to provide verification if ~~[the client]~~he requests ~~[additional]~~more time by the due date. The eligibility agency shall set a new due date based on what the ~~[client]~~applicant or recipient needs to do to obtain the verification and whether ~~[the client]~~he shows a good faith effort to obtain the verification.

~~([e]f) If an [client has not provided]applicant or recipient does not provide [required] verification by the due date[;] and [has]does not contact[ed] the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application[;] or review, or end eligibility.~~

~~(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.~~

~~(f) If the eligibility agency receives all necessary verification during the 30 days after denying an application for lack of verification, the date the eligibility agency receives all the verification is the new application date. If the eligibility agency receives verification more than 30 days after the application has been denied, the client will need to reapply for medical assistance.~~

(2) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(3) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall ~~[request]~~require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee) (1)(B).

(a) The ~~[applicant]~~individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the ~~[applicant]~~individual fails to provide verification, the eligibility agency shall end[s] eligibility within 30 days after the 90-day period. The eligibility agency ~~[can]~~may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13 through 455.23.

R414-308-7. Change Reporting and Benefit Changes.

(1) A client recipient must report to the eligibility agency reportable changes in the client's recipient's circumstances. Reportable changes are defined in Section R414-301-2.

(a) The due date for reporting changes is the close of business ten calendar days ~~on the 10th calendar day~~ after the client recipient learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income ~~the client receives~~ for the recipient, the due date for reporting the income change is the close of business ~~on the day that is~~ ten calendar days after ~~the date~~ the client receives such ~~change~~ income.

(c) The date of report is the date that the recipient reports the change to the eligibility agency during normal business hours, or the date that the eligibility agency receives the information from another source.

~~(e) The due date for providing verifications of changes is the close of business on the date the agency sets as the due date in a written notice to the client.~~

(2) The eligibility agency may receive information from credible sources other than the client recipient such as computer income matches~~;~~ and from anonymous citizen reports. ~~If the~~ The eligibility agency ~~receives~~ shall verify information from other sources ~~other than the client~~ that may affect the client's recipient's eligibility~~;~~ the agency will verify the information as needed depending on the source of information~~;~~ before using the information to change the client's recipient's eligibility for medical assistance. The eligibility agency shall verify ~~if~~ information from citizen reports ~~must always be verified by~~ through other reliable proofs.

~~(3) The date of report is the date the client reports the change to the agency by the close of business on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source.~~

~~(4)~~ 3 If the eligibility agency needs verification from the recipient ~~of the reported change from the client, the agency requests it in writing and provides~~ the agency shall send the recipient a written request. The eligibility agency shall give the recipient at least ten calendar days from the notice date ~~for the client~~ to respond. The due date for providing verification of changes is the close of business on the date that the eligibility agency sets as the due date in a written notice to the recipient.

~~(5)~~ 4 A client recipient ~~who~~ must provide~~s~~ change reports, forms or verifications to the eligibility agency by the close of business on the due date ~~has provided the information on time~~.

~~(6)~~ 5 ~~(a)~~ If ~~the reported information~~ the information about a change causes an increase in a client's recipient's benefits and the eligibility agency ~~requests~~ asks the recipient for verification, the ~~increase in benefits is effective the first day of the month following~~ eligibility agency shall increase benefits as follows:

(a) An increase in benefits is effective on the first day of the month after the change report month if the recipient returns all verification within ten calendar days of the request date or by the end of the change report month, if longer;

(b) An increase in benefits is effective on the first day of the month after the date that the eligibility agency receives all verification if the recipient does not return verification by the due

date, but returns verification in the calendar month that follows the report month.

~~(i) the date of the report if the agency receives verifications within ten days of the request; or~~

~~(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.~~

~~(b) The agency cannot increase benefits if the agency does not receive requested verifications.~~

~~(6) If the reported information causes an increase in a recipient's benefits and the eligibility agency does not request verification, the increase in benefits is effective on the first day of the month that follows the change report month.~~

~~(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:~~

~~(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.~~

~~(7) If a change adversely affects the recipient's eligibility for benefits, the eligibility agency shall change the effective date of eligibility to the first day of the month after the month in which it sends proper notice of the change.~~

(a) The eligibility agency shall change the effective date if it has enough information to adjust benefits, regardless of whether the recipient returns verification.

(b) If ~~the~~ eligibility agency shall send a written request to the recipient for verification if it does not have sufficient ~~enough~~ information to adjust benefits~~;~~ the agency requests verifications from the client. The due date is recipient has at least 10 ~~ten~~ days ~~from~~ after the date of the request to return verification.

(i) Upon receiving ~~the~~ verification~~s~~, the eligibility agency shall adjust~~s~~ benefits to become effective on the first day of the month ~~following the month in which the agency can~~ after the agency sends proper notice.

(ii) If the recipient does not return ~~the~~ verification~~s are not returned on~~ timely, the eligibility agency shall discontinue~~s~~ benefits ~~for the affected individuals effective the end of~~ after the month in which ~~the agency can~~ the agency sends proper notice.

~~(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.~~

(8) If the recipient returns all requested verification related to a change report in the month that follows the effective closure date, the eligibility agency shall treat the date of receipt as an application date and may not require the recipient to complete a new application form. The eligibility agency shall review the verification to determine whether the recipient is still eligible and notify the recipient of its decision. The eligibility agency may not change the review date unless it updates all factors of eligibility.

(9) If the eligibility agency cannot determine the effect of a change without verification from the recipient, the agency shall discontinue benefits if it does not receive the requested verification by the due date. If a change does not affect all household members and the recipient does not return verification, the eligibility agency

shall discontinue benefits only for those individuals affected by the change.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change on time or returned verification by the due date.

(9)b) If a [client]recipient fails to [timely]report a change timely or return verification[s] or forms by the due date, the [client]recipient must repay all services and benefits paid by the Department for which the [client]was]recipient is ineligible.

(10)11) If a due date falls on a non-business day, the due date [will be]is the close of business on the [first]next business day[immediately after the due date].

KEY: public assistance programs, applications, eligibility, Medicaid

Date of Enactment or Last Substantive Amendment: ~~October 1, 2011~~2012

Notice of Continuation: January 31, 2008

Authorizing, and Implemented or Interpreted Law: 26-18

Natural Resources, Wildlife Resources

R657-13

Taking Fish and Crayfish

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35440

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: The proposed revision allows fish to be filleted at any time and anglers to possess filleted fish at any time on Lake Powell.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments simplify fillet rules on Lake Powell therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only simplifies regulations already in place this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment simplifies current rule, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment simplifies current rule, therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment simplifies current rule regarding the filleting of fish at Lake Powell, since this only simplifies and clarifies current rule language the DWR determines that these amendments do not create a cost or savings impact to individuals who participate in fishing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake~~[-and]~~, Jordanelle Reservoir and Lake Powell, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(c) Fish may be filleted at any time and anglers may possess filleted fish at any time at Lake Powell.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

- (a) the number and species of fish;
- (b) date caught;
- (c) the certificate of registration number of the installation, pond, or short-term fishing event; and
- (d) the name, address, telephone number of the seller.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [~~January 4, 2011~~]**2012**

Notice of Continuation: **October 11, 2007**

Authorizing, and Implemented or Interpreted Law: **23-14-18; 23-14-19; 23-19-1; 23-22-3**

Natural Resources, Wildlife Resources
R657-42
Fees, Exchanges, Surrenders, Refunds
and Reallocation of Wildlife Documents

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35435

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to fees, exchanges, surrenders refunds and reallocation of permits, and other documents.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule replace "proclamation" with "guidebook"; and remove the exchange process for Dedicated Hunter permits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-1 and Section 23-19-38

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment makes technical corrections and removes the ability to exchange a Dedicated Hunter permit. It requires no programming changes and can be implemented with DWR's current budget. Therefore, DWR determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since the amendment clarifies the criteria for exchanging a dedicated hunter permit and would impact only dedicated hunter permit holders, this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment clarifies criteria for dedicated hunters wishing to exchange a permit, it does not have an additional financial requirement and would not generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies criteria for dedicated hunters wishing to exchange a permit, it does not have an additional financial requirement and would not generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs and do not create a cost or savings impact to individuals who participate in hunting in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules[;] and guidebooks[~~and proclamations~~] of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(d) "General season permit" means any:

(i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;

(ii) antlerless permit for elk, deer, or pronghorn antelope; or

(iii) harvest objective cougar permit.

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) CWMU - landowner association or its designated operator as provided in Rule R657-37.

(f) "Limited entry permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following:

(i) bull elk, buck deer, buck pronghorn, bear, cougar, or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat, desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) ~~[Any person who has obtained a Dedicated Hunter Permit may exchange that permit for any other available Dedicated Hunter Permit as provided in Rule R657-38.~~

~~————(5)——~~The division may charge a handling fee for the exchange of a permit.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

- (a) Section 23-19-38 and Rule R657-50;
- (b) Section 23-19-38.2 and Subsection (3); or
- (c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document ; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit

(ii) A person may receive a refund for a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.

(b)(i) The established wildlife document refund fee shall be deducted from all refunds under subsection (5)(a).

(ii) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.

(6) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(7) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this Section.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the guidebooks of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the ~~[guidebooks]~~guidebook of the Wildlife Board ~~for taking big game~~.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the ~~[Big Game guidebook]~~guidebooks of the Wildlife Board for taking big game.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the ~~[guidebooks]~~guidebook of the Wildlife Board ~~for taking waterfowl~~.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the ~~[Waterfowl]~~guidebook of the Wildlife Board for taking waterfowl or through the division website.

(c) The accepted method of payment of fee is only a credit or debit card.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~October 25, 2010~~2012

Notice of Continuation: May 8, 2008

Authorizing, and Implemented or Interpreted Law: 23-19-1; 23-19-38; 23-19-38.2

Natural Resources, Wildlife Resources R657-58 Fishing Contests and Clinics

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35439
FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment: 1) removes the deadline for tagged fish contest applications; 2) removes the list of approved waters; 3) removes the species of fish; 4) removes the deadline that is specific to tagged fish contests and implement the same deadline as other contests; and 5) allows for approval or denial of contest based on biological issues on a case by case basis. All of these amendments will simplify the process required for groups to hold tagged fish contests.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment simplifies the requirements for holding a tagged fish contest, therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment only simplifies the requirements for holding a tagged fish contest this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment simplifies the process for holding a tagged fish contest so it does not impose an additional financial requirement on persons participating in a fishing contest or small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment simplifies the process for holding a tagged fish contest so it does not impose an additional financial requirement on persons participating in a fishing contest.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this amendment only simplifies the process for holding a tagged fish contest and does not increase nor decrease the fees for such contest, DWR determines that these amendments do not create a cost or savings impact to individuals who sponsor or participate in fishing contests.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-58. Fishing Contests and Clinics.

R657-58-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule to provide the standards and procedures for fishing contests and events including:

- a) Type I fishing contests;
- b) Type II fishing contests;
- c) tagged fish contests; and
- d) fishing clinics.

(2) Any violation of, or failure to comply with, any provision of this rule or any specific requirements in a Certificate of Registration issued pursuant to this rule may be grounds for revocation or suspension of the Certificate of Registration, as determined by the division.

