

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

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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, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for March 2014 Medicaid Rate Changes

Effective March 1, 2014, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 16, 2014, 12:00 a.m., and January 31, 2014, 11:59 p.m. are included in this, the February 15, 2014, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them ([example]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least March 17, 2014. 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 June 15, 2014, 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.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

**Administrative Services, Risk
Management
R37-4
Adjusted Utah Governmental Immunity
Act Limitations on Judgments**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38250

FILED: 01/17/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 63G-7-604(4) mandates that the Governmental Immunity Act Limitations on Judgments be adjusted in even-numbered years.

SUMMARY OF THE RULE OR CHANGE: Commencing 07/01/2014, the limit for personal injury damages against a governmental entity will be increased from \$674,000 to \$703,000 per person/per occurrence, and from \$2,308,400 to \$2,407,700 in the aggregate/per occurrence. Also commencing 07/01/2014, the limit for property damages against a governmental entity will be increased from \$269,700 to \$281,300 in any one occurrence.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-7-604(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** In general, there is the potential for a 4.3% increase in personal injury and property damage limits during the next two fiscal years; however, it is impossible to calculate or estimate the aggregate anticipated costs that may arise due to this amendment, because those costs will be based upon the unique facts and applicable laws associated with the claims that will arise in FY2015 and FY2016.

◆ **LOCAL GOVERNMENTS:** Because this amendment affects local governmental entities, it will have the same impact on them, namely the potential for a 4.3% increase in personal injury and property damage limits during the next two fiscal years. As indicated above, it is impossible to calculate or estimate the aggregate anticipated costs that may arise due to this amendment, because those costs will be based upon the unique facts and applicable laws associated with the claims that will arise in FY2015 and FY2016.

◆ **SMALL BUSINESSES:** Because this amendment increases the limitation on judgments, it may increase damage awards for small businesses that have legitimate claims against governmental entities in the State of Utah. Small businesses may also be expected to purchase additional insurance as a condition of doing business with governmental entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment increases the limitation on judgments, it may increase damage awards for persons that have legitimate claims against governmental entities in the State of Utah. Persons may also be expected to purchase additional insurance as a condition of doing business with governmental entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Governmental entities may experience premium increases as a result of this amendment; however, it is impossible to predict those costs for each governmental entity within the State of Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may benefit businesses by increasing the available liability limits for personal injuries and property damage caused by governmental entities; however, such increases will be unique and limited to the unique facts of each case. This rule may also result in an increase in insurance premium costs for vendors and other organizations that provide events or services for governmental entities, but it is impossible to quantify such increases.

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
◆ Stephen Hewlett by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at shewlett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/30/2014

THIS RULE MAY BECOME EFFECTIVE ON: 04/30/2014

AUTHORIZED BY: Kimberly Hood, Executive Director

R37. Administrative Services, Risk Management.

R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.

R37-4-1. Authority and Calculation Process.

Pursuant to UCA 63G-7-604(4) the Risk Manager hereby establishes a new limitation of judgment.

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years ~~2009 and~~ 2011 and 2013 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year ~~2009~~2011 is calculated to be ~~214.00~~222.43 and the index for ~~2011~~2013 is ~~222.43~~232.02. The percentage difference between the ~~2009~~2011 index and the ~~2011~~2013 index was then computed to be ~~3.9%~~4.3%.

R37-4-2. New Limitation of Judgment Amounts.

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, ~~2012~~2014 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is ~~[\$674,000]~~\$703,000 for one person in any one occurrence, and ~~[\$2,308,400]~~\$2,407,700 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is ~~[\$269,700]~~\$281,300 in any one occurrence.

R37-4-3. Limitations of Judgments by Calendar Date.

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(2).

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(2).

3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(2).

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(2).

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property damage for any one occurrence as explained in R37-4-2(2).

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence as explained in R37-4-2(2).

9) Incident(s) occurring on or after July 1, 2012 - \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2).

10) Incident(s) occurring on or after July 1, 2014 - \$703,000 for one person in an occurrence, \$2,407,700 aggregate for two or more persons in an occurrence, and \$281,300 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, [g]Governmental [i]Immunity [a]Act caps

Date of Enactment or Last Substantive Amendment: ~~[May 31, 2012]~~2014

Notice of Continuation: May 30, 2012

Authorizing, and Implemented or Interpreted Law: 63G-7-604(4)

Agriculture and Food, Regulatory Services **R70-530** Food Protection

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38262

FILED: 01/28/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to adopt the 2009 FDA Model Retail Food Code and incorporate the current Code of Federal Regulations (CFR) for Food Manufacturing.

SUMMARY OF THE RULE OR CHANGE: Chapter 1: 1-201.10(B): added "Core item"; added "Cut leafy greens"; amended definition of "Injected" to remove the public health statement and process where no liquid is introduced; added "Mechanically Tenderized"; added "Non-continuous cooking"; revised "Potentially Hazardous Food (Time/Temperature Control for Safety Food)" subparagraph (2)(a) by adding "cut leafy greens"; added "Priority item"; added "Priority foundation item"; revised "Ready-to-Eat Food" subparagraph (1)(b) to correctly cross reference 3-401.11 (D)(1) and (3); revised subparagraph (1)(c) to update reference to subparagraph 3-401.11(D)(4); and revised "Reduced oxygen packaging" subparagraph (2)(d) and (2)(e) to correct spelling of "psychotropic". Chapter 2: 2-102.11(A): amended to replace "Critical items" with "Priority items"; and 2-103.11 (L):

added "food allergy awareness" as a part of the food safety training of employees by the Person in Charge. Chapter 3: 3-201.11 (D): amended to correctly cross reference subparagraph 3-401.11 (D); 3-302.11(A)(1): amended language to exempt frozen, commercially processed and packaged raw animal foods from separate storage or display from RTE foods; added new subparagraph (c) that allows this exemption; 3-401.11(A)(2): added "mechanically tenderized" meats to the list of foods that shall be cooked to heat all parts of the food to 68 deg C (155 deg F) for 15 seconds; 3-401.11(D): amended to add new subparagraph (D)(2) to not allow the sale of undercooked, comminuted meat from a children's menu; 3-401.11(D)(2): amended to become the new (D)(3); 3-401.11(D)(3): amended to become the new (D) (4); 3-401.14: added a new section on non-continuous cooking of raw animal foods that specifies the criteria for using a non-continuous cooking process; 3-402.11(B): added new subparagraph (4) to exempt fish eggs that have been removed from the skein and rinsed from freezing for parasite destruction; 3-403.11(E): added new paragraph (E) which was missing in 2007 Supplement; 3-404.11(A): amended to correct the reference paragraph 8-201.12 (B) - (E) to paragraph 8-201.14(B) - (E); 3-501.17(D)(2): amended to correct a typographical error; 3-502.11(D): amended to include *Listeria monocytogenes* controls which are specified under Section 3-502.12; 3-502.11(E): amended paragraph (E) to replace the word "and" with "or" to clarify that a variance would be required when operating a molluscan shellfish life-support system display tank, regardless of whether the tank was used for storing (back-of-the-house) or displaying (front-of-the-house) shellfish; 3-502.12: amended tag line to clarify that no variance is required for Reduced Oxygen Packaging methods listed in this section; 3-502.12(A): amended to clarify that all Reduced Oxygen Packaging methods in this section require controls for growth and/or toxin formation by *Clostridium botulinum* and *Listeria monocytogenes*, not just methods with two barriers; 3-502.12(B)(2)(d): amended to clarify that raw vegetables have high levels of competing organisms; 3-502.12(B)(5)(a): amended to clarify that prohibition only applies to ready-to-eat food to prevent conflict with Section 3-301.11; 3-502.12(D): amended to show this paragraph is not optional and remove italics; 3-502.12(D)(1): amended to clarify that implementing a HACCP plan is required; 3-502.12(D)(2)(c): amended to add cross reference to Part 3-3; 3-502.12(D)(2)(d): amended to clarify when bags should be sealed for cook-chill and sous vide; 3-502.12(E): amended to show this paragraph is not optional with no variance and remove italics; 3-502.12(E)(2) and (E)(3): amended to combine (E)(2) with (E)(3); 3-502.12(E)(4): amended to become the new (E)(3); 3-502.12(E)(5): amended to become the new (E)(4); and 3-603.11(A): amended cross reference from 3-401.11(D)(3) to 3-401.11(D) (4). Chapter 4: 4-204.110(A) and (B): amended to clarify that subparagraphs 4-204.110(A) and (B) applies to molluscan shellfish life support system tanks that are used for either storing or displaying molluscan shellfish; 4-501.114: amended lead-in paragraph to change "exposure times" to "contact times" and "manufacturer's label use instruction or directions" to "EPA-registered label use instructions" to harmonize with

EPA terminology (CFR 2008-III-010); 4-501.114(A): added chlorine concentration ranges and changed "Minimum Concentration" to "Concentration Range" in the chart (CFR 2008-III-010); 4-501.114(B)(1): amended to change the minimum temperature requirement for an iodine solution from "24 deg C (75 deg F)" to "20 deg C (68 deg F) to be consistent with EPA iodophor registration protocols (CFR 2008-III-010); 4-501.114(C)(3): amended to change "manufacturer's label" to "EPA-registered label use instructions" to harmonize with EPA terminology (CFR 2008-III-010); 4-501.114(E): amended to change "manufacturer's directions including the labeling" to "EPA-registered label use instructions" to harmonize with EPA terminology (CFR 2008-III-010); 4-703.11(C): amended to change "exposure time" to "contact time" to harmonize with EPA terminology in (C)(1)(2) (3) and (4) (CFR 2008-III-010); added sentence to clarify that contact times shall be consistent with EPA-registered labels and to harmonize with EPA terminology; 4-904.13: revised the text regarding preset tableware to clarify under what circumstances preset tableware may be exposed and not protected from contamination by wrapping, covering, or inverting; and 4-904.14: added a new Section 4-904.14 to allow the application of a post-sanitizing rinse restricted to commercial warewashing machines and the circumstances under which it may be allowed (2008-III-016). Chapter 5: 5-102.12(B): amended to remove "and irrigation"; 5-203.13: added a new paragraph (B) to address use limitations for toilets and urinals and amended existing paragraph to be new paragraph (A); and 5-203.15: amended to change "double" check valve to "dual" check valve. Chapter 6: 6-301.12: added new paragraph (D) to allow the use of a high velocity blade of non-heated, pressurized air for hand drying; 6-306.10: amended to change the cross reference in the paragraph from Section 5-203.13 to paragraph 5-203.13(A); Section 5-203.13 has (A) and (B) paragraphs. The cross reference now only refers to paragraph (A); 6-501.18: amended to delete cross reference to Section 5-205.11 as it pertains to handwashing sinks only and not toilets and urinals; and 6-501.111: amended the lead-in paragraph to clarify that establishments are expected to be free of pests. Chapter 7: 7-204.12: added a new paragraph (B) that allows the use of ozone on fruits and vegetables according to 21 CFR 173.368. Chapter 8: 8-201.13(A)(2): amended cross reference from subparagraph 3-401.11(D)(3) to subparagraph 3-401.11(D)(4); 8-304.11(G): amended to remove reference to deleted paragraph 8-304.11(H); 8-304.11(H): deleted paragraph (H) as it references subparagraph 3-501.16(A)(2) that was deleted from the Code in the Supplement to the 2005 Food Code; renumbered remaining paragraphs; 8-304.11(I): amended to become new paragraph (H); 8-304.11(J): amended to become new paragraph (I); 8-304.11(K): amended to become new paragraph (J); 8-401.20(A): amended to change "critical" to "priority items or priority foundation items"; 8-401.20(B): amended to change "noncritical" to "core items"; 8-403.10(B)(3): amended to change "critical items" to "priority items or priority foundation items"; 8-405.11(A) and (B): amended to change "critical item" to "priority item or priority foundation item"; 8-405.20(A) and (B): amended to change "critical item" to "priority item or

priority foundation item"; and 8-406.11(A): amended to change "noncritical violations" to "core items".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-5-17

- MATERIALS INCORPORATED BY REFERENCES:
- ◆ Updates 21 CFR Parts 100-199, published by Office of the Federal Register, 04/01/2013
 - ◆ Updates Food Code 2009, published by U.S. Department of Health and Human Services, 01/01/2010

- ANTICIPATED COST OR SAVINGS TO:
- ◆ THE STATE BUDGET: The state budget is not affected because the adoption of these current versions of the Food Code and the CFR does not affect the Division's budget. These are minor changes which do not affect the workload.
 - ◆ LOCAL GOVERNMENTS: Local governments have no responsibilities in Rule R70-530. There will be no impact to local government.
 - ◆ SMALL BUSINESSES: No costs or savings have been identified. The adoption of the current food code and the CFR includes very minor changes which will not affect small businesses.
 - ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The adoption of the current food code and the CFR includes very minor changes which will not affect persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division has reviewed this proposed rule extensively with industry. No increased or decreased compliance costs have been identified.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule adopts the current retail and manufacturing food safety standards. The Division has worked extensively with the industry for two years. This proposed rule was approved by the Utah Food Code Committee on 05/09/2013 and by the Agriculture Advisory Board on 07/16/2013.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

- DIRECT QUESTIONS REGARDING THIS RULE TO:
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 - ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2014

AUTHORIZED BY: LuAnn Adams, Commissioner

R70. Agriculture and Food, Regulatory Services.

[R70-530. Food Protection.

R70-530-1. Authority and Purpose.