R657-58-6. Requirements for Tagged Fish Contests.

(1) A COR from the Division of Wildlife Resources is required to conduct any tagged fish contest, regardless of number of contestants or value of prizes or awards.

~~(2) All COR application for a tagged fish contest must be received by the division between December 1st and December 31st of the year prior to when the contest is to be held.~~

_____ (3) If more than one application is received for a water in a year then a drawing will be held to select the applicant to receive the COR.

_____ ([4]3) Only one tagged fish contest per year may be held on any water [~~approved for tagged fish contests~~].

_____ ([5]4) Tagged fish contests must have the start date and end date identified on the COR Application.

_____ ([6]5) Tagging of fish for tagged fish contests must be conducted only by division personnel, or by designated representatives working under the direct supervision of the division.

_____ ([7]6) Without prior authorization from the division, it is prohibited to:

(a) tag, fin-clip or mark fish in any way, or

(b) introduce tagged, fin-clipped or marked fish into a water.

_____ ([8]7) The organizer of a tagged fish contest will assume all responsibility for the contest and the purchase of tags and tagging equipment.

[~~_____ (9) Tagged fish contests are permitted only on the following waters and only for the fish species listed for those waters:~~

_____ (~~a) Big Sandwash (Duchesne County) for trout;~~

_____ (~~b) Deer Creek Reservoir (Wasatch County) for trout;~~

_____ (~~c) East Canyon Reservoir (Morgan County) for smallmouth bass;~~

_____ (~~d) Echo Reservoir (Summit County) for yellow perch, trout;~~

_____ (~~e) Flaming Gorge Reservoir (Daggett County) for burbot, lake trout;~~

_____ (~~f) Gunlock Reservoir (Washington County) for crappie, bass;~~

_____ (~~g) Hyrum Reservoir (Cache County) for yellow perch, trout;~~

_____ (~~h) Lake Powell (Garfield, Kane and San Juan counties) for striped bass;~~

_____ (~~i) Jordanelle Reservoir (Wasatch County) for yellow perch, trout, bass;~~

_____ (~~j) Moose Pond (Daggett County) for trout;~~

_____ (~~k) Millsite Reservoir (Emery County) for trout;~~

_____ (~~l) Otter Creek Reservoir (Piute County) for trout;~~

_____ (~~m) Palisade (Sanpete County) for trout;~~

_____ (~~n) Panquitch Lake (Garfield County) for rainbow trout;~~

_____ (~~o) Piute Reservoir (Piute County) for trout;~~

_____ (~~p) Quail Creek Reservoir (Washington County) for trout, bass;~~

_____ (~~q) Red Fleet Reservoir (Uintah County) for trout, bluegill;~~

_____ (~~r) Rockport Reservoir (Summit County) for yellow perch, trout;~~

_____ (~~s) Sand Hollow Reservoir (Washington County) for bluegill, bass;~~

_____ (~~t) Seofield Reservoir (Carbon and Utah counties) for rainbow trout;~~

_____ (~~u) Starvation Reservoir (Duchesne County) for walleye;~~

_____ (~~v) Steinaker Reservoir (Uintah County) for trout, bluegill;~~

_____ (~~w) Utah Lake (Utah County) for white bass, carp;~~

_____ (~~x) Willard Bay (Box Elder County) for carp, hybrid striped bass; and~~

_____ (~~y) Yuba Reservoir (Juab and Sanpete counties) for walleye.~~

]

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [~~April 4, 2011~~]2012

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3

Natural Resources, Wildlife Resources R657-59 Private Fish Ponds

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35438

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed revision adds sections of rivers to the list which prohibits stocking of fertile rainbow trout.

SUMMARY OF THE RULE OR CHANGE: This rule provides the standards and procedures for private fishponds.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-15-10 and Section 23-15-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This revision will add sections of rivers to the list which prohibits the stocking of fertile rainbow trout because this amendment does not create additional workload or programming changes, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget. The changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this new amendment only adds sections of rivers to an already existing list this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Since this revision only adds section of rivers that will prohibit the stocking of fertile rainbow trout and will still allow for the stocking of other game fish, this revision will not impose additional financial requirements on persons requesting to stock a private pond in certain areas of the state and will not affect small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since this revision only adds section of rivers that will prohibit the stocking of fertile rainbow trout and will still allow for the stocking of other game fish, this revision will not impose additional financial requirements on persons requesting to stock a private pond in certain areas of the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that since this amendment only eliminates section of river to the stocking of fertile rainbow trout and not to the stocking of other game fish, these amendments will not create a cost or savings impact to individuals who wish to stock game fish in a private pond.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-59. Private Fish Ponds.

R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division

R657-59-16. Species, Strains, and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds Without a Certificate of Registration or Exemption Certificate.

(1) A certificate of registration or exemption certificate must be obtained from the division pursuant to R657-59-6 and R657-59-7 prior to stocking in any private fish pond:

- (a) non-salmonid aquaculture product; or
- (b) any other species or reproductive capability of aquaculture product not specifically authorized in this Section.

(2)(a) The following subsections designate areas closed to stocking aquaculture product in private fish ponds using a general area identifier such as canyon, creek, spring, or location and then followed by a specific area identifier in the form of hydrologic unit code (HUC) or township and range.

(b) The general area identifier is included for purposes of reference only and may include all or part of the associated drainage.

(c) The HUC or township and range designations constitute the legal descriptions of the actual closed areas.

(3) Certified sterile salmonid aquaculture product may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas:

- (a) Washington County - stocking is prohibited in the following areas:
 - (i) Ash Creek - HUC 150100080405;
 - (ii) Beaver Dam Wash - HUC 1501001010;
 - (iii) Laverkin Creek - HUC 150100080302;
 - (iv) Leeds Creek - HUC 150100080906;
 - (v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;
 - (vi) Tobin Wash - HUC 150100080802;
 - (vii) Sand Cove Wash - HUC 150100080801;
 - (viii) Manganese Wash/Santa Clara River - HUC 150100080804;
 - (ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;
 - (x) Cove Wash/Santa Clara River - HUC 150100080809;
 - (xi) Moody Wash - HUC 150100080603;
 - (xii) Upper Moody Wash - HUC 150100080602;
 - (xiii) Magotsu Creek - HUC 150100080704;
 - (xiv) South Ash Creek - HUC 150100080405);
 - (xv) Water Canyon - HUC 150100080701);
 - (xvi) Chinatown Wash/Virgin River - HUC 150100080508;
 - (xvii) Lower Gould Wash - HUC 150100080508;
 - (xviii) Grapevine Wash/Virgin River - HUC 150100080903;
 - (xix) Cottonwood Wash/Virgin River - HUC 150100080909;
 - (xx) Middleton Wash/Virgin River - HUC 150100080910;
 - (xxi) Lower Fort Pierce Wash - HUC 150100080605;
 - (xxii) Atkinville Wash - HUC 150100080303;
 - (xxiii) Lizard Wash - HUC 150100080302;

- (xxiv) Val Wash/Virgin River - HUC 150100080307;
- (xxv) Bulldog Canyon - HUC 150100080310; and
- (xxvi) Fort Pierce Wash - HUC 15010009.

([4]) Fertile rainbow trout may be stocked without a certificate of registration or exemption certificate in any private fish pond within the state consistent with R657-59-3, except for ponds located within the following areas and elevations:

Beaver County - stocking is prohibited in the following:

- (i) North Creek - HUCs 160300070203, 160300070208;

and

- (ii) Pine Creek (near Sulphurdale) - HUC 160300070501.

(b) Box Elder County - stocking is prohibited in the following:

- (i) Morison Creek - HUC 16020308;
- (ii) Bettridge Creek - HUC 16020308;
- (iii) Death Creek - HUC 16020308;
- (iv) Camp Creek - HUC 16020308;
- (v) Goose Creek - HUC 17040211;
- (vi) Raft River - HUC 17040210;
- (vii) Fat Whorled Pond Snail Springs - Township 10

North, Ranges 4 and 5 West; and

- (viii) Mantua Reservoir - HUC 16010204.

(c) Cache County - stocking is prohibited in the following:

- (i) Logan River - HUC 16010203;
- (ii) Blacksmith Fork - HUC 16010203;
- (iii) East Fork Little Bear River - HUC 16010203; and
- (iv) Little Bear River - HUC 16010203.

(d) Carbon County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(e) Daggett County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(f) Davis County - no areas closed to stocking fertile rainbow trout.

(g) Duchesne County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(h) Emery County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(i) Garfield County - stocking is prohibited in the following areas:

- (i) Birch Creek/Main Canyon - HUC 140700050102;
- (ii) Center Creek (tributary to East Fork Sevier R) HUC 160300020412;

- (iii) Cottonwood Creek - HUC 160300020406;

([iv]) East Fork of Boulder Creek/ West Fork Boulder Creek - HUC 140700050206; and

([v]) Ranch Creek (East Fork Sevier River drainage) - HUC 160300020405.

(j) Grand County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(k) Iron County - no areas closed to stocking fertile rainbow trout.

(l) Juab County - stocking is prohibited in the following areas:

- (i) Sulphur Wash - HUC 160203011303;
- (ii) Middle Pleasant Valley Draw - HUC 160203011402;
- (iii) Lower Pleasant Valley Draw - HUC 160203011403;
- (iv) Cookscomb Ridge - HUC 160203011501;
- (v) Outlet Salt Marsh Lake - HUC 160203011502;

- (vi) Deep Creek Range - HUC 160203011503;
- (vii) Snake Valley - HUC 160203011504;
- (viii) Little Red Cedar Wash - HUC 160203011505;
- (ix) Trout Creek - HUC 160203060101;
- (x) Smelter Knolls - HUC 160203060104;
- (xi) Toms Creek - HUC 160203060201;
- (xii) Goshute Canyon - HUC 160203060202;
- (xiii) Indian Farm Creek - HUC 160203060204;
- (xiv) Spring Creek - HUC 160203060803;
- (xv) Fifteenmile Creek - HUC 160203060804;
- (xvi) East Creek/East Deep Creek - HUC 160203060805;
- (xvii) East Creek/East Deep Creek - HUC

160203060806;

- (xviii) West Deep Creek - HUC 160203060808;
- (xix) Horse Valley - HUC 160203060304;
- (xx) Starvation Canyon - HUC 160203060305;
- (xxi) Cane Springs - HUC 160203060307;
- (xxii) Fish Springs Range - HUC 160203060308;
- (xxiii) Middle Fish Springs Wash - HUC 160203060309;
- (xxiv) Lower Fish Springs Wash - HUC 160203060403;
- (xxv) Fish Springs - HUC 160203060405;
- (xxvi) Wilson Health Springs - HUC 160203060407;
- (xxvii) Vernon Creek - HUC 160203040102;
- (xxviii) Outlet Chicken Creek - HUC 160300050206;
- (xxix) Little Valley/Sevier River - HUC 160300050403;
- (xxx) Pole Creek/Salt Creek - HUC 160202010104; and
- (xxxi) West Creek/Current Creek - HUC 160202010107.

(m) Kane County - no areas closed to stocking fertile rainbow trout.

(n) Millard County - stocking is prohibited in the following areas:

- (i) Outlet Salt Marsh Lake - HUC 160203011502;
- (ii) Sulphur Wash - HUC 160203011303;
- (iii) Cockscomb Ridge - HUC 160203011501;
- (iv) Tungstonia Wash - HUC 160203011302;
- (v) Salt Marsh Lake - HUC 160203011304;
- (vi) Indian George Wash - HUC 160203011301
- (vii) Outlet Bishop Springs - HUC 160203011203;
- (viii) Warm Creek - HUC 160203011204;
- (ix) Headwaters Bishop Springs - HUC 160203011202;
- (x) Indian Pass - HUC 160203011107;
- (xi) Chevron Ridge - HUC 160203011110;
- (xii) Petes Knoll - HUC 160203011109;
- (xiii) Red Gulch - HUC 160203011102;
- (xiv) Horse Canyon - HUC 160203011106;
- (xv) Hampton Creek - HUC 160203011105;
- (xvi) Knoll Springs - HUC 160203011103;
- (xvii) Browns Wash - HUC 160203011101;
- (xviii) Outlet Baker Creek - HUC 160203011004;
- (xix) Outlet Old Mans Canyon - HUC 160203011003;
- (xx) Hendrys Creek - HUC 160203011104;
- (xxi) Headwaters Old Mans Canyon - HUC

160203011002;

- (xxii) Rock Canyon - HUC 160203011001
- (xxiii) Silver Creek - Baker Creek - HUC 160203010806;
- (xxiv) Outlet Weaver Creek - HUC 160203010804;
- (xxv) Conger Spring - HUC 160203010702; and
- (xxvi) Sheepmens Little Valley - HUC 160203010607.

(o) Morgan County - stocking is prohibited in the following areas:

- (i) Weber River - HUC 16020102;
- (ii) East Canyon Creek - HUC 16020102; and
- (iii) Lost Creek - HUC 16020101.

(p) Piute County - stocking is prohibited in the following areas:

- (i) Birch Creek HUC 160300010603;
- (ii) Clear Creek HUC 1603000301;
- (iii) Manning Creek - HUC [160300030203-]160300030203;
- (iv) Tenmile Creek HUC 160300030204.

(q) Rich County - stocking is prohibited in the following areas:

- (i) Bear Lake including all its tributaries - HUC 16010201;
- (ii) Big Creek - HUC 16010101;
- (iii) Birch Creek from Birch Creek Reservoir upstream and tributaries HUC 16010101;
- (iv) Little Creek from Little Creek Reservoir upstream and tributaries HUC 16010101;
- (v) Otter Creek and its tributaries HUC 16010101;
- (vi) Woodruff Creek - HUC 16010101; and
- (~~iv~~)^{vii} Home Canyon and Meachum Canyon (Deseret Ranch) - HUC 16010101.

(r) Salt Lake County - stocking is prohibited in the following areas:

- (i) Big Cottonwood Canyon Creek - HUC 160202040201;
- (ii) Little Cottonwood Canyon Creek - HUC 160202040202;
- (iii) Mill Creek - HUC 160202040301;
- (iv) Parleys Creek - HUC 160202040302;
- (v) Emigration Creek - HUC 160202040303;
- (vi) City Creek - HUC 160202040304; and
- (vii) Red Butte Creek/Emigration Creek - HUC 160202040306.

(s) San Juan County - stocking is prohibited in any private fish pond above 7000 feet in elevation.

(t) Sanpete County:

(i) stocking is prohibited in the following areas west of the Manti Mountain Range divide:

- (A) Dry Creek/San Pitch River - HUC 160300040201;
- (B) Oak Creek/San Pitch River - HUC 160300040202;
- (C) Cottonwood Canyon/San Pitch River - HUC 160300040203;
- (D) Birch Creek/San Pitch River - HUC 160300040204;
- (E) Pleasant Creek - HUC 160300040205;
- (F) Dublin Wash/San Pitch River - HUC 160300040206;
- (G) Cedar Creek - HUC 160300040207;
- (H) Spring Hollow/San Pitch River - HUC 160300040208;
- (I) Upper Oak Creek - HUC 160300040302;
- (J) Petes Canyon/San Pitch River - HUC 160300040306;
- (K) Uinta Gulch - HUC 160202020201;
- (L) Upper Thistle Creek - HUC 160202020202;
- (M) Nebo Creek - HUC 160202020203;
- (N) Middle Thistle Creek - HUC 160202020204;
- (O) Dry Canyon/San Pitch River - HUC 160300040308;

(P) Maple Canyon/San Pitch River - HUC 160300040309;

(Q) Gunnison Reservoir/San Pitch River - HUC 160300040503;

(R) Outlet San Pitch River - HUC 160300040505;

(S) Beaver Creek - HUC 140700020201;

(T) Box Canyon/Muddy Creek - HUC 140700020203;

(U) Skumpah Creek-Salina Creek - HUC 160300030402;

and

(V) Headwaters Twelvemile Creek - HUC 160300040402.

(ii) stocking is prohibited in any private fish pond above 7000 feet in elevation east of the Manti Mountain Range divided.

(u) Sevier County - stocking is prohibited in the following areas:

(i) ~~[Pole Creek (tributary to)]~~ ~~Clear Creek[]~~ HUC ~~[160300030103]~~ 1603000301;

(ii) Salina Creek - HUC 160300030402; and

(iii) U M Creek - HUC 140700030101.

(v) Summit County - stocking is prohibited in the following areas:

(i) Bear River and all tributaries - HUC 16010101;

(ii) Mill Creek and all tributaries - HUC 16010101;

(iii) Muddy Creek and Van Tassel Creek - HUC 14040108;

(iv) Little West Fork/Blacks Fork - HUC 14040107;

(v) Black Fork - HUC 14040107;

(vi) Archie Creek - HUC 14040107;

(vii) West Fork Smiths Fork - HUC 14040107;

(viii) Gilbert Creek - HUC 14040107;

(ix) East Fork Smiths Fork - HUC 14040107;

(x) Dahalgreen Creek - HUC 14040106;

(xi) Henrys Fork - HUC 14040106;

(xii) Spring Creek and Poison Creek - HUC 14040106;

(xiii) West Fork Beaver Creek - HUC 14040106;

(xiv) Middle Fork Beaver Creek - HUC 14040106;

(xv) Echo Creek - HUC 16020101;

(xvi) Chalk Creek - HUC 16020101;

(xvii) Silver Creek - HUC 16020101;

(xviii) Weber River - HUC 16020101;

(xix) Beaver Creek - HUC 16020101;

(xx) Provo River - HUC 16020101;

(xxi) Kimball Creek - HUC 160201020101;

(xxii) Big Dutch Hollow/East Canyon Creek - HUC 160201020103;

(xxiii) Silver Creek - HUC 160201010403; and

(xxiv) Toll Canyon/East Canyon Creek - HUC 160201020102.

(w) Tooele County - stocking is prohibited in the following areas:

(i) Toms Creek - HUC 160203060201;

(ii) Goshute Canyon - HUC 160203060202;

(iii) Eightmile Wash - HUC 160203060203;

(iv) Indian Farm Creek - HUC 160203060204;

(v) Willow Spring Wash HUC 160203060205;

(vi) Willow Canyon - HUC 160203080104;

(vii) Bettridge Creek - HUC 160203080106;

(viii) East Creek/East Deep Creek - HUC 160203060806;

(ix) East Deep Creek - HUC 160203060807;

- (x) West Deep Creek - HUC 160203060808;
 (xi) Gullmette Gulch/Deep Creek - HUC 160203060902;
 (xii) Pony Express Canyon/Deep Creek - HUC 160203060904;
 (xiii) Badlands - HUC 160203060905;
 (xiv) White Sage Flat/Deep Creek - HUC 160203060907;
 (xv) Lower Fish Springs Wash - HUC 160203060403;
 (xvi) Fish Springs - HUC 160203060405;
 (xvii) Wilson Health Springs - HUC 160203060407;
 (xviii) East Government Creek - HUC 160203040101;
 (xix) Vernon Creek - HUC 160203040102; and
 (xx) Faust Creek - HUC 160203040105.
 (x) Uintah County - stocking is prohibited in any private fish pond above 7000 feet in elevation.
 (y) Utah County - stocking is prohibited in the following areas:
- (i) Starvation Creek - HUC 160202020101;
 (ii) Upper Soldier Creek - HUC 160202020102;
 (iii) Tie Fork - HUC 160202020103;
 (iv) Middle Soldier Creek - HUC 160202020105;
 (v) Lake Fork - HUC 160202020106;
 (vi) Lower Soldier Creek - HUC 160202020107;
 (vii) Upper Thistle Creek - HUC 160202020202;
 (viii) Nebo Creek - HUC 160202020203;
 (ix) Middle Thistle Creek - HUC 160202020204;
 (x) Lower Thistle Creek - HUC 160202020205;
 (xi) Sixth Water Creek - HUC 160202020301;
 (xii) Cottonwood Canyon - HUC 160202020302;
 (xiii) Fifth Water Creek - HUC 160202020303;
 (xiv) Upper Diamond Fork - HUC 160202020304;
 (xv) Wanrhodes Canyon - HUC 160202020305;
 (xvi) Middle Diamond Fork - HUC 160202020306;
 (xvii) Lower Diamond Fork - HUC 160202020307;
 (xviii) Headwaters Left Fork Hobbble Creek - HUC 160202020401;
 (xix) Headwaters Right Fork Hobbble Creek - HUC 160202020402;
 (xx) Outlet Left Fork Hobbble Creek - HUC 160202020403;
 (xxi) Outlet Right Fork Hobbble Creek - HUC 160202020404;
 (xxii) Upper Spanish Fork Creek - HUC 160202020501;
 (xxiii) Middle Spanish Fork Creek - HUC 160202020502;
 (xxiv) Peteetneet Creek - HUC 160202020601;
 (xxv) Spring Creek - HUC 160202020602;
 (xxvi) Beer Creek - HUC 160202020603;
 (xxvii) Big Spring Hollow/South Fork Provo River - HUC 160202030502;
 (xxviii) Pole Creek/Salt Creek - HUC 160202010104;
 (xxix) Middle American Fork Canyon - HUC 160202010802;
 (xxx) Mill Fork - HUC 160202020104; and
 (xxxi) Upper American Fork Canyon - HUC 160202010801.
 (z) Wasatch County - stocking is prohibited in the following areas:
- (i) Willow Creek/Strawberry River - HUC 140600040101;
 (ii) Clyde Creek/Strawberry River - HUC 140600040102;
 (iii) Indian Creek - HUC 140600040104;
 (iv) Trout Creek/Strawberry River - HUC 140600040105;
 (v) Soldier Creek/Strawberry River - HUC 140600040106;
 (vi) Willow Creek - HUC 140600040301;
 (vii) Current Creek Reservoir - HUC 140600040401;
 (viii) Little Red Creek - HUC 140600040402;
 (ix) Outlet Current Creek - HUC 140600040403;
 (x) Water Hollow/Current Creek - HUC 140600040404;
 (xi) Headwaters West Fork Duchesne River - HUC 140600030101;
 (xii) Little South Fork Provo River - HUC 160202030201;
 (xiii) Bench Creek/Provo River - HUC 160202030202;
 (xiv) Lady Long Hollow/Provo River - HUC 160202030203;
 (xv) Charcoal Canyon/Provo River - HUC 160202030204;
 (xvi) Drain Tunnel Creek - HUC 160202030301;
 (xvii) Lake Creek - HUC 160202030302;
 (xviii) Center Creek - HUC 160202030303;
 (xix) Cottonwood Canyon/Provo River - HUC 160202030304;
 (xx) Snake Creek - HUC 160202030305;
 (xxi) Spring Creek/Provo River - HUC 160202030306;
 (xxii) Daniels Creek - HUC 160202030401;
 (xxiii) Upper Main Creek - HUC 160202030403;
 (xxiv) Lower Main Creek - HUC 160202030404;
 (xxv) Deer Creek Reservoir-Provo River - HUC 160202030405;
 (xxvi) Provo Deer Creek - HUC 160202030501;
 (xxvii) Little Hobbble Creek - HUC 160202030402;
 (xxviii) Mill Hollow/South Fork Provo River - HUC 160202030104; and
 (xxix) Mud Creek - HUC 140600040103.
 (aa) Washington County - stocking is prohibited in the following areas:
- (i) Ash Creek - HUC 150100080405;
 (ii) Beaver Dam Wash - HUC 15010010;
 (iii) Laverkin Creek - HUC 150100080302;
 (iv) Leeds Creek - HUC 150100080906;
 (v) Baker Dam Reservoir/Santa Clara River - HUC 150100080704;
 (vi) Tobin Wash - HUC 150100080802;
 (vii) Sand Cove Wash - HUC 150100080801;
 (viii) Manganese Wash/Santa Clara River - HUC 150100080804;
 (ix) Wittwer Canyon/Santa Clara River - HUC 150100080808;
 (x) Cove Wash/Santa Clara River - HUC 150100080809;
 (xi) Moody Wash - HUC 150100080603;
 (xii) Upper Moody Wash - HUC 150100080602;
 (xiii) Magotsu Creek - HUC 150100080704;
 (xiv) South Ash Creek - HUC 150100080405);
 (xv) Water Canyon - HUC 150100080701);
 (xvi) Chinatown Wash/Virgin River - HUC 150100080508;
 (xvii) Lower Gould Wash - HUC 150100080508;