- (1) Authority:
Promulgated under the authority of the Section 4-5-17.
- (2) Purpose:
This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

R70-530-2. Scope.

~~This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.~~

R70-530-3 Incorporation by Reference.

- (1) ~~The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, April 1, 2008 edition, 40 CFR 185, July 1, 2007 edition, and 9 CFR 200 to End, January 1, 2008 edition, are incorporated by reference.~~
- (2) ~~The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, 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), 8-805.40, and 8-809.20; and~~
 - (3) ~~with the following additions or amendments:~~
 - (a) ~~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) ~~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.~~

~~(c) 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) Amend section 8-304.10(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.~~

~~(h) Amend section 8-401.10(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) Amend section 8-501.10(B) to read:~~

~~(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee;~~

~~(j) Add section 8-501.10(C) to read:~~

~~(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.~~

~~(k) 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) Amend section 8-701.30 to read:~~

~~Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).~~

~~(m) Amend section 8-803.10 to read:~~

~~8-803.10 Embargo, Detainment and Destruction of Adulterated Food Products Authorized.~~

~~(A) The embargo and detainment of adulterated food products is authorized under Section 4-5-5, UCA.~~

~~(B) The regulatory authority may place an embargo or detainment tag on food found to be adulterated and unfit for human consumption.~~

~~(C) The regulatory authority may issue a hold order to the person in charge or to a person who owns or controls the food, without prior warning, notice of a hearing, or a hearing on the hold order, 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.~~

~~(D) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, the regulatory authority may condemn, destroy or render unsalable for human food the adulterated food if deemed necessary for the protection of the public health.~~

~~(E) 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.~~

~~(F) If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the person in charge or the owner or other person who owns or has custody of the food to bring the food into compliance with this rule or to destroy or denature the food under the regulatory authority's supervision.~~

~~(n) Amend section 8-803.60 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) Amend section 8-803.90 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) Amend section 8-804.30 number/catchline to read:~~

~~8-804.30 Contents of the Summary Suspension Notice.~~

~~(q) Amend section 8-805.10(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) Amend section 8-805.20 to read:~~

~~A response to a hearing notice or a request for a hearing as specified in section 8-805.10 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(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) Amend section 8-805.50(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) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.~~

~~(v) Amend subsection 8-805.50(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(C) or for matters as determined necessary by the regulatory authority.~~

- ~~(v) Amend section 8-805.60 number/catchline to read:
8-805.60 Notice of Hearing Contents.~~
- ~~(w) Amend section 8-805.80 number/catchline to read:
8-805.80 Expedient and Impartial Hearing.~~
- ~~(x) Amend section 8-805.90 number/catchline to read:
8-805.90 Confidentiality of Hearing and Proceedings.~~
- ~~(y) Amend section 8-805.90(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.~~
- ~~(z) Amend section 8-806.30(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) Adopt subsections 8-806.30(B)(1) through (2) without changes.~~
- ~~(ab) Amend section 8-807.60 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.~~
- ~~(ac) Amend section 8-808.20 to read:
Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.~~
- ~~(ad) Amend section 8-811.10(B) to read:
(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of \$5,000.00 or be punished for violation of a class B misdemeanor for the first violation. Each day the violation exists may constitute a separate violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6.~~
- ~~(ae) Amend section 8-813.10 number/catchline to read:
8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.~~
- ~~(af) Amend section 8-813.10(B) to replace the phrase "designate amount" with the phrase "\$5,000".~~
- ~~(ag) Add paragraph 8-813.10(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.~~
- ~~(4) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-701(1)(e), and R156-56-803 are adopted and incorporated by reference.~~

JR70-530. Food Protection.

R70-530-1. Authority and Purpose.

(1) Authority.

This rule is promulgated under the authority of Section 4-5-17 UCA.

(2) Purpose.

This rule shall be liberally construed and applied to promote its underlying purpose of safeguarding public health and providing to consumers food that is safe, unadulterated, and honestly presented.

R70-530-2. Scope.

This rule establishes definitions; sets standards for management and personnel, food operations, equipment, and facilities; and provides for food establishment plan review, inspection, and employee restriction. It shall be used to regulate bakeries, grocery and

convenience stores, meat markets, food and grain processors, warehouses and any other establishment meeting the definition of a food establishment.

R70-530-3 Incorporation by Reference.

(1) The food standards, labeling requirements and procedures as specified in 21 CFR, 1 through 200, 2013 edition, 40 CFR 185, April 17, 2012 edition, and 9 CFR 200 to End, January 1, 2012 edition, are incorporated by reference.

(2) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2009, 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); and with the following additions or amendments:

(a) 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.

(b) Amend section 8-304.10(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.

(c) 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."

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-401.10(B)(2) to delete the phrase "and at least once every 6 months the establishment is contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of food operation are not changed."

(f) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(g) 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. Enforcement of this Rule shall be in accordance with title 4-2-2(J), Title 4-2-12, and R70-201.

(h) 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."

(i) 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."

(j) 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."

(k) 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."

(l) After 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".

(m) 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).

(n) Delete paragraph (D) from section 5-402.11

(o) Add "8-7 Penalties: 8-701.10 State Construction Code

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 Title 15A UCA. A copy of the construction code is available at the office of the local building inspector."

KEY: food[~~safety~~], inspections

Date of Enactment or Last Substantive Amendment: [September 25, 2008]2014

Notice of Continuation: March 7, 2012

Authorizing, and Implemented or Interpreted Law: 4-5-17

Alcoholic Beverage Control, Administration

R81-1-16

Disqualification Based Upon Conviction of Crime

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38274

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to be consistent with state statute.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies that certain criminal convictions are disqualifying offenses which will result in an Order to Show Cause.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-1-304(1)(a) and Section 32B-1-305 and Section 32B-1-306 and Section 32B-1-307 and Section

32B-1-607 and Section 32B-2-202 and Section 32B-5-304 and Section 32B-6-702 and Subsection 32B-2-201(10) and Subsection 32B-2-202(1) and Subsection 32B-3-203(3)(c) and Subsection 32B-4-414(1)(b) and Subsection 32B-4-414(1)(c) and Subsection 32B-6-805(3) and Subsection 32B-9-204(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--This rule filing makes the Department of Alcoholic Beverage Control (DABC) rules consistent with state statute.

♦ **LOCAL GOVERNMENTS:** None--This rule filing makes the DABC rules consistent with state statute.

♦ **SMALL BUSINESSES:** None--This rule filing makes the DABC rules consistent with state statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This rule filing makes the DABC rules consistent with state statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule filing makes the DABC rules consistent with state statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule filing makes the DABC rules consistent with state statute.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.

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

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act [~~generally~~] disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

(3) Compliance with subsections (1) and (2) are fundamental licensing requirements, the violation of which will result in the issuance of an Order to Show Cause in accordance with R81-1-6 and action on the license as determined by the commission in accordance with 32B-1-304(2).

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [~~October 30, 2013~~2014

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-201(10); 32B-2-202; 32B-3-203(3)(c); 32B-5-304(4); 32B-1-305; 32B-1-306; 32B-1-307; 32B-1-607; 32B-1-304(1)(a); 32B-6-702; 32B-6-805(3); 32B-9-204(4); 32B-4-414(1)(b) and (c)

**Alcoholic Beverage Control,
Administration
R81-7
Single Event Permits**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38275

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is necessary to require a deadline for submission of applications, clarify that notice to law enforcement may include notice of preliminary approval and to make all applicants submit proof of adequate control measures to prevent over-service and service to minors.

SUMMARY OF THE RULE OR CHANGE: This rule amendment requires that applications be submitted at least seven business days in advance of the event to be considered, clarifies that notice to law enforcement may include notice of preliminary approval and requires all applicants to submit proof of adequate control measures to prevent over-service and service to minors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-9-101 and Section 32B-9-102 and Section 32B-9-201 and Section 32B-9-202 and Section 32B-9-203 and Section 32B-9-204 and Section 32B-9-301 and Section 32B-9-302 and Section 32B-9-303 and Section 32B-9-304 and Section 32B-9-305 and Subsection 32B-2-202(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--The state budget will not be affected by this change. Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There is no impact to state budget as the amendment formalizes practices of the department.

◆ **LOCAL GOVERNMENTS:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. Local consent is required by statute and this amendment does not impose additional requirements to local governments as the amendment formalizes practices of the department.

◆ **SMALL BUSINESSES:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. Small businesses will have no additional costs or savings based on these changes as the amendment formalizes processes already in place by the department.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding

notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There will be no additional costs to permit applicants based on this change as the amendment formalizes processes already in place by the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There will be no additional costs to permit applicants to comply with these changes as the amendment formalizes processes already in place by the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments may have minimal impact on businesses as they now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.

R81-7. Single Event Permits.

R81-7-1. Application Guidelines.

(1) A single event permit is issued to those who are conducting a convention, civic or community enterprise.

(a) "Conducting" means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(b) "Convention, civic or community enterprise" means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational,

recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good.

(2) An application for a single event permit application shall be considered for issuance of a single event permit when the requirements of Section 32B-1-304 and 32B-9-201, -203 and -304 have been met, and a completed application has been received by the department. Applications submitted less than 30 days to prior to the event risk non-issuance of a permit and the department will not consider an application submitted less than 7 business days prior to the event.

(a) Once received, the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically. For purposes of 32B-9-202(4), notice to law enforcement, the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.

(3) Pursuant to Section 32B-9-303, Subject to the requirements of 32B-9-202(2)(f)(g)and(h) and 32B-9-202(3)(a)(b) (c)and(d), the director may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(4) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(6) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(7) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(8) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with ~~this~~ Subsection ~~(7)~~(1), the director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) the type of entertainment, if any, at the event;
- (d) the location of the event;
- (e) the frequency of events held at the same location;
- (f) whether the location is government owned and operated;

and

- (g) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.
- (9) Calendar year is defined as January 1 through December

31.

(10) The single event permit bond, as required by Section 32B-9-304(3), shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(11) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32B-9-304(3), an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(12) The director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits ~~for Outdoor or Large-Scale Public Events~~.

(1) Purpose~~[-The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues.]~~ In deciding whether to issue a single event permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the director will issue a single event permit ~~for an outdoor or a large-scale public event~~. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. Applicants for outdoor or large scale events will need to address these issues in their application.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -303.

(4) Policy.

(a) Before a single event permit will be issued by the director to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the director prior to the director's consideration of the single event permit application.

(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages, single event permits

Date of Enactment or Last Substantive Amendment: ~~July 1, 2012~~ 2014

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107]~~ 32B-2-202(1); 32B-9-101; 32B-9-102; 32B-9-201; 32B-9-202; 32B-9-203; 32B-9-204; 32B-9-301 32B-9-302; 32B-9-303; 32B-9-304; 32B-9-305

Alcoholic Beverage Control, Administration **R81-10b** Temporary Beer Event Permits

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38276
FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is necessary to require a deadline for submission of applications, clarify that notice to law enforcement may include notice of preliminary approval, and to make all applicants submit proof of adequate control measures to prevent over-service and service to minors.

SUMMARY OF THE RULE OR CHANGE: This rule amendment requires that applications be submitted at least seven business days in advance of the event to be considered, clarifies that notice to law enforcement may include notice of preliminary approval, and requires all applicants to submit proof of adequate control measures to prevent over-service and service to minors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-9-101 and Section 32B-9-102 and Section 32B-9-201 and Section 32B-9-202 and Section 32B-9-203 and Section 32B-9-204 and Section 32B-9-401 and Section 32B-9-402 and Section 32B-9-403 and Section 32B-9-404 and Section 32B-9-405 and Section 32B-9-406 and Subsection 32B-2-202(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--The state budget will not be affected by this change. Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There is no impact to state budget as the amendment formalizes practices of the department.

◆ **LOCAL GOVERNMENTS:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. Local consent is required by statute and this amendment does not impose additional requirements to local governments as the amendment formalizes practices of the department.

◆ **SMALL BUSINESSES:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. Small businesses will have no additional costs or savings based on these changes as the amendment formalizes processes already in place by the department.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There will be no

additional costs to permit applicants based on this change as the amendment formalizes processes already in place by the department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amendments will now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types. There will be no additional costs to permit applicants to comply with these changes as the amendment formalizes processes already in place by the department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments may have minimal impact on businesses as they now require the submission of an application by a certain date, formalize practice regarding notice to law enforcement, and expand applicability of proof for adequate control measures to prevent over-service and service to minors to all event types.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Sal Petilos, Executive Director

R81. Alcoholic Beverage Control, Administration.

R81-10B. Temporary Beer Event Permits.

R81-10B-1. Application Guidelines.

(1) A temporary special event beer permit application shall be considered for issuance of the permit, when the requirements of 32B-1-304 and 32B-9-201, -203 and -405 have been met, and a completed application has been received by the department. Applications submitted less than 30 days prior to the event risk non-issuance of a permit and the department will not consider an application submitted less than 7 business days prior to the event.

(a) Once received -- the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically. For purposes of 32B-9-202(4), notice to law

enforcement, the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3) Pursuant to 32B-9-403, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32B-9-403. To ensure compliance with this Subsection (3), the director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) whether the event is a convention, community or civic enterprise;
- (d) the type of entertainment, if any, at the event;
- (e) the location of the event;
- (f) the frequency of events held at the same location;
- (g) whether the location is government owned and operated;

and

- (h) the extent to which the event:
- (i) benefits the community;
- (ii) is held for charitable purposes; or
- (iii) is held for the profit of the entity or organization.