- (xviii) Grapevine Wash/Virgin River - HUC 150100080903;
- (xix) Cottonwood Wash/Virgin River - HUC 150100080909;
- (xx) Middleton Wash/Virgin River - HUC 150100080910;
- (xxi) Lower Fort Pierce Wash - HUC 150100080605;
- (xxii) Atkinville Wash - HUC 150100080303;
- (xxiii) Lizard Wash - HUC 150100080302;
- (xxiv) Val Wash/Virgin River - HUC 150100080307;
- (xxv) Bulldog Canyon - HUC 150100080310; and
- (xxvi) Fort Pierce Wash - HUC 15010009.
- (bb) Wayne County - no areas closed to stocking fertile rainbow trout.
- (cc) Weber County - stocking is prohibited in the following areas:
 - (i) North Fork Ogden River - HUC 16020102;
 - (ii) Middle Fork Ogden River and Gertsen Creek - HUC 16020102; and
 - (iii) South Fork Ogden River and Gertsen Creek - HUC 16020102.

KEY: wildlife, aquaculture, fish
Date of Enactment or Last Substantive Amendment: [August 21, 2008]2012
Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10

**Natural Resources, Wildlife Resources
 R657-62
 Drawing Application Procedures**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 35436
 FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to: 1) outline the Dedicated Hunter Preference Point system; 2) allow the accrual of preference points for Sandhill Crane, Sharp-tailed grouse, Sage grouse and Swan; 3) replace "proclamation" with "guidebook"; 4) allow four youth to apply together for general season deer permits; 5) define "youth"; and 6) clarify waiting periods for Sportsman permits and makes technical changes for rule consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment does not change the process currently in place by rule, it only clarifies the process for obtaining Dedicated Hunter Preference Points as well as makes technical changes for consistency, therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment only clarifies and simplifies existing criteria that has already been set by rule this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amended rule will clarify processes currently in place and add additional opportunities for youth, there are no additional requirements being added it would not generate a cost or saving impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amended rule will clarify processes currently in place and add additional opportunities for youth, there are no additional requirements being added it would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that because this amendment only clarifies processes currently in place it will not create a cost or savings impact to individuals who participate in hunting in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.**R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective [~~proclamations~~] guidebooks of the Wildlife Board.

R657-62-6. Applications.

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective [~~proclamation~~] guidebook of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

R657-62-7. Group Applications.

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices. [~~except for dedicated hunter region choice in certificate of registration application.~~]

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

R657-62-10. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, [~~or~~] doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit; or

(iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; [~~and~~]

(iv) doe pronghorn[-];

(v) Sandhill Crane;

(vi) Sharp-tailed Grouse;

(vii) sage grouse; and

(viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) [~~General buck deer preference~~] Preference points are forfeited if:

(a) a person obtains a first-choice hunt general buck deer permit[-] through the drawing;

(~~5~~) b) a person obtains an antlerless deer[-permit, an], antlerless elk[-permit or], doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit through the drawing;

(5) Preference points are not transferable.

(6) Preference points are [~~not transferable.~~]

(~~7~~) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(~~8~~) (7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-11. [~~Loyalty~~] Dedicated Hunter Preference Points.

(1) [~~Loyalty~~] Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A [~~loyalty~~] preference point is awarded for:

(a) each valid unsuccessful application;

(b) each valid application when applying only for a [~~loyalty~~] preference point in the dedicated hunter drawing.

(~~3~~) (c) successfully completing a three-year enrollment in the dedicated hunter program immediately preceding the application period.

(3)(a) A person may not apply in the drawing for both a [~~loyalty~~] preference point and a certificate of registration.

(b) A person may not apply for a [~~loyalty~~] preference point if that person is ineligible to apply for a certificate of registration.

(~~4~~) (c) Loyalty points may not be used when obtaining remaining certificates of registration after the dedicated hunter drawing.

(4) [~~Loyalty~~] Preference points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) [~~Loyalty~~] Preference points are not transferable.

(b) [~~Loyalty~~] Preference points shall only be applied to the Dedicated Hunter drawing.

~~](c) A person may not have more than one loyalty point at any time.~~

~~(d) Loyalty points are only valid through the end of the following application period.~~

(6) ~~[Loyalty]~~Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) ~~[Loyalty]~~Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications ~~[for three years]from 2011 to the current applicable drawing~~ for the purpose of researching ~~[loyalty]~~preference point records.

(c) Any requests for researching an applicant's ~~[loyalty]~~preference point records must be requested within the time frames provided in Subsection (b).

(d) Any ~~[loyalty]~~preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any ~~[loyalty]~~preference points earned that are obtained by fraud, deceit or misrepresentation.

R657-62-12. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective ~~[proclamation]~~guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective ~~[proclamation]~~guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

R657-62-13. Drawing Results.

~~[Applicants may be notified of drawing]~~Drawing results will be made available by the date prescribed in the respective ~~[proclamation]~~guidebook of the Wildlife Board.

R657-62-15. Permits Remaining After the Drawing.

(1) Any permits remaining after the drawing are available on the date published in the respective ~~[proclamation]~~guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

R657-62-19. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by ~~[region]~~unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer[-]; or

~~(iv) a dedicated hunter certificate of registration.~~

(2) Youth

(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each ~~[region]~~unit are reserved for youth hunters.

(iii) ~~Up to four youth may [not apply as part of any group]apply together for youth general deer permits.~~

(iv) Preference points shall be used when applying.

(c) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(3) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

- (i) limited entry, cooperative wildlife management unit and management buck deer;
- (ii) limited entry, cooperative wildlife management unit and management bull elk;
- (iii) limited entry and cooperative wildlife management unit buck pronghorn;
- (iv) once-in-a-lifetime;
- (v) dedicated hunter certificate of registration;

(vi) youth general buck deer;

(~~vii~~) general buck deer and general buck/bull combo;

(~~viii~~) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

- (i) limited entry, Cooperative Wildlife Management unit or management buck deer;
- (ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or
- (iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to ~~ten~~four people may apply together for general deer permits.

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(5) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; ~~and dedicated hunter limited entry deer permits~~; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; ~~and dedicated hunter limited entry elk permits~~; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-62-21. Antlerless Species.

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn; and

(iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-~~13~~15.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the ~~[Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime proclamation]~~ guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-62-22. Sandhill Crane, Sharp-Tailed and Sage Grouse.

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required ~~[to obtain a permit]~~ when taking Sandhill Crane, Sharp-Tailed and Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of a particular upland game hunt as posted in the guidebook of the Wildlife Board for taking upland game and turkey.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

([2]3) Group applications.

(a) Up to four people may apply together.

([3]b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

R657-62-23. Swan.

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

~~(b) A Utah hunting or combination license is required [to obtain a permit]~~ when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of the swan hunt as posted in the guidebook of the Wildlife Board for taking waterfowl.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(3)b Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting period does not apply.

R657-62-25. Sportsman.

(1) [~~Sportsman~~]Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

- (i) desert bighorn (ram);
- (ii) bison (hunter's choice);
- (iii) buck deer;
- (iv) bull elk;
- (v) Rocky Mountain bighorn (ram);
- (vi) Rocky Mountain goat (hunter's choice);
- (vii) bull moose;
- (viii) buck pronghorn;
- (ix) black bear;
- (x) cougar; and
- (xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to [R]Rule R657-41.

(b) Once-in-lifetime waiting periods.

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods.

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

R657-62-26. Turkey.

(1) [~~Turkey~~]Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining one limited entry or remaining wild turkey permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group Applications are not accepted.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 15 years of age or younger on the posting date of the wild turkey drawing.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~May 10, 2010~~]2012

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Transportation, Motor Carrier **R909-1** Safety Regulations for Motor Carriers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35425

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate by reference and adopt changes in the Federal Motor Carrier Safety Regulations as of 10/01/2011, and to add enforcement provisions authorized by statute.

SUMMARY OF THE RULE OR CHANGE: This rule amendment incorporates the current Federal Motor Carrier Safety Regulations. It includes a clarification for limits of liability for the transportation of hazardous materials as defined in 49 CFR 171.101. This rule amendment adds provisions that were previously included in Rule R909-16 regarding cease and desist orders, penalties, and fines, and a prohibition from operating commercial motor vehicles in intrastate or interstate commerce for any motor carrier that fails or neglects to comply with state and federal regulations. Changes to the Federal Motor Carrier Safety Regulations since the last incorporated version include the continuation of the 11-hour rule, and 34-hour restart, and an exemption for certain railroad signal employees. Changes to the commercial driver's license (CDL) include attaching the medical certificate to the license, extending farmer exemptions for share-cropping, and new standards for the commercial learner's permit (CLP). There are new requirements for intermodal equipment operation and an exception for intermodal equipment Daily Vehicle Inspection

Reports. Safety audits will now be held to a higher standard of compliance. The new regulatory guidance for texting also includes civil penalties. The Unified Carrier Registration fee bracket has been updated. Insurance changes include minimum levels of financial responsibility for Canada-domiciled motor carriers and freight forwarders and changes to cargo insurance rules. Interstate commercial motor vehicles designed to carry 9 -15 passengers must comply regardless of distance traveled. Amendments of drug testing procedures and use of a new control form have been implemented. Adopted are new standards of compliance for electronic on-board recorders and an exemption for transporting metal coils. The "registrant only" designation has been extended until 09/01/2012. There is now protection for shippers that does not require them to sign blank documents and the elimination of operational brakes on the third truck in a triple saddle-mount combination.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-9-101 and Section 72-9-103 and Section 72-9-104 and Section 72-9-301

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 49 CFR Parts 350 through 384, Parts 386 through 399, and part 40., published by Government Printing Office, October 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the changes to the Federal Motor Carrier Safety Regulations are already in effect and this rule amendment incorporates these regulations to enable the department to enforce them.

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

TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: John Njord, Executive Director

R909. Transportation, Motor Carrier.

R909-1. Safety Regulations for Motor Carriers.

R909-1-1. Authority and Purpose.

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 3[99;]84, Parts 386 through 399, and Part 40, [~~as contained in the October 1, 2008~~](October 1, 2010), [~~Code of Federal Regulations, is~~] as amended by the Federal Register through June 6, 2011 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and [UCA]Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, [UCA]Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

R909-1-[2]3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-[3]4. Implements of Husbandry.

"Implements of Husbandry" is defined in [~~Utah Code Ann.~~]Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R909-1-5. Cease and Desist Order - Registration Sanctions.

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

R909-1-6. Penalties and Fines.

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

KEY: trucks, transportation safety, implements of husbandry
Date of Enactment or Last Substantive Amendment: [~~June 11, 2009]~~2012

Notice of Continuation: November 1, 2011

Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703.

Transportation, Motor Carrier
R909-16
 Overall Motor Carrier Safety Standing

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35427

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The overall motor carrier safety standing described in this rule has been replaced by the Federal Compliance Safety Accountability Program (CSA) and is no longer applicable. Therefore, this rule is being repealed.

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed in its entirety and the enforcement provisions regarding cease and desist order, penalties and fines, and civil penalties are being added to Rule R909-1 by amendment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-9-303 and Section 72-9-701 and Section 72-9-702

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are some savings to the department because the Federal Motor Carrier Safety Administration now gathers and dispenses CSA data from roadside inspections and allows states and companies access to this information through an on-line system.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the overall motor carrier safety standing described in this rule only applied to motor carriers.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the overall motor carrier safety standing described in this rule only applied to motor carriers and has been replaced by the Federal Compliance Safety Accountability Program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the overall motor carrier safety standing described in this rule only applied to motor carriers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance costs for affected persons because the overall motor carrier safety standing described in this rule has been replaced by the Federal Compliance Safety Accountability Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impact to businesses because the overall motor carrier safety standing described in this rule has been replaced by the Federal Compliance Safety Accountability Program.

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

TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: John Njord, Executive Director

R909. Transportation, Motor Carrier.

[R909-16. Overall Motor Carrier Safety Standing.

R909-16-1. Purpose.

To establish procedures and guidelines in obtaining an overall company safety standing from the Department and to prohibit motor carriers receiving an "unsatisfactory" standing from obtaining, holding, or working on state contracts; obtaining or retaining permitting privileges.

R909-16-2. Definitions.

In addition to definitions found in CFR Title 49 Parts 350-399, the following definitions are provided:

(1) "Commercial Motor Vehicle" means any self-propelled or towed motor vehicle used on a highway in interstate or intrastate commerce to transport passengers or property when the vehicle

(a) Has a gross vehicle weight rating or gross combination with of 10,001 pounds;

(b) Is designed or used to transport more than 15 passengers, including the driver;

(c) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under the Federal Hazardous Material Regulations.

(2) "Compliance Review" means an on-site examination of motor carrier operations, such as driver's hours of service, maintenance and inspection, driver qualification, controlled substance and alcohol testing, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets a safety fitness standard. If applicable, compliance with the commercial/economic regulations is reviewed also. A CR is intended to provide information to evaluate the safety performance and regulatory compliance of a company's operation.

(3) "Motor Carrier" means a company operating commercially within the state. The term includes a motor carrier's agents, officers and representatives as well as employees

responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

(4) "Safety Rating" means a system by which a motor carrier's safety management controls are measured to determine compliance with the Federal Motor Carrier Safety Regulations, Title 49 Parts 350-399 and the Hazardous Material Regulations, Title 49, Parts 107-181 as determined through a State/Federal Compliance Review.

(5) "Safety Standing" means a system by which a motor carrier's overall safety fitness is determined by the Department. An overall company safety fitness is determined through an assessment of a company's compliance in the areas of permit conditions, accident rates and severity, number and severity of vehicle violations, and out-of-service rate.

R909-16-3. Obtaining a "Satisfactory" Standing.

A motor carrier shall receive a "satisfactory" standing from the Department if the company has an overall company safety fitness of "satisfactory." To meet this requirement, a motor carrier must meet the following conditions:

(1) Received a "satisfactory" rating from a State/Federal Compliance Review within the last 12 months prior to the request of standing;

(2) Utah Trucking Guide;

(3) Does not have a recordable accident rate higher than the national average as defined by 49 CFR Appx. B to Part 385.

(4) The company vehicle out-of-service rate for the previous 12 months must be below the national average as defined by the Federal Motor Carrier Safety Administration;

(5) If the company hauls hazardous materials, compliance must be met as outlined in the Hazardous Materials Regulations, 49 CFR Part 171-180.

(6) Meet compliance with all federal, state, and local laws governing the operation of commercial motor carriers.

R909-16-4. Determination of a company's overall "Unsatisfactory" Standing.

A company may receive an overall company "unsatisfactory" standing by the Department if any the conditions outlined in R909-16-3 are not met.

R909-16-5. Assignment of a "Provisional" Standing.

The Department may issue a "provisional" standing to a motor carrier for which there is insufficient data to determine compliance with the Safety Standard and/or one which has not received a safety "rating" in accordance with the Federal Motor Carrier Safety Regulations, Title 49 Part 385.

R909-16-6. Notification of Safety Standing.

Notice of an "unsatisfactory" standing will be made to the motor carrier by the Department in writing within 30 days of determination.

R909-16-7. Motor Carriers receiving an "Unsatisfactory" Standing.

Motor carriers receiving an "unsatisfactory" standing are prohibited from:

- ~~_____ (1) Bidding on State Contracts;~~
- ~~_____ (2) Obtaining State Contracts;~~
- ~~_____ (3) Retaining State Contracts;~~
- ~~_____ (4) Obtaining permits from the Motor Carrier Division, or~~
- ~~_____ (5) Retaining permits issued by the Motor Carrier Division.~~

R909-16-8. Cease and Desist Order – Registration Sanctions.

~~_____ The Department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule as authorized by Section 72-9-303.~~

R909-16-9. Penalties and Fines.

~~_____ Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Section 72-9-701 and 72-9-703.~~

R909-16-10. Motor Carriers delinquent in paying civil penalties; prohibition on transportation.

~~_____ A motor carrier that has failed to pay civil penalties imposed by the Department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce as authorized by 72-9-303.~~

R909-16-11. Change to standing based upon corrective actions.

~~_____ (1) A motor carrier that has taken action to correct the deficiencies that resulted in an "unsatisfactory" standing may request a review at any time.~~

~~_____ (2) The request must be made in writing and sent or faxed to: Motor Carrier Division, 4501 South 2700 West, Box 14820, Salt Lake City, Utah 84114-8240, Phone: (801) 965-4243, Fax: (801) 965-4211.~~

~~_____ (3) The motor carrier must base this request upon evidence that it has taken corrective actions and that its operations currently meet the safety conditions as outlined in R909-3. The request must include a written description of corrective actions taken, and other documentation the carrier wishes the Department to consider.~~

~~_____ (4) The Department will make a final determination in writing within 30 days after the request has been made based upon the documentation the motor carrier submits, and any additional relevant information.~~

~~_____ (5) The Department will perform reviews of requests made by motor carriers within 45 days of the request.~~

R909-16-12. Rights of Carriers to Appeal "Unsatisfactory" Standing.

~~_____ (1) A motor carrier may appeal the Department's assessment of an "unsatisfactory" standing. The motor carrier must make a "petition to review" standing in writing. The petition must state why the proposed standing is believed to be in error and list all factual and procedural issues disputed. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.~~

~~_____ (2) The Department may request the petitioner to submit additional data and attend an Informal Hearing to discuss the~~

~~standing. Failure to provide the information requested or to attend the Informal Review may result in dismissal of the petition.~~

~~_____ (3) A motor carrier must make a request for a "petition to review" within 45 days of the date of the "unsatisfactory" standing was issued.~~

~~_____ (4) The Department will notify the motor carrier in writing of its decision following the Administrative Review or Informal Review. The Department will complete its review within 15 days after the Administrative Review or Informal Review date.~~

~~_____ (5) If after the Administrative Review or Informal Review, an agreement acceptable to the Division is not reached, a formal Notice of Agency Action will be entered against the carrier.~~

KEY: safety standing, truck

Date of Enactment or Last Substantive Amendment: December 24, 2008

Notice of Continuation: November 29, 2006

Authorizing, and Implemented or Interpreted Law: 72-9-303; 72-9-701; 72-9-702]

Transportation, Motor Carrier
R909-17
Appeal Process for Utah Commercial
Vehicle Safety Alliance Inspections

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35428

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R909-17 was enacted under Section 72-9-301 to establish a procedure for motor carriers to contest violations cited on roadside inspections conducted by the Utah Highway Patrol or Motor Carrier Division Personnel. This rule is being repealed because challenges of motor carrier data are now managed by the federal on-line system DataQ's.

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed because challenges of motor carrier data are now managed by the federal on-line system DataQ's.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-9-301

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The UDOT/Motor Carrier Division will still incur costs for personnel to manage the state requests for data changes in the DataQ's system, but costs will be reduced by repeal of this rule and by using this more efficient, time saving on-line system.

- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because this rule only applied to motor carriers.
- ◆ SMALL BUSINESSES: Motor Carrier companies may see a reduction in costs and time related to challenging data from repeal of this rule because the process in the DataQ's system is streamlined and consumer friendly.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this rule only applied to motor carriers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of Rule R909-7 and the change to the DataQ's system will not require additional compliance costs to motor carriers because the new system is streamlined and consumer friendly.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses from repeal of this rule other than the possible savings from moving to the federal DataQ's system which is streamlined and consumer friendly.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 MOTOR CARRIER
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: John Njord, Executive Director

R909. Transportation, Motor Carrier.
[R909-17. Appeal Process for Utah Commercial Vehicle Safety Alliance Inspections.

R909-17-1. Purpose.
 Under Utah Code 72-9-301 the Department in cooperation with the Department of Public Safety, Utah Highway Patrol Division are charged with ensuring commercial motor vehicles obey the Federal Motor Carrier Safety Regulations and Hazardous Material Regulations contained in Title 49, Code of Federal Regulations. This rule establishes a procedure for motor carriers to

contest violations cited on roadside inspections conducted by the Utah Highway Patrol or Motor Carrier Division Personnel.

R909-17-2. Definitions.
 In addition to the definitions found in CFR Title 49 Parts 350-399, the following definitions are provided:
 (1) "Division" means the Motor Carrier Safety Division
 (2) "Department" means the Utah Department of Transportation
 (3) "Administrative Review" means a proceeding in which a review board consisting of three members appointed by the Department in conjunction with the Transportation Commission evaluate the findings from the Division and comments from the motor carrier.