(4)(a) The temporary special event beer permit bond, as required by Section 32B-9-405(3), shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the director rules, and that if a violation occurs at the event, the bond may be forfeited.

(5) The director may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The director may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits[~~for Outdoor or Large-Scale Public Events.~~]

(1) Purpose.[~~The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues.~~] In deciding whether to issue a temporary special event beer permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before the director will issue a temporary special event beer permit[~~for an outdoor or a large-scale public event.~~] However, this rule gives the director discretion not to require specific control measures under

certain circumstances after considering the facts and circumstances of a particular event. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. Applicants for outdoor or large scale events will need to address these issues in their application.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -403.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the director to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted

area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a temporary special event beer permit. These can include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the director prior to the director's consideration of the permit application.

(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages, temporary beer event permits

Date of Enactment or Last Substantive Amendment: ~~July 1, 2012~~ **2014**

Notice of Continuation: July 11, 2013

Authorizing, and Implemented or Interpreted Law: ~~32A-1-107; 32A-10|32B-2-202(1); 32B-9-101; 32B-9-102; 32B-9-201; 32B-9-202; 32B-9-203; 32B-9-204; 32B-9-401; 32B-9-402; 32B-9-403; 32B-9-404; 32B-9-405; 32B-9-406~~

Commerce, Real Estate
R162-2g
Real Estate Appraiser Licensing and
Certification Administrative Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38270

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish by administrative rule the education requirements for state-licensed appraisers, state-certified residential appraisers, and state-certified general appraisers, and to require supervisory appraisers and appraiser trainees to complete a specified course approved by the division prior to the division recognizing experience hours for trainee appraisal work performed after 01/01/2015.

SUMMARY OF THE RULE OR CHANGE: This filing establishes by administrative rule the education requirements for state-licensed appraisers, state-certified residential appraisers, and state-certified general appraisers, and requires supervisory appraisers and appraiser trainees to complete a specified course approved by the Division prior to the Division recognizing experience hours for trainee appraisal work performed after 01/01/2015.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2g-205 and Subsection 61-2g-201(2)(h)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Appraiser education has been and will continue to be provided by private individuals and schools and by public schools. The education requirements for state-licensed appraisers, state-certified residential appraisers, and state-certified general appraisers are not changed by this proposed rule amendment. The only new education requirement is a course for supervisory appraisers and appraiser trainees. This course manual has been prepared and provided to the Division at no cost and will be taught by private individuals and schools. The Division has the staff and budget in place to administer the tracking of course completion by appraisers and trainees. No additional resources will be required to administer this proposed rule amendment.

◆ **LOCAL GOVERNMENTS:** No fiscal impact to local government is anticipated from this filing. They do not offer the training.

◆ **SMALL BUSINESSES:** No small business is required to offer the Supervisory Appraiser and Appraiser Trainee Course. Schools and instructors choosing to seek approval by the Division to provide the Supervisory Appraiser and Appraiser Trainee Course will have little or no cost to become approved by the Division to provide the course. Costs, if any, to schools and instructors will be offset by course fees charged to students who register to take the course.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Schools and instructors choosing to seek approval by the Division to provide the Supervisory Appraiser and Appraiser

Trainee Course will have little or no cost to become approved by the Division to provide the course. Costs, if any, to schools and instructors will be offset by course fees charged to students who register to take the course.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Supervisory appraisers and appraiser trainees are affected by this filing and are required to complete the Supervisory Appraiser and Appraiser Trainee Course in order for appraiser trainees to log experience hours after 01/01/2015. The cost of compliance will be the cost charged by providers of the course. This cost will be determined by course providers and cannot be determined at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing clarifies the pre-licensing education requirements that apply to an appraiser license or certification. The requirement to complete pre-licensing education is found in statute, and the associated rule poses no additional fiscal impact to either business or individuals. The filing also imposes a new course requirement on appraiser trainees and trainee supervisors. A business that wishes to offer the course will have costs to develop and certify curriculum. Those costs will vary and cannot be estimated; however, it is anticipated that a business will ultimately profit from the investment.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.
 R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.**

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time prior to the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the appraisal business;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and

(ix) failure to pay taxes or child support obligations.

(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraisal;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4)~~(a)~~ Pre-licensing education.

(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:

(i) approved by the AQB; and

(ii)(A) certified by the division pursuant to Subsection R162-2g-307b(1)-(3); or

(B) not required to be certified by the division pursuant to Subsection R162-2g-307b(6).

(b) The 75 hours of required education shall include:

(i) 30 hours of appraisal principles;

(ii) 30 hours of appraisal procedures; and

(iii) the 15-hour National USPAP course, or its equivalent.

(c) The 15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:

(i) taught by an instructor who:

(A) is a state-certified residential or state-certified general appraiser; and

(B) has been certified by the AQB; or

(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.

(d) A person who applies for trainee registration on or after January 1, 2015 shall successfully complete the division-approved Supervisory Appraiser and Appraiser Trainee Course:

(i) as taught by a division-approved instructor; and

(ii) within the two-year period preceding the date of application.

~~(e)~~(e) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.

(5) Application to the division. An applicant shall submit the following to the division:

(a) a completed application as provided by the division;

(b) course completion certificates for the 75 hours of pre-licensing education;

(c)(i) two fingerprint cards in a form acceptable to the division; or

(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;

(d) all court documents related to any past criminal proceeding;

(e) complete documentation of any sanction taken against any license in any jurisdiction;

(f) a signed letter of waiver authorizing the division to:

(i) obtain the fingerprints of the applicant;

(ii) review past and present employment records;

(iii) review education records; and

(iv) conduct a criminal background check;

(g) the fee for the criminal background check;

(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;

(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and

(j) the nonrefundable application fee.

(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:

(a) identifying each supervising certified appraiser on a form supplied by the division; and

(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.

(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division:

(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and

(ii) evidencing at least 2,000 hours of appraisal experience:

(A) pursuant to Subsection R162-2g-304d;

(B) completed during the time when the applicant was registered with the division as a trainee; and

(C) accrued in no fewer than 12 months; ~~and~~

(b) evidence of having successfully completed a state-licensed appraiser pre-licensing curriculum that has been certified by the division pursuant to Subsection R162-2g-307b; and

(c) ~~(b)~~ a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(2)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-licensed residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 2,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than 24 months; ~~and~~

(b) evidence of having received an associate degree or higher degree from an accredited:

(i) college;

(ii) junior college;

(iii) community college; or

(iv) university;

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing curriculum that has been certified by the division pursuant to Subsection R162-2g-307b; and

(d) ~~(b)~~ a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(2)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(2)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, 1,000 hours of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than 30 months; ~~and~~

(b) evidence of having received a bachelors degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing curriculum that has been certified by the division pursuant to Subsection R162-2g-307b; and

(d) ~~(b)~~ except as provided in this Subsection (4)(2)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

~~(g) the Appraisal Foundation or its boards.~~

~~(3)(2)(a)~~ Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection ~~(3)(2)~~(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

~~(4)(2)~~(a) A state-licensed appraiser who, within six months of renewing the license, meets the requirements for certification and files a completed application shall pay a transfer fee rather than an application fee.

(b) A certification that is obtained under this Subsection ~~(4)(2)~~(a) shall expire on the same date that the license was due to expire prior to transfer.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g)(i) If an applicant's education was approved prior to January 1, 2008 and his or her experience was approved prior to January 1, 2011 (under a system referred to by the division and industry as a segmented application), but the applicant did not pass the applicable examination required for licensure or certification by December 31, 2010, the applicant shall, by December 31, 2011:

(A) complete all additional education, as required under the AQB standards;

(B) pass the required examination applicable to the license or certification being sought by the individual; and

(C) submit a complete application to the division.

(ii) An applicant who fails to comply with the December 31, 2011 deadline established in this Subsection (2)(g)(i) shall:

(A) complete all additional education as required under the AQB standards;

(B) pass the required examination applicable to the license or certification sought by the individual;

(C) submit recent appraisals that meet the requirements of all applicable statutes and rules for review by the experience review committee; and

(D) submit a complete application to the division according to deadlines established in Subsection R162-2g-304f(1).

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) Beginning January 1, 2015, a registered trainee may not claim experience hours for any appraisal work performed unless the trainee and the trainee's supervisor(s) have previously completed the division-approved Supervisory Appraiser and Appraiser Trainee Course.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;
 (G) participation in income analysis: 30% of total hours;
 (H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) measurement of the exterior of a property that is the subject of an appraisal; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:

(A) conforming to USPAP Standards 1 and 2; and

(B) including the following property types:

(I) vacant property;

(II) two- to four-unit dwelling;

(III) non-complex single-family unit; and

(IV) complex single-family unit; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:

(i) property types identified in Appendix 3(a)(i) and (ii);

(ii) property types identified in Appendix 3 (b)(i) and (ii);

(iii) property types identified in Appendix 3 (c)(i) and (ii);

(iv) property types identified in Appendix 3 (d)(i) and (ii);

(v) property types identified in Appendix 3 (e)(i) and (ii),

and

(vi) property types identified in Appendix 3 (f)(i).

(f) No more than 25% of the total hours submitted for licensure or certification may be earned from appraisal assignments related to property types identified in Appendix 3(f)(iii) and (iv) combined.

(g) No more than 20% of the total hours submitted for licensure or certification may have been earned from appraisal assignments related to property types identified in Appendix 3(g).

(h)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 85% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 85% shall be awarded no credit.

(i) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) The following activities, if performed in accordance with USPAP Standards Rules 4 and 5, may be used to satisfy up to 50% of the experience required for certification:

(A) appraisal analysis;

(B) real estate counseling or consulting services; and

(C) feasibility analysis/study.

(iv) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be

earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

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

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor or instructors, at least one of whom is a state-certified residential or state-certified general appraiser and has been certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught; or

(II) not required to be certified, pursuant to Subsection R162-2g-307c(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(c)(i) A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of this Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

(d)(i) An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster:

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-307b. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used other than lecture method, including:

(i) webinar;

(ii) satellite broadcast; or

(iii) other form of distance education;

(c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;

(d) the school procedure for maintaining the security of the final exams and answer keys;

(e) the titles, authors, and publishers of all required textbooks;

(f)(i) the instructor(s) who will teach each class; and

(ii) evidence that each instructor is:

(A) certified by the division;

(B) qualified to serve as a guest lecturer; or

(C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;

(g) a nonrefundable applicable fee; and

(h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) name and license number of each student receiving education credit.

(2) Standards for approval of traditional classroom courses.

Each course shall:

(a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;

(b) be approved through the AQB course approval program;

(c) allow a maximum of 10% of the required class time for testing, including review test and final examination;

(d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.

(3) Standards for approval of distance education

(a) A distance education course shall:

(i) comply with this Subsection (2);

(ii) provide interaction between the student and instructor;

(iii) include a written examination personally proctored by an official approved by the presenting entity;

(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and

(v) offer at least 15 credit hours.

(b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:

(i) the AQB;

(ii) a state licensing jurisdiction; or

(iii) a college or university that:

(A) offers distance education programs in other disciplines;

and

(B) is approved or accredited by:

(I) the Commission on Colleges;

(II) a regional or national accreditation association; or

(III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)

(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

(7) Supervisory Appraiser and Appraiser Trainee Course. In order to obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with this Subsection (1); and

(b) sign a written attestation agreeing to provide a paper copy of the course manual to each attendee.

KEY: real estate appraisals, school certification, instructor certification

Date of Enactment or Last Substantive Amendment: [October 23, 2013]2014

Authorizing, and Implemented or Interpreted Law: 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)

Corrections, Administration
R251-111
Government Records Access and
Management

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE NO.: 38255
 FILED: 01/21/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures for access to government records of the Department of Corrections and to facilitate intergovernmental, cross-boundary inter-cooperation.

SUMMARY OF THE RULE OR CHANGE: The rule states its underlying statutory authority; it provides definitions; it describes how, to whom, and to what addresses records requests should be made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 46-4-501 and Section 46-4-502 and Section 63G-2-204 and Section 64-13-10 and Subsection 63A-12-104(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule will have no effect on savings or costs to the State of Utah's budget beyond those afforded in the Government Records Access and Management Act (GRAMA) statute, Section 63A-12-100 "Public Records Management Act."
- ◆ **LOCAL GOVERNMENTS:** This rule will have no effect on savings or costs to any local government or subsections of local government beyond those afforded in the GRAMA statute.
- ◆ **SMALL BUSINESSES:** This rule will have no effect on savings or costs to small business beyond those afforded in the GRAMA statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will have no effect on savings or costs to individuals beyond those afforded in the GRAMA statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with compliance to the changes within this rule beyond those afforded in the GRAMA statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any cost to businesses will be within the constraints and performance of the GRAMA Statute within the Utah Code.

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

CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER, UT 84020-9549
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Rollin Cook, Executive Director

R251. Corrections, Administration.
R251-111. Government Records Access and Management.
R251-111-1. Authority and Purpose.

(1) This rule is authorized Sections 63A-12-104(2), 63G-2-204, 64-13-10, 46-4-501 and 46-4-502, of the Utah Code.

(2) The purpose of this rule is to provide procedures for access to government records of the Department of Corrections and to facilitate intergovernmental, cross-boundary intercooperation.

R251-111-2. Definitions.

- (1) "Department" means the Department of Corrections.
- (2) "GRAMA" means Government Records Access and Management Act, Title 63G, Chapter 2, Utah Code.
- (3) "Individual" means a human being.
- (4) "Inmate" means any person who is committed to the custody of the Department and who is housed at a correctional facility or at a county jail at the request of the Department.
- (5) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.
- (6) "Requester" means the person making a request for records.

R251-111-3. Requests for Access.

- (1) Requests for access to records shall be directed as follows:
 - (a) All records requests by an inmate or offender under the jurisdiction of the Department shall be directed to:
 - (i) For all inmates: Institutional Operations Division, Primary Records Officer, Utah State Prison, P.O. Box 250, Draper, Utah 84020; or
 - (ii) For all probationers and parolees: Adult Probation and Parole Division, Primary Records Officer, Administration, 14717 Minuteman Drive, Draper, Utah 84020.

(b) All records requests by persons to obtain information for a story or report for publication or broadcast to the general public shall be directed to the Public Information Officer, 14717 Minuteman Drive, Draper, Utah 84020.

(c) All requests for access to records by persons other than those specified in subparagraphs (a) and (b) above, shall be directed to the Records Bureau, 14717 Minuteman Drive, Draper, Utah 84020.

(d) All requests from governmental agencies shall be directed to the appropriate unit of the Department, as approved by the Records Bureau or specified in Departmental policy.

(2) The time limits dictated by GRAMA Section 63G-2-204, of the Utah Code, for response to requests shall be calculated based on receipt of a valid request at the office specified in this rule.

(3) Written requests may be submitted electronically. Evidence of identity, where required, shall be based upon accepted State standards for electronic identification.

R251-111-4. Inmate Submission Requirements -- Forms.

(1) All records requests from inmates shall be submitted on the Utah State Prison Inmate GRAMA Records Request Form supplied by the Department.

(2) Records requests by inmates at the Utah State Prison or the Central Utah Correctional Facility must be accompanied by a Money Transfer Form which authorizes a deduction for fees from the inmate's account or a proper request for a waiver of fees.

(3) Inmates requesting a fee waiver because of a claimed indigent status, or other reason, shall state the claim on the request form.

KEY: criminal records, corrections, GRAMA, government records

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, Implemented or Interpreted Law: 63A-12-104(2); 63G-2-204; 64-13-10; 46-4-501; 46-4-502

**Environmental Quality, Water Quality
R317-5
Large Underground Wastewater
Disposal (LUWD) Systems**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38271

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to repeal the existing Rule R317-5 by replacing old language and awkward organization with newer concepts and technologies, referencing Rule R317-4 in similar subsections and parallel rules.

SUMMARY OF THE RULE OR CHANGE: Some highlights of the new rule include: 1) the new draft is not a "stand-alone"

rule. It incorporates specific provisions in the new Rule R317-4 that are also pertinent to Large Underground Wastewater Disposal (LUWD) systems. These include: a) definitions; b) material standards; c) horizontal setbacks shown in Table 2 in Rule R317-4; d) soil exploration pits and percolation tests; e) design requirements; f) construction and installation; and g) final inspection; 2) outline and contents of new draft closely resemble Rule R317-4; 3) the addition of new authority and purpose sections to comply with format of other rules; 4) the scope section details where an engineer needs to consider factors in design such as flow, waste strength, site characteristics, etc.; 5) emphasis on sound engineering concepts needed for designing these large wastewater systems in more sensitive areas of the state with shallow groundwater or poorer soils being mindful of the increased design flows (over 5,000 pgd); 6) the entire rule has waiver capability granted by the director as long as the proposal does not override "the safeguarding of public health, protection of water quality, or engineering practice"; 7) twelve new definitions with LUWD systems language are included; 8) the new section titled General Standards, Prohibition, Requirements and Enforcement closely resembles Rule R317-4; 9) the new section Feasibility Determination and Concept Approval closely resembles the part of Rule R317-4 that are also pertinent to LUWD systems. In the old rule, no direction was given for applications for approval in concept. All new applications will have to obtain a feasibility determination prior to applying for a construction permit. This will include: a) number of soil logs and percolation tests required (it was unclear in the old rule); b) ground water determination (nothing previously specified; c) ground slope detailed up to 35%, using the same language as Rule R317-4; 10) Engineering Reports, Plans and Construction Permits includes more details about contents of reports and plans that are needed for DWQ review: a) must be designed by a Utah PE and certified Level 3 Onsite Professional per R317-11; details in applications closely resemble Rule R317-4; 11) the Design Requirements section references incorporation of Rule R317-4, with two minor exceptions, and details components required for a LUWD system (same as existing Rule R317-5). Horizontal separation distance between bottom of absorption trenches and anticipated highest ground water table is increased to 48 inches, unless pre-treatment unit is installed, then the separation can be 24 inches; 12) construction and installation is a new section that incorporates Rule R317-4 as a reference; 13) final Inspection and Authorization to Use inspection section references Rule R317-4 and the requirements are more clearly explained when compared to the old version; 14) operation and maintenance section has been overhauled. Closely resembles Rule R317-4 using the same frequency and inspection components; and 15) the section of the Operating Permits and Annual Inspection Reports has been removed which details what information is required to submit in order to obtain an operating permit on existing systems. This is no longer necessary as all LUWD systems have been identified and have operating permits. The rest of this section has the same language as the existing rule, explaining operating permits for new systems and annual inspection reports.

Details on the inspection report with new fields to record septic tank measurements, pressure squirt height, date of last pumping, etc., which were all previously required on an operating permit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 19, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No impact to state budget is anticipated. Design of large underground wastewater systems are made by the private sector representing the engineering community and their clients.
- ◆ LOCAL GOVERNMENTS: This rule offers the Local Health Departments (LHDs) some aspects of administration of these systems, but it is strictly voluntary. Those LHDs not wanting to participate, which represent a majority of the counties in Utah, will still have the Division of Water Quality being the lead in review and administration. For those few counties asking for this authority, local ordinances with application fees should cover any of their costs.
- ◆ SMALL BUSINESSES: As additional lots are developed, businesses involved in the design and construction of large underground wastewater disposal systems may show an increased need for their services and products.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule should not add any additional costs from the present rule. There is language that allows an engineer to seek a waiver from any section of this rule, provided sound engineering and equivalent environmental and public health protection is met.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No difference in compliance costs is anticipated for affected persons since the overall requirements are nearly identical to the original rule, but have been better organized for easier reference.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no difference in the fiscal impact expected on businesses since most of the proposed changes are in rule organization and clarity.

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

ENVIRONMENTAL QUALITY
 WATER QUALITY
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

[R317-5. Large Underground Wastewater Disposal Systems.

R317-5-1. General.

~~1.1 SCOPE: These rules shall apply to large underground disposal systems for domestic wastewater discharges which exceed 5,000 gallons per day (gpd) and all other domestic wastewater discharges not covered under the definition of an "Onsite wastewater disposal system" in R317-1-1.13. Usually these systems should not be designed for over 15,000 gpd. In general, it is not acceptable to dispose of industrial wastewater in an underground disposal system.~~

~~1.2 ENGINEERING REPORT: An engineering report shall be submitted which shall contain design criteria along with all other information necessary to clearly describe the proposed project and demonstrate project feasibility.~~

~~1.3 SUBMISSION OF PLANS FOR REVIEW: Plans for new large underground wastewater disposal systems or extensions of existing systems shall be submitted to the Director for review as required by R317-1. All designs shall be prepared and submitted under the supervision of a registered professional engineer licensed to practice in the State of Utah and certified pursuant to R317-11. A construction permit must be issued by the Director prior to construction of the wastewater disposal system or the building(s) to be served by the wastewater system. The system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.~~

~~A. Local Health Department Requirements — it is the applicant's responsibility to ensure that the Large Underground Wastewater Disposal System (LUWDS) application to the Division is in compliance with local health department requirements regarding the location, design, construction and maintenance of an LUWDS prior to the applicant submitting a request for a construction permit to the Director. Local Health Departments may petition the Director to require local review for compliance with local requirements prior to DWQ initiating its review. Where the petition has been approved by the Director, the applicant is required to submit documentation that the local health department has approved the proposed LUWDS prior to issuance of a construction permit.~~

~~1.4 OPERATION AND MAINTENANCE: Operation and maintenance shall be provided by the owner to ensure the disposal system is functioning properly at all times. An operating permit will be required for all large underground wastewater disposal systems to monitor that proper operation and maintenance is occurring for the protection of the environment and public health. The operating permit shall be issued by the Director or, by delegated authority, by the local health department having jurisdiction, and shall be effective for a period not to exceed 5 years from the issuance date.~~

~~A. Operating Permit Required: The owner of a large underground wastewater disposal system shall provide a written notice~~

of intent (NOI) to the Division of Water Quality and the local health department having jurisdiction of its intent to operate a large underground wastewater disposal facility. Those systems currently in operation must submit the NOI no later than January 1, 2010. New systems permitted under this rule must submit the NOI prior to final inspection. The notice of intent shall be specific for the operating permit and shall include the following information:

1. Facility name and address; owner name, address, and phone number.
2. List of Facility Components, e.g., septic tank, pump tank, gravel drainfield trench, gravelless chambers, pressure drainfield, etc.
3. Design flow (gallons per day) and number and type of connections.
4. Type of waste treated and disposed, i.e., residential, restaurant, other commercial establishment, etc.
5. Sketch plan of existing system showing major facility components.

B. Local Health Department Authority to Issue Operating Permits:

1. A local health department that currently has approval from the Director to administer an alternative systems program may obtain authority within its jurisdiction to administer operating permits for large underground wastewater disposal systems by submitting a written request to administer this program. The request must include an agreement to implement and enforce inspection, servicing, monitoring, and reporting requirements of this rule.

2. Local health departments that have been delegated authority to administer the operating permit program must submit an annual report on or before September 1 of the calendar year, to the Division of Water Quality containing:

- (a) A list of LUWD systems under delegation.
- (b) A summary listing the compliance status of each system, showing those systems that are currently failing, and those systems that have been repaired.
- (c) A summary of any enforcement actions taken, identifying those actions that are still pending, and those that been resolved.

C. Annual Report. The owner shall submit an annual covering the period of July 1 to June 30 (the "reporting year") to the permitting agency no later than August 1 of each year. In this report, the owner shall report the following items:

1. All information required to be submitted in the NOI.
2. Checklist of inspections performed including the date of the inspection and a list of findings.
3. Packed Bed media system sampling results.
4. Signature of owner or certified operator, and date.

D. Owner Responsibility to Maintain System: The owner is responsible for maintaining its large underground wastewater disposal system and for performing periodic inspections and servicing of its system. Inspections of conventional systems (gravity, or pump to gravity) shall be not less than once each reporting year, and inspections of at-grade, pressure, mound and packed bed media systems shall be not less than twice each reporting year. At a minimum, the owner is responsible for inspecting these components of the various type of system:

1. Community septic tank or treatment unit - measure sludge and scum levels, and pump when necessary.
2. Effluent filter - clean when necessary.
3. Inspect distribution box.

4. Inspect pump, floats, alarm and control panel, and record flow or hour meter reading.

5. Disposal field - inspect for ponding or surfacing in disposal area. Flush, clean, re-adjust to equal pressure in laterals.

E. Operation and Maintenance Manual Required: New systems must have a written operation and maintenance document describing the treatment and disposal system and outlining routine maintenance procedures, including checklists and maintenance logs needed for proper operation of the system. This document must be available at the time of the final inspection on all new systems.

F. Packed Bed Media System Sampling and Monitoring Requirements:

The owner of a packed bed media system is responsible for sampling and monitoring for COD (Chemical Oxygen Demand), TSS (Total Suspended Solids) and TIN (Total Inorganic Nitrogen) at an interval not exceeding six calendar months. Additional sampling and monitoring may be required if it has been determined that there is a potential for groundwater impacts. Effluent quality of a grab sample, before discharge to a disposal method, shall not exceed 75 mg/L COD or 25 mg/L TSS.

1. Effluent COD exceeding 75 mg/L or TSS exceeding 25 mg/L shall be followed up with weekly sampling commencing within 30 days until such time as two successive results are obtained that are within these limits. Any two successive samples resulting in exceedence of either 75 mg/L COD or 25 mg/L TSS shall result in the system being deemed non-compliant requiring further evaluation and a corrective action plan.

2. For non-complying systems, the permitting agency shall require the order:

(a) all necessary steps such as maintenance servicing, repairs, and/or replacement of system components to correct the system;

(b) effluent quality testing for COD and TSS shall continue every week until two successive samples of COD and TSS are found to be in compliance;

(c) payment of fees for additional inspections, reviews and testing;

(d) evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

(e) investigation of household practices related to the discharge of chemicals into the system, such as photo-finishing chemicals, laboratory chemicals, excessive amount of cleaners or detergents, etc.; and

(f) additional tests or samples to troubleshoot the system malfunction.

1.5 LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM REQUIRED:

The drainage system of any building or establishment covered herein shall receive all wastewater as required by R309-100; the Utah Plumbing Code and shall have a connection to a public sewer except when such sewer is not available for use, in which case connection shall be made as follows:

A. To an underground wastewater disposal system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of disposal system acceptable under R317-3.