R909-17-3. Request for Review.
 (1) A motor carrier may request the removal of a violation or the designation of the violation being an out-of-service item, cited on a CVSA Inspection. The request must be made in writing to: Deputy Administrator, Motor Carrier Division, 4501 South 2700 West, Box 148240, Salt Lake City, UT 84114-8240.
 (2) This request must be accompanied with a list of factual and procedural issues that are in dispute and any information or documentation that supports such request. Documentation or statements from mechanics or vehicle manufactures may accompany the request.
 (3) Upon receipt of such a request the Deputy Administrator shall evaluate the inspection, statements from the Inspector/Investigator which conducted the inspection, statements from the motor carrier and any evidence or statements that support its argument carrier.
 (4) The Deputy Administrator shall notify the motor carrier in writing of the decision within thirty (30) days of receipt of a request for review.
 (5) The motor carrier will be notified in writing of the decision.

R909-17-4. Motor Carrier Rights to Appeal.
 (1) If upon notification of the Deputy Administrator's decision, the motor carrier wishes to appeal the decision, written notification must be made to the Motor Carrier Administrator within thirty (30) days of being notified. The request must be sent or faxed to: Administrator, Motor Carrier Division, 4501 South 2700 West, Box 148240, Salt Lake City, Utah 84123, Phone: (801) 965-4781, Fax: (801) 965-4211.
 (2) The request must state why the motor carrier feels the decision is not accurate, how they believe the inspector/investigator was in error at the time of the inspection, and provide documentation to support their claim.
 (3) An Administrative Review will be held with the Motor Carrier Administrator, and a panel designated by the Administrator. The motor carrier may be asked to submit additional data and attend an Informal Review to discuss the cites being contested.
 (4) If the motor carrier does not provide the information requested, or does not attend the Informal Review, the Division may dismiss its request for review.

~~_____ (5) The Division will notify the motor carrier in writing of its decision within 45 days of the Administrative Review or Informal Review.~~

~~_____ (6) The decision constitutes final agency action.~~

~~**KEY:** appeal, inspection~~

~~**Date of Enactment or Last Substantive Amendment:** December 4, 2001~~

~~**Notice of Continuation:** November 29, 2006~~

~~**Authorizing, and Implemented or Interpreted Law:** 72-9-301]~~

**Transportation, Motor Carrier
R909-75
Safety Regulations for Motor Carriers
Transporting Hazardous Materials
and/or Hazardous Wastes**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35426

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to incorporate updated federal safety regulations applicable to the offering, acceptance, and transportation of hazardous materials.

SUMMARY OF THE RULE OR CHANGE: Changes to the federal regulations being incorporated include changes to the hazardous material table to include new proper shipping names and requirements for fuel cell cartridges, organometallic substances, chlorosilanes that have water-reactive properties, and explosives. The regulations also codify several special permits that have been utilized in the past and incident reporting has been modified to be received electronically. Emergency response telephone numbers on shipping papers must now include the contact person, but the telephone number is no longer required for transport vehicles or freight containers which have been fumigated and display the fumigant marking. The full training requirements of Part 172 are not required for those transporting excepted quantities, but rather require them to be familiar with the requirements of Part 173.4a. Security Plan requirements are amended to be required only for certain hazardous materials as listed in Part 172.800. Intermediate bulk containers and large packagings must be marked indicating if they are intended to be stacked and be marked with how much weight may be stacked on them. Information regarding closure instructions must be retained for two years for combination packages and one year for single packages.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-9-103 and Section 72-9-104 and Section 72-9-301

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 49 CFR, Sub-Chapter C, Parts 107, 171, 172, 177, 178, 179 and 180, published by Government Printing Office, October 1, 2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the amendment only incorporates federal regulations already in effect.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the amendment only incorporates federal regulations already in effect.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the amendment only incorporates federal regulations already in effect.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the amendment only incorporates federal regulations already in effect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance costs for affected persons because the amendment only incorporates federal regulations already in effect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the amendment only incorporates federal regulations already in effect.

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

TRANSPORTATION
MOTOR CARRIER
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: John Njord, Executive Director

R909. Transportation, Motor Carrier.

R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.

R909-75-1. Purpose and Authority.

The purpose of this rule is to adopt regulations that are applicable to the offering, acceptance and transportation of hazardous materials related to the operation of a motor carrier within the State of Utah. This rule is authorized by Sections 72-9-103, 72-9-104 and 72-9-301.

R909-75-2. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, Parts ~~[100 through 180]~~ 107, 171, 172, 177, 178, 179, and 180 ~~[of the October 1, 2008 edition of the Federal Register,] (October 1, 2010), as amended by the Federal Register through February 28, 2011~~ are incorporated by reference. These changes apply to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulations

Date of Enactment or Last Substantive Amendment: ~~September 9, 2009~~ 2012

Notice of Continuation: November 1, 2011

Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-301

Transportation, Preconstruction, Right-of-Way Acquisition

R933-1

Right of Way Acquisition

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35429

FILED: 11/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify when the requirements of this rule regarding documents and authorities apply to the purchase, sale, or exchange of property and to make minor grammatical corrections.

SUMMARY OF THE RULE OR CHANGE: This rule amendment provides the department discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and makes minor grammatical corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-5-117

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the amendment provides the department additional discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and inasmuch as the department already handles property acquisition.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the amendment provides the department additional discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and inasmuch as the department already handles property acquisition.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the amendment provides the department additional discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and inasmuch as the department already handles property acquisition.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses or local government entities because the amendment provides the department additional discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and inasmuch as the department already handles property acquisition.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the amendment provides the department additional discretion as it relates to the documents and authorities it deems necessary or appropriate to ensure the value of real property is congruent with the proposed price and other terms of purchase, sale or exchange, and inasmuch as the department already handles property acquisition.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses from this amendment because the amendment only addresses the acquisition of rights of way and the purchase, sale and exchange of real property, and enacts the current practices of the Department as required by state and federal law.

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

TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: John Njord, Executive Director

R933. Transportation, Preconstruction, Right of Way Acquisition.

R933-1. Right of Way Acquisition.

R933-1-1. Purpose and Authority.

This rule provides the department's procedures for right of way acquisition and the purchase, sale, and exchange of real property. This rule is required by Section 72-5-117 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R933-1-2. Incorporation of Federal Regulations for Federal Financial Assistance Projects.

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register, on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects receiving federal financial assistance.

R933-1-3. Partial Incorporation of Federal Regulations for State Projects Funded Without Federal Financial Assistance.

The State of Utah incorporates by reference 49 CFR 24 as amended in the Federal Register on January 4, 2005, as its administrative rules on the acquisition of rights of way for projects that do not receive federal financial assistance, except that 49 CFR 24.107 is not incorporated and shall not be the basis for recovery of attorney fees or other litigation expenses specified therein. Attorney fees and other litigation expenses shall only be recoverable for projects that do not receive federal financial assistance to the extent expressly provided for by state law.

R933-1-4. Requirements for Purchase, Sale, or Exchange of Real Property.

(1) When purchasing, selling, or exchanging real property, the department ~~shall~~ may obtain and review the following documents and authorities as the department deems it necessary or appropriate to ensure that the value of the real property is congruent with the proposed price and other terms of purchase, sale, or exchange:

- (a) title insurance commitment;
- (b) an environmental assessment;

- (c) an engineering assessment;
- (d) applicable regulatory codes;
- (e) an appraisal;
- (f) an analysis of past maintenance and operational expenses, when available;
- (g) the situs, zoning, and planning information;
- (h) a land survey; and
- (i) other requirements determined necessary by the ~~the~~ department.

(2) This rule shall apply to all purchases, sales, and exchanges of the department, except as otherwise allowed, required or governed by state or federal law. For projects not receiving federal financial assistance, the requirements of this rule ~~shall~~ do not apply to the purchase, sale, or exchange of property, or to an interest in real property that is under a contract or other written agreement prior to May 5, 2008, or with a value of less than \$100,000, as estimated by the department.

KEY: right of way acquisition, condemnation

Date of Enactment or Last Substantive Amendment: ~~March 10, 2011~~ 2012

Notice of Continuation: November 1, 2011

Authorizing, and Implemented or Interpreted Law: 72-5-117

**Workforce Services, Unemployment
Insurance
R994-403-112c
Available**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35448

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the foreign travel provision.

SUMMARY OF THE RULE OR CHANGE: A claimant is not eligible to receive unemployment benefits while in a foreign country. A two-week exception was allowed for individuals traveling to apply for a job. That exception has only been used once in the many years it has been in rule and claimants are confused thinking it might apply to them. Taking that exception out will make it easier to administer and more clear.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.

- ◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs of savings to local government.
- ◆ SMALL BUSINESSES: There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any person as there are no fees associated with this program and it is federally funded. These changes will not impact any employers contribution rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons and there are no fees associated with this program and it is federally funded. These changes will not impact any employers contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.
 R994-403. Claim for Benefits.
 R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. ~~An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.~~

(C) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country ~~[except as provided in subparagraph (B) of this section]~~. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school

attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

KEY: filing deadlines, registration, student eligibility, unemployment compensation

Date of Enactment or Last Substantive Amendment: [~~August 2, 2011~~2012]

Notice of Continuation: June 26, 2007

Authorizing, and Implemented or Interpreted Law: 35A-403(1)

**Workforce Services, Unemployment
Insurance
R994-508
Appeal Procedures**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35455

FILED: 11/15/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is to simplify appeals process.

SUMMARY OF THE RULE OR CHANGE: The current rule allows for a motion for reconsideration to the administrative law judge. The Department has always treated those requests as an appeal to the Board. This change will reflect current practice. This amendment also eliminates the Request for Reconsideration at the Board level. Those requests are rarely granted and entail a great deal of time. Parties can always appeal to the Court of Appeals.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-1-303 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs of savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2012

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.
 R994-508. Appeal Procedures.**

~~**[R994-508-121. Correction of Error and Augmentation of the Record:**~~

~~_____ A party may request correction of an ALJ decision if the request is made in writing and filed within 30 calendar days of the date of the decision. The ALJ retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to Utah Code Subsections 35A-4-406(2) and 35A-4-406(3) unless the Board has accepted an appeal. If the ALJ agrees to grant the request for correction, a new decision will be issued and new appeal rights to the Board will be established. If the ALJ denies the request, the request will be treated as an appeal to the Board.]~~

~~**[R994-508-306. Reconsideration of a Decision of the Board:**~~

~~_____ A party may request reconsideration of a decision of the Board in accordance with Utah Code Subsection 63G-4-302.]~~

KEY: unemployment compensation, appellate procedures

Date of Enactment or Last Substantive Amendment: ~~[April 11, 2011]~~2012

Notice of Continuation: June 10, 2008

Authorizing, and Implemented or Interpreted Law: 35A-4-508(2); 35A-4-508(5); 35A-4-508(6); 35A-4-406; 35A-4-103

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.