~~1.6 MULTIPLE UNITS UNDER SEPARATE OWNERSHIP: Multiple Units Under Separate Ownership shall not be served by a common large underground disposal system except when, based upon sound engineering judgment, other alternatives are determined infeasible. In such cases, a common subsurface system may be used provided the following requirements are met:~~

~~A. The common subsurface disposal system and conveyance sewers shall be under the sponsorship of a body politic.~~

~~B. The subsurface absorption system shall be designed and constructed to provide duplicate capacity (two independent systems). Each system shall be designed to accommodate the total anticipated maximum daily flow. The duplicate systems shall be designed with appropriate valving, etc., to allow for periodic alternation of the use of each system.~~

~~C. Sufficient land area with suitable characteristics shall be available to provide for a third absorption system capable of handling the total maximum daily wastewater flow. This area shall be kept free of permanent structures, traffic or soil modification (See Section R317-5-3.1(L)).~~

~~D. The subsurface absorption system should be used only until a more permanent system becomes available.~~

~~1.7 NEW PROCESSES AND METHODS OF DISPOSAL: Where unusual conditions exist, other methods of disposal not described herein may be employed if approved by the Director and by the local health authority having jurisdiction. The approval will be based on evidence of adequacy to meet water quality standards and other requirements of the Code.~~

~~1.8 UNITS REQUIRED IN A LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM: The large underground wastewater disposal system shall typically consist of the following:~~

~~A. A building sewer with cleanout.~~

~~B. A septic tank.~~

~~C. An effluent filter.~~

~~D. A pressurized subsurface disposal system. This may be an absorption field, deep wall trenches, absorption beds, or, for packed bed media applications, drip irrigation dispersal, depending on location, topography, soil conditions and maximum ground water level.~~

~~E. Accessibility components to insure proper maintenance and servicing. These may include risers on tanks to the surface of the ground, with firmly secured lids; and absorption field inspection ports.~~

~~F. Pressurized systems typically require a dosing chamber or dosing tank and cleanouts at the end of pressurized laterals.~~

~~G. Additional components may also be required depending on the waste stream characteristics and the need to provide adequate protection to groundwater. These components may include pretreatment devices such as grease traps, or may involve secondary treatment using packed bed media systems.~~

~~1.9 LOCATION AND INSTALLATION: Location and installation of the wastewater disposal system shall be such that with reasonable maintenance it will function properly and will not create a nuisance, health hazard or endanger the quality of any waters of the State. Due consideration shall be given to the size and shape of the area in which the system is installed, slope of natural and finished grade, soil characteristics, maximum ground water elevation, proximity of existing or future water supplies or water courses, possible flooding and expansion potential of the disposal system.~~

~~1.10 ISOLATION: The system shall be isolated as shown in Table 5-1.~~

TABLE 5-1

~~MINIMUM HORIZONTAL SEPARATION IN FEET
(Undisturbed Earth)~~

	Building Sewer	Septic Tank	Absorption Field	Seepage Pit or Trench	Absorption Bed or trench
Drinking Water Supply Source					
— Deep Well	(a) 100	100	100	100	100
— Shallow Well or Spring	(b)	(b)	(b)	(b)	(b)
— Domestic Water Supply Lines	(c)	10	10	10	10
Ponds, Lakes, Reservoirs and Water Courses		25	(d)	(d)	(d)
Foundation Walls	3	5	25	25	25
Land Drain					
— Located upslope	10	20	20	20	20
— Located downslope	25	100	100	100	100
Property Line	5	5	5	15	10
Seepage Pits (Trenches)		5	10	12 (e)	10
Absorption beds		5	10	10	10
Absorption fields		5	(f)	10	10

~~Footnotes:~~

~~(a) Sewers may be constructed within the 100-foot protective zone, provided the sewer construction meets the requirements of R309-106-2.3.4.~~

~~(b) It is recommended that the listed concentrated sources of pollution be located at least 1,500 feet from shallow wells and springs. Any proposal to locate closer than 1,500 feet will be reviewed on a case-by-case basis, taking into account geology, topography, existing land use agreements, designated use of water system (public or non-public) and potential for pollution of water sources. It is the responsibility of the water supply owner to establish an adequate protection zone in accordance with the applicable drinking water rules. Even separation of 1500 feet or greater from concentrated sources of pollution will not guarantee suitability of the water supply system.~~

~~(c) The requirements stated in R317-5-1.13(F) must be met.~~

~~(d) A minimum of 100 feet is desirable, but may be modified to a lesser or greater distance, depending on soil conditions or mitigating measures such as lining the water course with impervious material.~~

~~(e) Seepage pits or seepage trenches must be installed within an established absorption zone. The absorption zone will be sized based on the ratio of ground surface area "GSA" to the required sidewall area "SWA". The GSA/SWA ratio must be at least 2.5. The trenches and pits shall be installed within the absorption zone such that the spacing between trenches will be equal. Spacing of 12 feet (sidewall to sidewall) shall be a minimum. Distance to the edge or boundary of the established absorption zone shall be a minimum of 15 feet. The system must also conform to all other separation requirements identified in Table 5-1.~~

~~(f) The required sidewall area "SWA" shall be computed based on the design application rate with the associated soil type depicted in Table 5-8. The ground surface area identified~~

within the absorption zone will be a minimum of 2.5 times the required sidewall area. An example of a typical seepage trench design with variation is available from the Division.

(f) See Table 5-4.

1.11 CONSTRUCTION INSPECTION: Approval to operate the constructed/installed facilities shall be issued following a final inspection by a representative of the Department of Health. The facilities must be inspected after installation but prior to backfilling.

1.12 CONSTRUCTION MATERIALS: Materials used in construction of the system shall be durable, sound, and not unduly subject to corrosion. Pipe, pipe fittings and similar materials shall comply with the requirements of R309-100.

1.13 WASTEWATER DRAINAGE LINE OR BUILDING SEWER: Wastewater drainage lines (or building sewers) shall comply with R309-100, the Utah Plumbing Code, or meet the following requirements, whichever is more restrictive:

A. Any generally accepted material will be given consideration, but material selected shall be suitable for local conditions to include soil characteristics, external loadings, abrasions and similar problems.

B. The lines shall have a minimum inside diameter of 4 inches, in which case they shall be laid on a minimum slope of 1.25 percent. For sewer lines serving more than one dwelling unit, it is recommended that the line be sized greater than 4 inches in diameter. Lines of greater sizes should be designed for a minimum velocity of 2 feet per second based on the pipe flowing full. See R317-3 for calculation of flow velocities.

C. The lines shall have cleanouts every 50 feet and at all changes in direction or grade, except where manholes are installed every 400 feet and at every change in direction or grade.

D. On 4-inch and 6-inch lines, two 45 degree bends with cleanout will be acceptable in lieu of a manhole, and 90 degree ell is not recommended.

E. The design of wastewater pump stations shall comply with the requirements contained in R317-3.

F. Lines shall be separated from water service pipes in separate trenches and by at least 10 feet horizontally. If the local conditions prevent a 10-foot separation, or when sewer lines must cross water lines, the two lines may be placed within the 10 feet of each other, provided:

1. The bottom of the water service pipe, at all points, shall be at least 18 inches above the top of the wastewater drainage line at its highest point.

2. The water service pipe shall be placed in a separate trench or the line should be placed on a shelf of undisturbed soil to one side of the sewer line trench.

3. The number of joints in the service pipe shall be kept to a minimum and the materials and joints of both the sewer line and water service line shall be of a strength and durability to prevent leakage under known adverse conditions. The joints between the two lines shall be staggered to the extent possible.

4. When it is impossible to obtain the proper horizontal and vertical separation as stipulated above, both the water and sewer line shall be constructed in accordance with the requirements of R309-112.2.

1.14 ESTIMATES OF WASTEWATER QUANTITY: The maximum daily wastewater flow to be disposed of should be determined as accurately as possible, preferably by actual

measurement. Where this is not possible, Table 5-2 may be used to estimate the flow:

TABLE 5-2
ESTIMATED QUANTITY OF DOMESTIC WASTEWATER

TYPE OF ESTABLISHMENT	GALLONS PER DAY
Construction/work camps (semi-permanent)	60 per person
Resort camps with limited plumbing	60 per person
Country Clubs	25 per person
Dwellings	
a. Boarding house	60 per person
Additional kitchen waste for non-resident boarder	10 per person
b. Boarding schools	75-100 per person
c. Condominium	400 per unit
d. Mobile home	400 per unit
e. Single family dwelling	400 per day
f. Rooming House	40 per person
Highway Rest Areas (improved with restroom facilities)	5 per vehicle
Hospitals	250 per bed
Nursing Homes	200 per Bed
Institutions other than Hospitals and Nursing Homes	75-125 per person
Motels and Hotels	62 per person
Industrial Buildings (exclusive of industrial waste)	15-35 per person
Launderette (self-service)	50 per load
Office Buildings	
a. With cafeteria	25 per employee
b. Without cafeteria	15 per employee
Recreational Vehicle Parks/Campgrounds	
a. Sanitary stations for self-contained Vehicles	50 per space
b. Independent spaces (temporary or transient with sewer connections)	125 per space
c. Dependent spaces (temporary or transient with no sewer connections) with service building including showers	125 per space
(1) with service building but no showers	35 per person (Campground)
(2) with service building but no showers	85 per space
(3) with service building but no showers	25 per person (Campground)
d. Campground with no-flush toilets	5 per person
Restaurants	35 per seat
a. Additional for bars and cocktail lounges	2 per person
Schools	
a. Boarding	75 per person
b. Day, without cafeteria, gymnasiums or showers	15 per person
c. Day, with cafeteria, but no gymnasium or shower	20 per person
d. Day, with cafeteria, gymnasium and shower	25 per person
Service Station (per vehicle served)	5 per vehicle
Ski Areas and Visitor Centers	5 per visitor

R317-5-2. Septic Tanks.

2.1 GENERAL REQUIREMENTS: Septic tanks shall be constructed of durable materials designed to withstand expected physical loads and corrosive forces. They shall be watertight and designed to provide settling of solids, accumulation of sludge and

seum, and access for cleaning, as specified in the following paragraphs:

2.2 TANK CAPACITY: Septic tanks shall be sized on the following basis:

(1) $V = 1.5Q$ for Q less than or equal to 1500

(2) $V = 1125 + 0.75 Q$ for Q greater than 1500

V = liquid volume of tank in gallons

Q = (Maximum anticipated) wastewater discharge in gallons per day

2.3 TANK DIMENSIONS: In general, tank length should be at least 2 or 3 times the width. Liquid depth of tanks shall be at least 30 inches. A liquid depth greater than 6 feet shall not be considered in determining tank capacity.

2.4 TANK COMPARTMENTS: Septic tanks may be divided into compartments, or separate tanks may be installed in series, up to a maximum of 3, provided the following requirements are met:

A. The volume of the first compartment or tank must equal or exceed the volume of any other compartment.

B. No compartment or tank shall have an inside horizontal dimension less than 24 inches.

C. Inlets and outlets shall be designed as specified for tanks, except when a partition wall is used to form a multi-compartment tank. Under such conditions, an opening in the partition may be used to allow for flow between compartments, provided the minimum dimension of the opening is 4 inches, the cross-sectional area is not less than 30 square inches, and the mid-point is below the liquid surface a distance approximately equal to 40% of the liquid depth of the tank.

2.5 INLETS AND OUTLETS:

A. Inlets and outlets of tanks or compartments shall be submerged or baffled to divert incoming flow toward the tank bottom and minimize the discharge of sludge or seum in the effluent.

B. Sanitary Tees may be used in lieu of baffled inlet or outlet structures.

C. All outlet baffles shall extend below the liquid surface a distance equal to approximately 40% of the liquid depth. Space between the baffle top and the underside of the tank cover shall be at least 1 inch.

D. Seum storage volume shall consist of 15% or more of the required liquid capacity of the tank and shall be provided in the space between liquid surface and top of inlet devices, which shall be set at least 1 inch below the underside of the tank cover.

E. Inlets and outlets shall allow free venting of tank gases back through the drainage system.

F. The inlet invert shall be at least 1 inch above outlet invert.

2.6 ACCESS TO TANK:

A. Access to inlet and outlet devices shall be provided through properly placed openings not less than 18 inches in minimum horizontal dimension.

B. The top of the tank shall be at least 6 inches below finished grade.

C. If the top of the tank is located more than 18 inches below finished grade, all access openings required by sub-section (1) above, shall be extended to within 18 inches of the finished grade.

2.7 ABANDONED SEPTIC TANKS: Septic tanks,

cesspools and seepage pits which are no longer in use shall be completely pumped and filled with sand or soil.

2.8 DISCHARGE TO ABSORPTION SYSTEM: Septic tank effluent shall be conducted to the absorption system through a

watertight sewer line meeting the requirements for wastewater drainage lines as contained in R317-5-1.13(A), (B), and (F). Tees, wyes, or other distributing devices may be used as needed. If a distribution box is used, it shall be of sufficient size to accommodate the necessary distribution line connections. Outlet inverts shall be at the same elevation and at least 1 inch below the inlet invert. Conveyance to the absorption system must be adequately sized to handle peak hydraulic flow.

R317-5-3. Absorption Systems.

3.1 GENERAL REQUIREMENTS:

A. Suitable soil exploration, to a depth of about 10 feet, or at least 4 feet below the bottom of the proposed absorption systems and percolation tests, shall be made to provide information on subsoil conditions. Percolation tests and soil exploration reports shall be completed and submitted as part of the engineering report for the disposal facility. After January 1, 2002, the soil evaluation and percolation tests must be done in accordance with certification requirements in R317-11. A minimum of 5 percolation tests must be conducted at different sites for each disposal system. Additional tests may be required, where necessary to adequately evaluate the total absorption system or where there is significant variability in test results. In general, the system will be sized based on the slowest stabilized percolation test rate. Soil logs should be prepared in accordance with the Unified Soil Classification System by a qualified individual. Requirements outlined in R317-5-4.1 and Table 5-8 will be helpful in developing this information.

B. Absorption devices, including seepage pits or trenches, placed in sloping ground should be so constructed that the horizontal distance between the distribution line and the ground surface is at least 10 feet.

C. Soil having excessively high permeability, such as gravel with large voids, affords little filtering and is unsuitable for absorption systems. Percolation rates (R317-5-4.1) of approximately 5 minutes per inch or less usually will not be acceptable.

The extremely fine-grained "blow sand" found in some parts of Utah is generally unsuitable for absorption systems and should be avoided. If no choice is available, systems may be constructed in such material, provided it is within the required percolation range specified in this code, and the required area is calculated on the minimum percolation rate (60 minutes per inch for absorption fields and 30 minutes per inch for absorption beds).

D. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

E. Effluent distribution lines or pipe shall be perforated and should consist of 4-inch diameter pipe of appropriate material which has demonstrated satisfactory results for the given application. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

F. The coarse material in the absorption system shall consist of crushed stone, gravel, or similar material of equivalent strength and durability. It shall be free from fines, dust, sand or clay. The top of the stone or gravel shall be covered with a pervious material such as an

acceptable synthetic filter fabric, a 2-inch compacted layer of straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the stone or gravel.

G. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area.

H. Absorption systems shall be backfilled with earth that is free from debris and large rocks. The first 4 to 6 inches of soil backfill should be hand placed. Distribution pipes shall not be crushed or misaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement.

I. Heavy equipment shall not be driven in or over absorption systems during backfilling or after completion.

J. That portion of absorption system below the top of distribution pipes shall be in natural soil. Under unusual circumstances the Director may allow installation in acceptably stabilized earth fill. The earth fill and location will have to be evaluated on a case-by-case basis, taking into consideration the soil characteristics and degree of consolidation of the fill material.

K. Soil and Ground Water Requirements. In areas where absorption systems are to be constructed, soil cover must be adequate to insure at least 4 feet of soil between bedrock or any other impervious formation, and the bottom of absorption systems. Maximum ground water elevation must be at least 2 feet below the bottom of absorption systems and at least 4 feet below finished grade.

L. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for replacement of the absorption system. Suitability must be demonstrated through soil exploration and percolation tests results.

3.2 ABSORPTION FIELDS: Absorption fields are the preferred type of absorption system. They consist of a series of gravel-filled trenches provided with perforated pipes designed to distribute septic tank effluent into the gravel fill, from which it percolates through the trench walls and bottom into the surrounding sub-surface soil.

A. Design of absorption fields shall be as outlined in Tables 5-3 and 5-4.

TABLE 5-3
ABSORPTION FIELD CONSTRUCTION DETAILS

ITEMS	UNITS	MINIMUM	MAXIMUM
Number of lateral trenches		2	
Length of trenches	Feet		100
Width of trenches	Inches	12	36
Slope of pipe (bottom)	In./100 ft.	Level	Level
Depth of coarse material:			
Under pipe	Inches	6	
Under pipe located within			
10 ft. of trees	Inches	12	
Over pipe	Inches	2	
Size of coarse material	Inches	3/4	2 1/2
Depth of backfill over coarse material	Inches	6	

TABLE 5-4
SIZE AND MINIMUM SPACING FOR ABSORPTION FIELD TRENCHES

Minimum Spacing of wall to Trenches Width of trench at bottom (inches)	Minimum Spacing of wall to wall (ft.)
12 to 18	6.0
18 to 24	6.5
24 to 30	7.0
30 to 36	7.5

B. The minimum absorption area (total bottom area of trenches) of the absorption field shall be determined from the following equation but in no case the maximum allowable application rate shall exceed 2.2 gallons per square foot per day

$$Q = 5 / \text{square root of } t$$

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day

$$t = \text{stabilized percolation rate in minutes per inch}$$

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 60 minutes per inch indicate a soil unsuitable for absorption field construction.

C. Wherever possible all trench bottoms should be constructed at the same elevation. Distribution pipes and trenches should be level and should be connected at both ends to provide a continuous system. If ground surface slope is too steep to permit a level installation, then a system of serial trenches following land contours should be used, with each trench and distribution pipe being constructed level but at a different elevation. A schematic diagram showing the recommended layout of trenches and distribution systems is available from the Director.

1. The system should include drop boxes which should generally conform to the detail in Appendix 1 and should operate in such a manner that a trench will be filled with wastewater to the depth of the gravel fill before the wastewater flows to the next lower trench. The drop boxes shall be watertight and should be provided with a means of access at the top.

2. The lines between the drop boxes should be a minimum of 4 inches in diameter and should be watertight with direct connections to the distribution box. They should be laid in a trench excavated through undisturbed earth to the exact depth required. Backfill should be carefully tamped.

3.3 ABSORPTION BEDS: Absorption beds consist of large excavated areas provided with gravel fill in which effluent distribution lines are laid. They may be used in place of absorption fields when trenches are not considered desirable, and shall conform to requirements applying to absorption fields, except for the following:

A. They shall comply with construction details specified in Table 5-5.

TABLE 5-5
ABSORPTION BED CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Distance between distribution lines	Feet		6
Distance between distribution lines and wall	Feet		3

Depth to bottom of bed	Feet	1 1/2
Size of coarse material	Inches	3/4 2 1/2
Depth of coarse material		
Under pipe	Inches	6
In bed within 10 ft. of trees	Inches	12
Over pipe	Inches	2
Depth of backfill over coarse material	Inches	6

B. Required absorption area (total bottom area of bed) shall be determined from the following equation, but in no case shall it exceed 1.1 gallons per square foot per day:

$$Q = 2.5/\text{square root of } t$$

Where Q = maximum rate of effluent application to the soil in gallons per square foot per day.

t = stabilized percolation rate in minutes per inch.

Percolation tests shall be performed as specified in R317-5-4.1. Rates in excess of 30 minutes per inch indicate a soil unsuitable for absorption bed construction.

3.3 SEEPAGE PITS: If absorption fields or beds are not feasible, seepage pits will be considered. These consist of deep pits which receive septic tank effluent and allow it to seep through sidewalls into the adjacent subsurface soil. Seepage pits may be either hollow lined or filled with clean coarse material. They shall conform to the following requirements:

A. Number and size of seepage pits required shall be determined by calculation of seepage rate into each stratum of soil encountered in pit sidewall by reference to Table 5-8. Only pervious side-wall area below the inlet shall be considered. In order to calculate a sidewall seepage rate a representative number of soil explorations shall be evaluated to adequately identify the type and depth of each soil stratum expected throughout the absorption area. In general, a minimum of 5 explorations will be evaluated. This information shall be provided in the engineering report.

B. For the purposes of confirming an appropriate sidewall seepage rate, the owner shall submit a statement describing the character and thickness of each stratum of soil encountered during pit construction. Soil classification and assumed seepage rates shall be as specified in Table 5-8 except when valid seepage measurements are available.

C. The lining may be brick, stone, block or similar materials, at least 4 inches thick, laid in cement mortar above the inlet and with tight butted joints below the inlet. The annular space between the lining and the earth wall shall be filled with crushed rock or gravel varying in diameter from 3/4 inch to 2-1/2 inches.

D. A structurally sound and otherwise suitable top shall be provided. Structural design and materials used throughout shall assure a durable safe structure.

E. If more than one seepage pit is provided, the installation may be operated in series or parallel with distribution of effluent as specified in R317-5-2.1(G).

F. For hollow lined pits, the inlet pipe should extend horizontally at least 1 foot into the pit with a tee to divert flow downward and prevent washing and eroding the sidewall.

G. For filled pits a thin layer of crushed rock or gravel ranging from 3/4 to 2-1/2 inches in diameter, free from fines, sand, clay or organic material shall cover the coarse material to permit leveling of the distribution pipe.

TABLE 5-6
SEEPAGE PITS CONSTRUCTION DETAILS

ITEM	UNIT	MINIMUM	MAXIMUM
Generals			
Distance between seepage pits	feet	12(a)	
Diameter of distribution pipe	inches	4	
Size of coarse material	inches	3/4	12
Bottom of pit to maximum ground water	feet	2	
Bottom of Pit in unsuitable soil or bedrock formations	feet	4	
Hollow lined Pits:			
Width of annular space between lining and sidewall containing crushed rock (3/4 to 2 1/2 inches in diameter)	inches	6	
Thickness of brick or block linings	inches	4(b)	
Filled Pits:			
Depth of coarse material under pipe	feet	4	
Over distribution pipe	inches	2	
Depth of backfill over material	inches	6	

Footnotes:
(a) See Table 5-1
(b) Pre-manufactured linings may be approved with thicknesses less than 4 inches.

3.5 SEEPAGE TRENCHES (MODIFIED SEEPAGE PITS):

Seepage trenches are considered as modified seepage pits and consist of deep trenches filled with clean, coarse material. They shall conform to the requirements applying to seepage pits except for the following:

A. The effective sidewall absorption area shall be considered as the outside surface of the seepage trench (vertical sidewall area) calculated below the inlet or distribution pipe. Only pervious sidewall area below the inlet shall be considered.

TABLE 5-7
SEEPAGE TRENCH DETAIL

ITEM	UNIT	MINIMUM	MAXIMUM
Seepage trench width	feet	2	
Seepage trench length	feet		100
Effluent Distribution pipe			
Diameter	inches	4	
Slope	percent	level	level
Distance between seepage trenches	feet	12(a)	

Footnote:
(a) See Table 5-1.

TABLE 5-8
SEEPAGE TRENCHES AND PITS
ALLOWABLE SIDEWALL SEEPAGE RATES

SYMBOL AND CHARACTER OF SOIL BY UNIFIED SOIL CLASSIFICATION SYSTEM	GALLONS/ DAY/ SQ. FT.
Hardpan or bedrock (including fractured bedrock with little or no fines).	0
GW Well graded gravels, gravel sand mixtures little or no fines.	1.55
GP Poorly graded gravels or gravel sand mixtures, little or no fines.	1.55
SW Well graded sands, gravelly sand, little or no fines.	1.20
SP Poorly graded sands or gravelly sands, little or no fines.	1.20
SM Silty sand, sand silt mixtures.	0.8
GM Silty gravels, poorly graded gravel sand silt mixtures.	1.0
GC Clayey gravels, gravelly sand clay mixtures.	0.45(a)
SC Clayey sands, sand clay mixtures.	0.45(a)
ML Inorganic silts and very fine sand, rock flour, silt or clayey fine sands or clayey silts with slight plasticity.	0.45(a)
MH Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts.	0.45(a)(b)
CL Inorganic clays or low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays.	0.45(a)(b)
CH Inorganic clays of high plasticity, fat clays.	0
OL Organic silts and organic silty clays of low plasticity.	0
OH Organic clays of medium to high plasticity, organic silts.	0
PT Peat and other highly organic silts.	0
Other Impervious formations.	0

Footnotes:

(a) For the purpose of this table, whenever there are reasonable doubts regarding the suitability and estimated absorption capacities of soils, percolation tests shall be conducted in those soils in accordance with R317-4-1. Soils within the same classification may exhibit extreme variability in permeability, depending on the amount and type of clay and silt present. The following soils categories, SC, GC, and ML, MH and CL soils, may prove unsatisfactory for absorption systems, depending upon the percentage and type of fines present.

(b) These soils are usually considered unsuitable for absorption systems, but may be suitable, depending upon the percentage and type of fines in coarse-grained porous soils, and the percentage of sand and gravels in fine-grained soils.

R317-5-4. Percolation Tests.

A. General Requirements.

1. A percolation test measures the rate which subsurface soil absorbs water for the purpose of identifying porous soil strata and site suitability for absorption systems, and is also a basis for estimating the design criteria of such systems to insure a reasonably long lifespan.

2. While percolation tests constitute a valuable guide for successful operation of disposal systems, considerable judgment must be used in applying the results. Percolation test results shall not be presumptive, prima facie, or conclusive evidence as to the suitability for absorption systems. Such percolation tests may be considered and analyzed as one of many criteria in determining soil suitability for absorption systems. There is no need for conducting percolation tests when the soil or other site conditions are clearly unsuitable.

3. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for absorption systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the health authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Required Test Procedures:

1. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent, certifying that the tests were conducted in accordance with these requirements, and indicating the depth and rate of each test in minutes per inch, the date of the tests, the logs of the soil exploration pits, a statement of the present and maximum ground water table, and all other factors affecting percolation test results. Percolation tests shall be conducted at the owner's expense by or under the supervision of a registered sanitarian, registered engineer, or other qualified person approved by the health authority in accordance with the following:

(a) Conditions Prohibited for Test Holes:

Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the health authority.

(b) Number and Location of Percolation Tests:

One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present.

Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the health authority and may be accepted only if conducted with an authorized representative present.

(c) Type, Depth, and Dimensions of Test Holes:

Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from 4 to 18 inches (preferably 8 to 12 inches). The vertical sides shall be at least 12 inches deep, terminating in the soil at an

elevation 6 inches below the bottom of the proposed absorption system.

2. Test Procedure for Sandy or Granular Soils

For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of 12 inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least 12 inches above the gravel seeps away in 10 minutes, or less, the test may proceed immediately as follows:

(a) Water shall be added to a point not more than 6 inches above the gravel.

(b) Thereupon, from the fixed reference point, water levels shall be measured at 10 minute intervals for a period of 1 hour.

(c) If 6 inches of water seeps away in less than 10 minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed 6 inches.