Attorney General, Administration **R105-2** Records Access and Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35414
FILED: 11/07/2011

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: The rule is enacted under the authority of the Government Records Access and Management Act (GRAMA), Subsection 63G-2-204(2)(d), which authorizes agencies to make rules specifying where a record request under GRAMA should be submitted. It is also enacted under the authority of Subsection 63A-12-104(2), which allows an agency to make rules specifying which parts of the agency may share records without meeting the requirements of Section 63G-2-206. The rule also notifies potential requesters that those seeking records of client agencies of the Attorney General's Office should seek them directly from that client agency, under the authority of Subsection 67-5-15(1). Finally, because the Attorney General is a constitutional office, the position has been taken by some that the Attorney General is not subject to the requirements of the Rulemaking Act. The Attorney General's constitutional authorities -- Utah Const. Art VII Sections 1 and 16 -- are also provided.

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 supporting or opposing this rule 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: Specifying the address for receipt of GRAMA requests helps ensure that requests won't go astray and, under Subsection 63G-2-204(7), and ensures that the Office will get the full time established by statute to respond to a GRAMA request. It also allows the Office to be treated as a single entity for purposes of record sharing. And it provides notice to requesters that they must seek records belonging to a client agency from the client agency, potentially saving time for both the requester and the Attorney General's Office. The Attorney General's Office has recently amended the rule to change addresses specified in the rule, to notify requesters that some records must be sought from the client agency, to eliminate language stating that many records of the Attorney General are private or protected, and to clarify language. Therefore, this rule should be continued.

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

ATTORNEY GENERAL
ADMINISTRATION
ROOM 230 UTAH STATE CAPITOL
350 NORTH STATE STREET
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

AUTHORIZED BY: John Swallow, Deputy Attorney General

EFFECTIVE: 11/07/2011

Commerce, Administration
R151-2
 Government Records Access and
 Management Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 35411
 FILED: 11/03/2011

**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: The Government Records Access and Management Act, Section 63G-2-101 et seq., requires all governmental entities to establish economical and efficient records management practices. Rule R151-2 is made pursuant to Subsection 63G-2-204(2)(d) of the Act which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63A-12-104(2) which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63-2-603 which concerns requests to amend a record.

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 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: The rule should be continued because it ensures the efficient management of Department records, which is required under Section 63G-2-101 et seq.

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

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 11/03/2011

Commerce, Occupational and
 Professional Licensing
R156-24b
 Physical Therapy Practice Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 35443
 FILED: 11/15/2011

**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: Title 58, Chapter 24b, provides for the licensure of physical therapists and physical therapy assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-24b-201(3) provides that the Physical Therapy Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) (a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 24b, with respect to physical therapists and physical therapist assistants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in 2007, the Division has received no written comments.

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 as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 24b, with respect to physical therapists and physical therapist assistants. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/15/2011

**Commerce, Occupational and
Professional Licensing
R156-26a
Certified Public Accountant Licensing
Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35444
FILED: 11/15/2011

**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: Title 58, Chapter 26a, provides for the licensure of certified public accountants (CPA) and CPA firms. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-26a-201(3) provides that the Utah Board of Accountancy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 26a, with respect to certified public accountants and CPA firms.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in 2007, the Division has received no written comments.

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 as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 26a, with respect to certified public accountants and CPA firms. The rule should also be

continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/15/2011

**Commerce, Occupational and
Professional Licensing
R156-54
Radiologic Technologist, Radiologist
Assistant, and Radiology Practical
Technician Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35442
FILED: 11/15/2011

**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: Title 58, Chapter 54, provides for the licensure of radiologic technologists, radiology assistants and radiology practical technicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-54-201(3) provides that the Radiologic Technologist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 54, with respect to radiologic technologists, radiology assistants and radiology practical technicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in 2007, it has been amended two times. The Division received an 04/20/2009 email from Troy Dicou in which he supported the proposed amendment to increase the passing examination score for radiology practical technicians. The Division also received an 04/14/2009 email from Ginny Haselhuhn, American Registry of Radiologic Technologists (ARRT), in which they supported the proposed amendment to increase the passing examination score for radiology practical technicians and also commented that they wanted to assist the Division in making an informed decision regarding the state's minimum passing score requirements. No other written comments have been received by the Division with respect to this rule since the last five-year review conducted in January 2007.

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 as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 54, with respect to radiologic technologists, radiology assistants and radiology practical technicians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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:

♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/15/2011

Human Resource Management,
Administration
R477-14
Substance Abuse and Drug-Free
Workplace

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35412
FILED: 11/04/2011

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 67-19-6 authorizes the Department of Human Resource Management (DHRM) to make rules regarding human resources, including the discipline of employees for violations of substance abuse laws, as stated in Sections 67-19-18, 67-19-34, 67-19-37, and 67-19-38; and the testing of employees for suspected use of controlled substances, as stated in Section 67-19-36.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the past five years, the only written comments received about this rule or proposed amendments came from the Governor's Office of Planning and Budget, wherein they disagreed with a proposed amendment's categorization as nonsubstantive. DHRM withdrew the filing and filed a substantive amendment.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 67-19-33 prohibits controlled substance and alcohol in the workplace and Section 67-19-34 requires DHRM to make rules governing violations of this. This rule also implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, and incorporates the federal Code of Regulations. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 11/04/2011

Human Services, Child and Family
Services
R512-10
Youth Mentor Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35410
FILED: 11/03/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-4a-106 authorizes the Division of Child and Family Services to provide services directly or through contract and to monitor those services to insure compliance with applicable state law and the standards and rules of the Division of Child and Family 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: 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: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide and monitor the Youth Mentor Program.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 11/03/2011

Transportation, Administration
R907-60
Handling of Publications Prepared by
the Utah Department of Transportation
Either for Sale or Free Copy

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35421
FILED: 11/14/2011

**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 authorized by Subsection 63G-2-204(2)(d) which allows the department to specify where and to whom requests for access to department publications should be directed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received 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 authorizing this rule remains in effect and the department complies with the law by having this rule in place to specify where and to whom requests for access to department publications should be directed. Therefore, this rule should be continued.

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

TRANSPORTATION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

**Transportation, Preconstruction
R930-2
Public Hearings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35422
FILED: 11/14/2011

**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 authorized by Section 72-1-201 and is enacted to promote greater public involvement in the highway program of the department through public hearings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received 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: This rule should remain in effect so the department can continue to promote public involvement in the highway program through public hearings and to provide procedures for conducting public hearings. Therefore, this rule should be continued.

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

TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

**Transportation, Preconstruction
R930-5
Establishment and Regulation of At-Grade Railroad Crossings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35420
FILED: 11/14/2011

**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 Sections 54-4-14, 54-4-15, 72-1-201, and 41-6a-1205 to improve the safety for all users of at-grade railroad crossings and provide for the efficient operation of trains, vehicles, and pedestrians through those crossings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received 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 laws authorizing this rule remain in effect and the department complies with those laws by having this rule in place to improve the safety for all users of at-grade railroad crossings and provide for the efficient operation of trains, vehicles, and pedestrians through those crossings. Therefore, this rule should be continued.

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

TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

**Transportation, Preconstruction
R930-6
Manual of Accommodation of Utility
Facilities and the Control and
Protection of State Highway Rights-of-
Way**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35423
FILED: 11/14/2011

**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 Sections 72-3-109, 72-6-116, 72-7-102, and 72-7-108 which authorize or require the department to make rules governing approach roads and driveways, regulating in state rights of way the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utilities, excavation and installation of other facilities, including telecommunication facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received 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: This rule is necessary for the department to govern approach roads and driveways, regulate in state rights of way the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utilities, excavation and installation of other facilities, including telecommunication facilities, as authorized or required by Sections 72-3-109, 72-6-116, 72-7-102, and 72-7-108 and to ensure the safe use and protection of federal-aid highways. Therefore, this rule should be continued.

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

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

**Transportation, Preconstruction, Right-
of-way Acquisition
R933-2
Control of Outdoor Advertising Signs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35424
FILED: 11/14/2011

**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 72-7-506 which authorizes the department to make rules to control outdoor advertising, enforce the Utah Outdoor Advertising Act, and establish application and administrative procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received 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: This rule is necessary for the department to control outdoor advertising, enforce the Utah Outdoor Advertising Act, and establish application and administrative procedures as authorized by Section 72-7-506. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION, RIGHT-OF-WAY
ACQUISITION

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

Transportation, Preconstruction, Right-of-way Acquisition
R933-3

Relocation or Modification of Existing Authorized Access Openings or Granting New Access Openings on Limited Access Highways

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35419
FILED: 11/14/2011

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 Sections 72-1-201 and 72-7-102 which authorize the department to make rules establishing a procedure for the

creation of limited access facilities and procedures for new access openings and relocation or modification of existing access openings on limited access highways.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received 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: This rule is necessary for the department to establish a procedure for the creation of limited access facilities and procedures for new access openings and relocation or modification of existing access openings on limited access highways as authorized by Sections 72-1-201 and 72-7-102. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION, RIGHT-OF-WAY
ACQUISITION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/14/2011

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

Commerce

Administration

No. 35232 (AMD): R151-4-107. Computation of Time

Published: 10/01/2011

Effective: 11/07/2011

Occupational and Professional Licensing

No. 35237 (AMD): R156-78B-4. General Provisions

Published: 10/01/2011

Effective: 11/08/2011

Education

Administration

No. 35241 (R&R): R277-115. Copyrighting Material

Developed with Funds that Flow Through the Board

Published: 10/01/2011

Effective: 11/08/2011

No. 35242 (AMD): R277-419. Pupil Accounting

Published: 10/01/2011

Effective: 11/08/2011

No. 35243 (NEW): R277-487. Public School Student Confidentiality

Published: 10/01/2011

Effective: 11/08/2011

No. 35244 (NEW): R277-531. Public Educator Evaluation Requirements (PEER)

Published: 10/01/2011

Effective: 11/08/2011

No. 35245 (NEW): R277-603. Autism Awareness Restricted Account Distribution

Published: 10/01/2011

Effective: 11/08/2011

No. 35246 (AMD): R277-610. Released-Time Classes for Religious Instruction

Published: 10/01/2011

Effective: 11/08/2011

No. 35247 (NEW): R277-614. Athletes and Students with Head Injuries

Published: 10/01/2011

Effective: 11/08/2011

No. 35248 (REP): R277-701. Robert C. Byrd Honors Scholarship Program

Published: 10/01/2011

Effective: 11/08/2011

No. 35249 (AMD): R277-746. Driver Education Programs for Utah Schools

Published: 10/01/2011

Effective: 11/08/2011

No. 35250 (REP): R277-747. Private School Student Driver Education

Published: 10/01/2011

Effective: 11/08/2011

Environmental Quality

Water Quality

No. 35221 (AMD): R317-1-7. TMDLs

Published: 09/15/2011

Effective: 11/07/2011

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 35225 (AMD): R414-1-5. Incorporations by Reference

Published: 10/01/2011

Effective: 11/15/2011

No. 35207 (AMD): R414-3A-2. Definitions

Published: 09/15/2011

Effective: 11/15/2011

NOTICES OF RULE EFFECTIVE DATES

No. 35227 (AMD): R414-14-2. Definitions
Published: 10/01/2011
Effective: 11/15/2011

No. 35228 (AMD): R414-54-3. Services
Published: 10/01/2011
Effective: 11/15/2011

No. 35229 (AMD): R414-59-4. Client Eligibility
Requirements
Published: 10/01/2011
Effective: 11/15/2011

Human Resource Management
Administration

No. 35251 (AMD): R477-4-2. Career Service Exempt
Positions
Published: 10/01/2011
Effective: 11/07/2011

No. 35252 (AMD): R477-8-4. Overtime
Published: 10/01/2011
Effective: 11/07/2011

Human Services

Substance Abuse and Mental Health

No. 35223 (AMD): R523-23. On-Premise Alcohol Training
and Education Seminar Rules of Administration
Published: 10/01/2011
Effective: 11/07/2011

Public Service Commission
Administration

No. 35236 (AMD): R746-409-1. General Provisions
Published: 10/01/2011
Effective: 11/07/2011

End of the Notices of Rule Effective Dates Section

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

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through November 15, 2011. 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).