(d) The final water level drop shall be used to calculate the percolation rate.

3. Test Procedure for Other Soils Not Meeting the Above Requirements.

The hole shall be carefully filled with clear water and a minimum depth of 12 inches shall be maintained above the gravel for at least a 4-hour period by refilling whenever necessary. Water remaining in the hole after 4 hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

(a) Any soil which has sloughed into the hole shall be removed and water shall be adjusted to 6 inches over the gravel.

(b) Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of 4 hours unless 2 successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

(c) The hole shall be filled with clear water to a point not more than 6 inches above the gravel whenever it becomes nearly empty.

(d) Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

(e) When the first 6 inches of water seeps away in less than 30 minutes, the time interval between measurements shall be 10 minutes, and the test run for 1 hour.

(f) The water depth shall not exceed 6 inches at any time during the measurement period.

(g) The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

4. Calculation of Percolation Rate.

The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches or fractions thereof.

5. Using Percolation Rate to Determine Absorption Area.

The minimum or slowest percolation rate shall be used in calculating the required absorption area.

C. Recommendations to Enhance Test Procedures.

1. Soil Exploration Pit Prerequisite to Percolation Tests.

Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

2. Test Holes to Commence in Specially Prepared Excavations.

All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately 6 inches above the strata to be tested.

3. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Nails driven into a board will provide a good instrument to scarify the sides of the hole. Remove all loose soil from the bottom of the hole. Add up to 3 inches of clean coarse sand or pea-sized gravel to protect the bottom from scouring or sealing with sediment when water is added.

Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

4. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by increase intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

5. Placing Water in Test Holes.

Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

6. Percolation Rate Measurement, General.

Necessary equipment should consist of a tape measure (with at least 1/16 inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

JR317-5. Large Underground Wastewater Disposal (LUWD) Systems.

R317-5-1. Authority, Purpose, Scope, Jurisdiction, Waiver Approval and Administrative Requirements.

1.1. Authority.

Construction and operating permits and approvals are issued pursuant to the provisions of Utah Water Quality Act Sections 19-5-104, 19-5-106, 19-5-107 and 19-5-108. Violation of these permits or approvals including compliance with the conditions thereof, or beginning construction, or modification without the director's approval, is subject to the penalties provided in Section 19-5-115.

1.2. Purpose.

A. The purpose of this rule is to protect the public health and the environment from potential adverse effects from large underground wastewater disposal systems within the boundaries of Utah.

B. This rule incorporates specific provisions contained in Rule R317-4 that are referenced herein, and pertinent to large

underground wastewater disposal (LUWD) systems for the purpose of providing minimum design standards. Where the engineered design includes information supporting a deviation from the minimum requirements within this rule or referenced to in Rule R317-4, then the engineer may request a waiver. This rule also establishes the administrative requirements for obtaining from the division a LUWD system:

1. approval-in-concept;
2. construction permit;
3. authorization to use; and
4. operating permit

1.3 Scope.

This rule applies to large underground wastewater disposal systems designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple units under separate ownership (except condominiums), or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system per Rule R317-4.

A. The engineer shall use recognized practice standards for wastewater treatment to increase long term performance and lessen potential impacts to public health and the environment. Depending on site-specific characteristics, the division may require a LUWD system to pretreat effluent prior to disposal in the absorption system. In general, systems with high waste strength or flows over 15,000 gpd should consider pretreatment. Factors that should be evaluated include, but are not limited to, the following:

1. design flow (gpd)
2. highly variable flows, including seasonal fluctuations;
3. wastewater strength characteristics;
4. site characteristics.
5. proximity to ground water table, considering various soil types and separation distance;
6. ground water classification;
7. proximity to nearby drinking water sources, or location within a drinking water source protection zone; and
8. anticipated system life expectancy.

1.4. Jurisdiction. Large underground wastewater disposal systems are under the jurisdiction of the Division of Water Quality. Local Health Departments may petition the division to require local review for compliance with local requirements prior to the division initiating its review.

1.5 Waiver.

The director may grant a waiver from the minimum requirements stated in this rule, subject to site-specific consideration and justification, but not overriding the safeguarding of public health, protection of water quality or engineering practice. The intent of the waiver is to allow the engineer to utilize site specific information, recognized practice standards, or other acceptable justification while designing an appropriate LUWD system for the property. The engineer is encouraged to discuss waivers with the division staff prior to formal application for feasibility determination review.

R317-5-2. Definitions.

2.1. Definitions found in Rules R317-1 and R317-4 apply to large underground wastewater disposal systems except where specifically replaced by the following definitions:

"Alternative system" means a LUWD system that is not a conventional system.

"Building sewer" means the pipe that carries wastewater from the building to a public sewer, a LUWD system, or other point of dispersal. It sometimes is synonymous with "house sewer".

"Conventional system" means a LUWD system typically consisting of a building sewer, septic tank, and an absorption system utilizing absorption trenches, absorption beds, or deep wall trenches.

"Curtain drain" means any ground water interceptor or drainage system that is backfilled with gravel or other suitable material and is intended to interrupt or divert the course of shallow ground water or surface water away from the LUWD system.

"Malfunctioning or failing system" means a LUWD system that is not functioning in compliance with the requirements of this rule and may include:

1. absorption systems that seep or flow to the surface of the ground or into waters of the state;
2. systems that overflow from any of their components;
3. systems that cause backflow into any portion of a building drainage system;
4. systems discharging effluent that does not comply with applicable effluent discharge standards of its operating permit;
5. leaking septic tanks; or
6. noncompliance with standards stipulated in or by the construction permit, operating permit, or both.

"Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of a LUWD system at that site.

"Mound system" means an alternative LUWD system where the bottom of the absorption system is placed above the elevation of the original site, and the absorption system is contained in a mounded fill body above that grade.

"Packed bed media system" means an alternative LUWD system that uses natural or synthetic media to treat wastewater. Biological treatment is facilitated via microbial growth on the surface of the media. The system may include a pump tank, a recirculation tank, or both.

"Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage that are likely to cause human illness, disorders or disability. These may include pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning LUWD system constitutes a public health hazard.

"Sand lined trench system" means an alternative LUWD system consisting of a series of narrow excavated trenches utilizing sand media and pressure distribution.

"Unapproved LUWD system" means any LUWD system that is deemed by the division to be any of the following:

1. installation without the required division oversight, permits, or inspections;
2. repairs to an existing system without the required division oversight, permits, or inspections; or
3. alteration to an existing system without the required division oversight, permits, or inspections.

"Waiver" means an acceptable deviation from the requirements established within this rule or referenced rules. The waiver must be acceptable to division staff based on the engineer providing adequate design justification to demonstrate that the deviation proposed will not override the safeguarding of public health, the protection of water quality, or the protection of the receiving environment. Waiver requests should be based on acceptable engineering practice and standards.

R317-5-3. General Standards, Prohibitions, Requirements, and Enforcement.

3.1. Failure to Comply With Rules.

Any person failing to comply with this rule shall be subject to enforcement action as specified in Sections 19-5-115 and 26A-1-123.

3.2. Feasibility.

LUWD systems are not feasible in some areas and situations. If property characteristics indicate conditions that may fail in any way to meet the requirements specified herein, the use of a LUWD system shall be prohibited.

3.3. Prohibited Flows.

No ground water drainage, drainage from roofs, roads, yards, or other similar sources shall discharge into any portion of a LUWD system, but shall be disposed of so they will in no way affect the system. Non-domestic wastes such as chemicals, paints, or other substances that are detrimental to the proper functioning of a LUWD system may not be disposed of in such systems.

3.4. Increased Flows Prohibited.

Wastewater flow may not exceed the design flow of a LUWD system.

3.5. Property Lines Crossed.

Privately owned LUWD systems, including replacement areas, shall be located on the same lot as the building served unless, when approved by the division, a perpetual utility easement and right-of-way is established and recorded on an adjacent or nearby lot for the construction, operation, and continued maintenance, repair, alteration, inspection, relocation, and replacement of a LUWD system, including all rights to ingress and egress necessary or convenient for the full or complete use, occupation, and enjoyment of the granted easement. The easement shall be large enough to accommodate the proposed LUWD system and replacement area. The easement shall meet the setbacks specified in Section R317-4-13 Table 2.

3.6. Initial Absorption Area and Replacement Area.

A. All properties that utilize LUWD systems shall be required to have a replacement area.

B. The absorption area, including installed system and replacement area, may not be subject to activity that is likely to adversely affect the soil or the functioning of the system. This may include vehicular traffic, covering the area with asphalt, concrete, or structures, filling, cutting or other soil modifications.

3.7. Operation and Maintenance.

Owners of a LUWD systems shall operate, maintain, and service their systems according to the standards of this rule.

3.8. No Discharge to Surface Waters or Ground Surface.

Effluent from any LUWD system may not be discharged to surface waters or upon the surface of the ground. Wastewater may not be discharged into any abandoned or unused well, or into any crevice, sinkhole, or similar opening, either natural or artificial.

3.9. Repair of a Malfunctioning or Unapproved System.

Upon determination by the regulatory authority that a malfunctioning or unapproved LUWD wastewater system creates or contributes to any dangerous or unsanitary condition that may involve a public health hazard, or noncompliance with this rule, the regulatory authority shall order the owner to take the necessary action to cause the condition to be corrected, eliminated or otherwise come into compliance.

A. For malfunctioning systems, the regulatory authority shall require and order:

1. all necessary steps, such as maintenance, servicing, repairs, and replacement of system components to correct the malfunctioning system, to meet all rule requirements to the extent possible and may not create any new risk to the environment or public health;

2. effluent quality testing as required by Subsection R317-5-9.2.D;

3. evaluation of the system design including non-approved changes to the system, the wastewater flow, and biological and chemical loading to the system;

4. additional tests or samples to troubleshoot the system malfunction.

3.10. Procedure for Wastewater System Abandonment.

Whenever the use of a LUWD system has been abandoned or discontinued, the owner of the real property on which such wastewater system is located shall render it safe by having the septic tank, any other tanks, hollow seepage pit, or cesspool wastes pumped out or otherwise disposed of in an approved manner. Within 30 days the tanks shall be:

A. crushed in place and the void filled;

B. completely filled with earth, sand, or gravel; or

C. removed and backfilled.

3.11. Septage Management.

A person shall only dispose of septage, or sewage contaminated materials in a location or manner in accordance with the requirements of the division and any local agencies having jurisdiction.

3.12. Multiple Units Under Separate Ownership (except condominiums).

The common components of the LUWD system, including the reserve absorption area, shall be under the sponsorship of a body politic.

A. The subsurface absorption system shall be designed and constructed to provide duplicate capacity, meaning two independent systems. Each system shall be designed to accommodate the total anticipated maximum daily flow. The duplicate system shall be designed with appropriate valving, etc., to allow for periodic alternation of the use of each system.

B. Sufficient land area with suitable characteristics shall be planned and available to provide for a third absorption system capable of handling the total maximum daily wastewater flow. This area shall be kept free of permanent structures, traffic or soil modification.

3.13. Underground Injection Control.

Large underground wastewater disposal (LUWD) systems with design flow rates of 5,000 gallons per day or more are co-regulated by the Utah 1422 Underground Injection Control (UIC) Program in Rule R317-7. LUWD systems are authorized-by-rule under the UIC program provided they remain in compliance with

the construction and operating permits issued according to Rule R317-5. However, if any noncompliance with these permits results in the potential for or demonstration of actual exceedance of any Utah Maximum Contaminant Levels (MCLs) in a receiving ground water, the noncompliance may also be a violation of the Utah UIC administrative rules and therefore be subject to enforcement action. Owners and operators of a large underground wastewater disposal system are required to submit UIC inventory information according to Subsection R317-7-6.4(C) using the approved form for a LUWD system.

R317-5-4. Feasibility Determination and Approval-in-Concept.

4.1. General Criteria for Determining LUWD System Feasibility.

The division shall determine the feasibility of using a LUWD system. Upon favorable determination for feasibility an approval-in-concept will be granted by the division.

A. General Information. The required information shall include:

1. situs address if available;
2. name and address of the property owner and person requesting feasibility;
3. the location, type, and depth of all existing and proposed private and public drinking water wells, and other water supply sources within 1500 feet of the proposed LUWD system;
4. the location of all drinking water source protection zones delineated on the project site;
5. the location of all existing creeks, drainages, irrigation ditches, canals, and other surface and subsurface water conveyances within 1500 feet of the proposed LUWD system;
6. the location and distance to nearest sewer, owner of sewer, whether property is located within service boundary, and size of sewer; and
7. statement of proposed use if other than a single-family dwelling.

B. If the proposed LUWD system is located in aquifer recharge areas or areas of other particular geologic concern, the division may require such additional information relative to ground water movement, or possible subsurface wastewater flow.

C. Soil and Site Evaluation.

1. Soil Exploration Pit and Percolation Test.

a. A minimum of five soil exploration pits shall be excavated to allow the evaluation of the soils. The soil exploration pits shall be constructed and soil logs recorded as detailed in Section R317-4-14 Appendix C.

b. The division may require percolation tests in addition to the soil exploration pits.

c. The division may require additional pits, tests, or both where:

- i. soil structure varies;
- ii. limiting geologic conditions are encountered; or
- iii. the division deems it necessary.

d. The percolation test shall be conducted as detailed in Section R317-4-14 Appendix D.

e. Soil exploration pits and percolation tests shall be conducted as closely as possible to the proposed absorption system site. The division shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. All

soil logs and percolation test results shall be submitted to the division.

f. When there is a substantial discrepancy between the percolation rate and the soil classification, it shall be resolved through additional soil exploration pits, percolation tests, or both.

g. Absorption system feasibility and sizing shall be based on Section R317-4-13 Table 5 or 6.