Questions regarding the index and the information it contains should be addressed to 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/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	35065	R81-10C	NEW	10/01/2011	2011-15/41
	35097	R81-10D	NEW	10/01/2011	2011-16/7
	35198	R81-10D-6	NSC	10/01/2011	Not Printed
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Agriculture and Food, Animal Industry	34343	R58-1	AMD	03/24/2011	2011-3/7
	34976	R58-4	5YR	06/23/2011	2011-14/135

disinfection monitoring

Environmental Quality, Drinking Water	34375	R309-215-16	NSC	02/14/2011	Not Printed
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disruptive students

Education, Administration	34824	R277-609	AMD	07/11/2011	2011-11/48
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diversion programs

Commerce, Occupational and Professional Licensing	34885	R156-1	AMD	07/26/2011	2011-12/12
	35096	R156-1	NSC	08/16/2011	Not Printed
	34323	R156-1-102	AMD	02/24/2011	2011-2/7

do not resuscitate

Health, Family Health and Preparedness, Licensing	35029	R432-31	AMD	10/01/2011	2011-15/79
Health, Health Systems Improvement, Licensing	34636	R432-31	NSC	05/03/2011	Not Printed

domestic violence

Human Services, Child and Family Services	34344	R512-1-6	NSC	01/26/2011	Not Printed
	34778	R512-205	EMR	05/10/2011	2011-11/108
	34779	R512-205	NEW	07/28/2011	2011-11/69

double employment

Human Resource Management, Administration	34997	R477-8	AMD	09/03/2011	2011-14/63
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drinking water

Environmental Quality, Drinking Water	34112	R309-100-4	AMD	02/03/2011	2010-20/51
	34243	R309-110-4	AMD	05/09/2011	2010-23/34
	34243	R309-110-4	CPR	05/09/2011	2011-7/28
	34375	R309-215-16	NSC	02/14/2011	Not Printed
	34244	R309-520	AMD	05/09/2011	2010-24/8
	34244	R309-520	CPR	05/09/2011	2011-7/33
	34450	R309-800	AMD	05/23/2011	2011-6/72

driver address record

Public Safety, Driver License	34371	R708-42	5YR	01/20/2011	2011-4/49
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driver education

Education, Administration	35249	R277-746	AMD	11/08/2011	2011-19/25
	35250	R277-747	REP	11/08/2011	2011-19/26
Public Safety, Driver License	34399	R708-18	5YR	01/31/2011	2011-4/46

<u>driver license</u>					
Public Safety, Driver License	34374	R708-44	5YR	01/20/2011	2011-4/50
	34373	R708-44	NSC	02/14/2011	Not Printed
<u>driver license verification</u>					
Public Safety, Driver License	34372	R708-43	5YR	01/20/2011	2011-4/49
<u>dropouts</u>					
Education, Administration	34834	R277-760	REP	07/11/2011	2011-11/67
<u>drug abuse</u>					
Human Resource Management, Administration	34751	R477-14	AMD	07/01/2011	2011-10/57
	35412	R477-14	5YR	11/04/2011	Not Printed
<u>drug stamps</u>					
Tax Commission, Collections	35148	R867-2B-1	AMD	10/13/2011	2011-17/63
<u>drug/alcohol education</u>					
Human Resource Management, Administration	34751	R477-14	AMD	07/01/2011	2011-10/57
	35412	R477-14	5YR	11/04/2011	Not Printed
<u>dual employment</u>					
Human Resource Management, Administration	34746	R477-8	AMD	09/03/2011	2011-10/50
	35252	R477-8-4	AMD	11/07/2011	2011-19/45
<u>early intervention</u>					
Health, Community and Family Health Services, Children with Special Health Care Needs	34592	R398-20	NSC	05/03/2011	Not Printed
<u>earthquakes</u>					
Natural Resources, Water Rights	34691	R655-11	5YR	04/14/2011	2011-9/121
	34960	R655-11	AMD	09/12/2011	2011-14/76
<u>economic development</u>					
Governor, Economic Development	34762	R357-5	NEW	06/30/2011	2011-10/22
	34929	R357-6	EMR	06/15/2011	2011-13/80
	34930	R357-6	NEW	08/08/2011	2011-13/65
<u>education</u>					
Commerce, Real Estate	34476	R162-103	AMD	04/27/2011	2011-6/46
	34943	R162-103	REP	11/01/2011	2011-14/26
Education, Administration	34814	R277-407	AMD	07/11/2011	2011-11/21
	35087	R277-407-6	NSC	08/16/2011	Not Printed
	34333	R277-470-12	AMD	02/22/2011	2011-2/21
	34429	R277-709	AMD	04/08/2011	2011-5/17
Health, Community and Family Health Services, Children with Special Health Care Needs	34592	R398-20	NSC	05/03/2011	Not Printed
<u>education finance</u>					
Education, Administration	34230	R277-419	AMD	01/10/2011	2010-23/26
	35242	R277-419	AMD	11/08/2011	2011-19/9
<u>educational administration</u>					
Education, Administration	34359	R277-800-5	NSC	01/27/2011	Not Printed
<u>educational expenditures</u>					
Education, Administration	34998	R277-478	5YR	06/30/2011	2011-14/138
	34926	R277-478	AMD	08/08/2011	2011-13/53
	35000	R277-479	5YR	06/30/2011	2011-14/138
	35167	R277-479	REP	10/11/2011	2011-17/32
<u>educational policy</u>					
Education, Administration	35163	R277-112	AMD	10/11/2011	2011-17/25
	35337	R277-112-3	NSC	10/31/2011	Not Printed

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<u>educational program evaluations</u>					
Education, Administration	34823	R277-501-9	AMD	07/11/2011	2011-11/48
<u>educational testing</u>					
Education, Administration	34924	R277-473	AMD	08/08/2011	2011-13/46
	35116	R277-473-4	NSC	08/31/2011	Not Printed
	34831	R277-712	REP	07/11/2011	2011-11/59
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Human Resource Management, Administration	34748	R477-10	NSC	05/25/2011	Not Printed
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Education, Administration	35244	R277-531	NEW	11/08/2011	2011-19/16
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Education, Administration	34822	R277-500	NEW	07/11/2011	2011-11/43
	34823	R277-501-9	AMD	07/11/2011	2011-11/48
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Education, Administration	34494	R277-510	5YR	03/04/2011	2011-7/48
	34334	R277-520	AMD	02/22/2011	2011-2/22
	35168	R277-530	NEW	10/11/2011	2011-17/34
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Education, Administration	35168	R277-530	NEW	10/11/2011	2011-17/34
<u>effluent standards</u>					
Environmental Quality, Water Quality	34437	R317-1-7	AMD	04/13/2011	2011-5/26
	35082	R317-1-7	AMD	10/04/2011	2011-15/77
	35221	R317-1-7	AMD	11/07/2011	2011-18/10
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Human Services, Aging and Adult Services	34390	R510-401	5YR	01/26/2011	2011-4/37
<u>electric assisted bicycle headgear</u>					
Public Safety, Driver License	34402	R708-33	5YR	01/31/2011	2011-4/48
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Commerce, Occupational and Professional Licensing	35014	R156-55b	AMD	09/12/2011	2011-15/60
	35306	R156-55b	5YR	10/04/2011	2011-21/157
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	34324	R722-350	NEW	02/22/2011	2011-2/40	
<u>eligible regional service center</u>						
Education, Administration	34826	R277-706	NEW	07/11/2011	2011-11/54	
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Human Services, Recovery Services	34685	R527-250	NEW	07/01/2011	2011-9/96	
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Health, Family Health and Preparedness, Emergency Medical Services	34902	R426-16	AMD	07/26/2011	2011-12/49	
Health, Health Systems Improvement, Emergency Medical Services	34598	R426-2	NSC	05/03/2011	Not Printed	
	34599	R426-5	NSC	05/03/2011	Not Printed	
	34600	R426-6	NSC	05/03/2011	Not Printed	
	34358	R426-7	5YR	01/12/2011	2011-3/55	
	34601	R426-7	NSC	05/03/2011	Not Printed	
	34346	R426-8	5YR	01/05/2011	2011-3/56	
	34602	R426-8	NSC	05/03/2011	Not Printed	
	34603	R426-11	NSC	05/03/2011	Not Printed	
	34604	R426-12	NSC	05/03/2011	Not Printed	
	34605	R426-13	NSC	05/03/2011	Not Printed	
	34606	R426-14	NSC	05/03/2011	Not Printed	
	34607	R426-15	NSC	05/03/2011	Not Printed	
	34608	R426-16	NSC	05/03/2011	Not Printed	
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Human Resource Management, Administration	34748	R477-10	NSC	05/25/2011	Not Printed	
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	34738	R162-2f-407	NSC	08/17/2011	Not Printed
	34988	R162-2f-407	AMD	08/22/2011	2011-14/20
	34917	R162-2g	NEW	11/01/2011	2011-13/16
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Transportation, Administration	35140	R907-1	5YR	08/11/2011	2011-17/97
	35141	R907-1	NSC	08/31/2011	Not Printed
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Education, Administration	34999	R277-717	5YR	06/30/2011	2011-14/139
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Education, Administration	34937	R277-707	NEW	08/08/2011	2011-13/63
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Tax Commission, Auditing	34967	R865-7H-1	AMD	08/25/2011	2011-14/83
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	34966	R865-13G-15	AMD	08/25/2011	2011-14/87
	34872	R865-13G-16	AMD	08/11/2011	2011-12/70
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Corrections, Administration	34858	R251-114	NSC	06/14/2011	Not Printed	
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	34467	R325-4	5YR	02/24/2011	2011-6/103	
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	34476	R162-103	AMD	04/27/2011	2011-6/46
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	34703	R162-104-14	AMD	06/22/2011	2011-9/7
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	34947	R162-107	REP	11/01/2011	2011-14/41
	34948	R162-109	REP	11/01/2011	2011-14/42
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	34909	R162-2f-205	AMD	08/10/2011	2011-13/10
	34910	R162-2f-401a	AMD	08/10/2011	2011-13/12
	34911	R162-2f-403	AMD	08/10/2011	2011-13/14
	34738	R162-2f-407	NSC	08/17/2011	Not Printed
	34988	R162-2f-407	AMD	08/22/2011	2011-14/20
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	34576	R392-301	NSC	05/03/2011	Not Printed
	34580	R392-401	NSC	05/03/2011	Not Printed
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	34757	R865-19S-103	AMD	06/23/2011	2011-10/112
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