2. Wind-Blown Sand.

The extremely fine grained wind-blown sand found in some parts of Utah shall be deemed not feasible for LUWD systems unless pretreatment is provided, as percolation test results in wind-blown sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time.

3. Suitable Soil Depth.

For conventional systems, effective suitable soil depth shall extend at least 48 inches or more below the bottom of the dispersal system to bedrock formations, impervious strata, or excessively permeable soil. Some alternative LUWD systems may have other requirements.

4. Ground Water Requirements.

The elevation of the anticipated maximum ground water table shall meet the separation requirements of the anticipated absorption systems.

a. Maximum Ground Water.

Maximum ground water table shall be determined where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of a LUWD system. Maximum ground water table shall be determined where alternative LUWD wastewater systems may be considered based on groundwater elevations. The maximum ground water table shall be determined by the following.

i. Regular monitoring of the ground water table, or ground water table, perched, in an observation well for a period of one year, or for the period of the maximum groundwater table.

(1) Previous ground water records and climatological or other information may be consulted for each site proposed for a LUWDS system and may be used to adjust the observed maximum ground water table elevation.

ii. Direct visual observation of the maximum ground water table in a soil exploration pit for:

(1) evidence of crystals of salt left by the maximum ground water table; or

(2) chemically reduced iron in the soil, reflected by redoximorphic features i.e., a mottled coloring.

(3) Previous ground water records and climatological or other information may be consulted for each site proposed for a LUWD system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation.

iii. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative LUWD system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

b. Curtain Drains.

A curtain drain or other effective ground water interceptor may be allowed as an attempt to lower the groundwater table to meet the requirements of this rule. The division shall require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

5. Ground Slope.

Absorption systems may not be placed on slopes where the addition of fluids is judged to create an unstable slope.

a. Absorption systems may be placed on slopes between 0% and 25%, inclusive.

b. Absorption systems may be placed on slopes greater than 25% but not exceeding 35% if:

i. all other requirements of this rule can be met;

ii. effluent from the proposed system will not contaminate ground water or surface water, and will not surface or move off site before it is adequately treated to protect public health and the environment;

iii. no slope will fail, and there will be no other landslide or structural failure if the system is constructed and operated adequately, even if all properties in the vicinity are developed with a LUWD system; and

iv. a report is submitted by a professional engineer or professional geologist that is licensed to practice in Utah. The report shall be imprinted with the engineer's or geologist's registration seal and signature and shall include the following.

(1) Predictions and supporting information of ground water transport from the proposed system and of expected areas of ground water mounding.

(2) A slope stability analysis that shall include information about the geology of the site and surrounding area, soil exploration and testing, and the effects of adding effluent.

(3) The cumulative effect on slope stability of added effluent if all properties in the vicinity were developed with LUWD systems.

c. Absorption systems may not be placed on slopes greater than 35%.

6. Other Factors Affecting a LUWD System Feasibility.

a. The locations of all rivers, streams, creeks, dry or ephemeral washes, lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, that will affect building sites, shall be provided.

b. Areas proposed for LUWD wastewater systems shall comply with the setbacks in Section R317-4-13 Table 2.

c. If any part of a property lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

7. Unsuitable.

Where soil and other site conditions are clearly unsuitable for the placement of a LUWD system, there is no need for conducting soil exploration pits or percolation tests.

R317-5.5. Engineering Reports, Plans and Construction Permits.

All engineering reports, plans and specifications shall be prepared by a registered professional engineer licensed to practice in the State of Utah and certified Level 3 in accordance with Rule R317-11.

5.1 Engineering Report.

An engineering report shall be submitted which shall contain design criteria along with all other information necessary to clearly describe the proposed project and demonstrate project feasibility as described in feasibility determination and approval-in-concept of Section R317-5-4.

5.2. Plan Review.

Submission of plans for review. Plans for new, alterations, repairs and replacements of large underground wastewater disposal systems shall be submitted to the division for review as required by Rule R317-1 and include the following:

A. Local Health Departments Requirements.

It is the applicant's responsibility to ensure that a LUWD System application to the division is in compliance with local health department requirements regarding the location, design, construction and maintenance of a LUWD system prior to the applicant submitting a request for a construction permit to the division. Where the petition has been approved by the director, the applicant is required to submit documentation that the local health department has approved the proposed LUWD system before a construction permit may be issued.

B. Information Required.

Plans submitted for review shall be drawn to scale, 1" = 10', 20' or 30', or other scale as approved by the division. Plans shall be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Depending on the individual site and circumstances, or as determined by the division, some or all of the following information may be required.

1. Applicant Information.

a. The name, current address, and telephone number of the applicant.

b. Complete address, legal description of the property, or both to be served by this LUWD system.

2. LUWD System Site Plan.

a. Submittal date of plan.

b. North arrow.

c. Lot size and dimensions.

d. Legal description of property.

e. Ground surface contours, preferably at 2 foot intervals, of both the original and proposed final grades of the property, or relative elevations using an established bench mark.

f. Location and explanation of type of dwelling(s) or structure(s) to be served by a LUWD system.

g. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

h. Location and dimensions of the essential components of the wastewater system including the replacement area for the absorption system.

i. Location of all soil exploration pits and all percolation test holes.

j. Location of building sewer and water service line to serve the building.

k. Location of sewer mains, manholes, clean-outs, and other appurtenances.

l. Location of easements or drainage right-of-ways affecting the property.

m. Location of all intermittent or year-round streams, ditches, watercourses, ponds, subsurface drains, etc. within 100 feet of proposed LUWD system.

n. The location, type, and depth of all existing and proposed water supply sources

o. Delineation of all drinking water source protection zones located on the project site.

p. Distance to nearest public water main and size of main.

q. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

3. Statement with Site Plan.

Statement indicating the source of culinary water supply, whether a well, spring, non-public or public system, its location and distances from all LUWD systems.

4. Soil Evaluation.

a. Soil Logs, Percolation Test Certificates, or both.

b. Statement with supporting evidence indicating the maximum anticipated ground water table and the flooding potential for LUWD system sites.

5. Relative Elevations.

Show relative elevations of the following, using an established bench mark.

a. Building drain outlet.

b. The inlet and outlet inverts of any septic tanks.

c. Septic tank access cover, including height and diameter of riser, if used.

d. Pump tank inlet, if used, including height and diameter of riser.

e. The outlet invert of the distribution box, if provided, and the ends or corners of each distribution pipe lateral in the absorption system.

f. The final ground surface over the absorption system.

6. System Design.

Details for said site, plans, and specifications are listed in Design in Section R317-4-6.

a. Schedule or grade, material, diameter, and minimum slope of building sewer and effluent sewer.

b. Septic tank and pump tank capacity, design, cross sections, etc., materials, and dimensions. If tank is commercially manufactured, state the name and address of manufacturer.

c. Absorption system details, including the following:

i. details of drop boxes or distribution boxes, if provided;

ii. schedule or grade, material, and diameter of distribution pipes;

iii. length, slope, and spacing of each absorption system component;

iv. maximum slope across ground surface of absorption system area;

v. distance of absorption system from trees, cut banks, fills, or subsurface drains; and cross section of absorption system showing the:

(1) depth and width of absorption system excavation;

(2) depth of distribution pipe;

(3) depth of filter material;

(4) barrier material, i.e., synthetic filter fabric, straw, etc., used to separate filter material from cover; and

(5) depth of cover.

d. Pump, if provided, details as referenced in Section R317-4-14 Appendix B.

e. If an alternative LUWD system is designed, include all pertinent information to allow plan review and permitting for compliance with this rule.

C. Plans Submitted.

1. All applicants requesting plan approval for a LUWD shall submit two copies of the above required information to enable the division to retain one copy as a permanent record.

2. Applications may be rejected if proper information is not submitted.

5.3. Construction Permit Required.

No person shall make or construct any device for treatment or discharge of wastewater without first receiving a permit to do so from the director.

R317-5-6. Design Requirements.

6.1. Shall meet the requirements of Section R317-4-6, with these exceptions:

A. When a LUWD serves multiple single family dwellings the wastewater flow shall be estimated at 400 gpd per dwelling.

B. Minimum separation distance from the bottom of the absorption trenches to the anticipated maximum ground water table is 48 inches. If a mound, sand lined trench, or packed bed pretreatment unit is designed and installed on the LUWD system, the horizontal separation distance may be reduced to 24 inches.

6.2. Components Required in a LUWD System:

A. A septic tank;

B. An effluent filter;

C. A pressurized subsurface disposal system.

1. This may be an absorption field, deep wall trenches, absorption beds, or, for packed bed media applications, drip irrigation dispersal, depending on location, topography, soil conditions and maximum ground water level.

2. Pressurized systems require cleanouts at the end of pressurized laterals and typically require a dosing chamber or dosing tank.

3. The Utah Guidance for Performance, Application, Design, Operation & Maintenance: Pressure Distribution Systems document shall be used for design requirements, along with the following:

a. Dosing pumps, controls and alarms shall comply with Section R317-4-14 Appendix B.

b. Pressure distribution piping.

i. All pressure transport, manifold, lateral piping, and fittings shall meet PVC Schedule 40 standards or equivalent.

ii. The ends of lateral piping shall be constructed with sweep elbows or an equivalent method to bring the end of the pipe to the final grade. The ends of the pipe shall be provided with threaded plugs, caps, or other devices acceptable to the division to allow for access and flushing of the lateral.

D. Accessibility components to insure proper maintenance and servicing. These include that all tanks shall have access risers to the surface of the ground; and absorption field inspection ports.

E. Additional components may also be required depending on the waste stream characteristics and the need to provide adequate protection to groundwater. These components may include pretreatment devices such as grease traps, or may involve secondary treatment using packed bed media systems.

R317-5-7. Construction and Installation.

Shall meet the requirements of Section R317-4-7.

R317-5-8. Final Inspection and Authorization to Use.**8.1. Final inspection.**

Upon completion of construction, but before backfilling, the system designer must notify the division of completion and schedule a final inspection with the division. Where the local health department has the authority to issue operating permits they shall be included in the final inspection. The final inspection shall meet the requirements of Section R317-4-8. No wastewater may be introduced into a LUWD system until an authorization to use has been issued by the division.

8.2. Authorization to Use

The following documents, sealed by the engineer, must be provided to the division in order to receive authorization to use:

A. Written certification that the system was installed in accordance with the construction permit and any approved change orders.

B. Two record drawings of the completed system.

C. Two Operation & Maintenance Manuals. Manuals must include details of:

1. individuals of contact for the installed system;

2. list of all key components of the system;

3. maintenance and service instructions of each component;

4. schedule of maintenance inspections and servicing.

D. Written recommendation to the owner to place the facilities into service, pending issuance of the authorization to use by the division.

R317-5-9. Operation and Maintenance.

9.1. Operation and maintenance shall be provided by the owner to ensure the disposal system is functioning properly at all times.

9.2. The owner is responsible for maintaining a LUWD system and for performing periodic inspections, servicing and monitoring of its system as detailed in the issued operating permit, including the following:

A. Any new system installed after April 2009 must have a written operation and maintenance manual document describing the treatment and disposal system and outlining routine maintenance procedures, including checklists and maintenance logs needed for proper operation of the system.

B. Each LUWD Conventional System shall be assessed after the first year of operation and annually thereafter.

C. Each LUWD Pressure Distribution System shall be inspected as outlined in Section R317-4-23 Tables 7.1 and 7.2.

D. LUWD Alternative Systems.

1. Each alternative system shall be inspected as outlined in Section R317-4-13 Tables 7.1 and 7.2.

2. Each packed bed media system shall be sampled a minimum of every six months as outlined in Section R317-4-13 Table 7.3.

a. The grab sample shall be taken before discharge to an absorption system.

b. Effluent not meeting the standards of Section R317-4-13 Table 7.3, shall be followed with two successive weekly tests of the same type within a 30 day period from the first exceedance.

3. If two successive samples exceed the minimum standards, the system shall be deemed to be malfunctioning, and

shall require further evaluation and a corrective action plan, see Subsection R317-5-3.9.

R317-5-10. Operating Permits and Annual Inspection Reports.**10.1. Operating Permit required.**

An operating permit is required for all LUWD systems to monitor that proper operation and maintenance is occurring for the protection of the environment and public health. The operating permit shall be issued by the director or, by delegated authority, the local health department having jurisdiction, and shall be effective for a period not to exceed 5 years from the date of issuance.

10.2. Local Health Department Authority to Issue Operating Permits.

Local health departments may request delegated authority to administer the operating permit program. The request must include an agreement to implement and enforce inspection, servicing, monitoring, and reporting requirements of this rule. The local health department must submit an annual report on or before September 1 of each calendar year, to the division containing:

A. A list of LUWD systems under delegation.

B. A summary listing the compliance status of each system, showing those systems that are currently failing, and those systems that have been repaired.

C. A summary of any enforcement actions taken, identifying those actions that are still pending, and those that have been resolved.

10.3. Annual Inspection Report.

The owner of a LUWD system shall submit an annual inspection report covering the period of July 1 to June 30, the "reporting year", to the permitting agency no later than August 1 of each year. In this report, the owner shall report on all requirements listed in the operating permit. As a minimum, the report shall include the following items:

A. Facility name and address; owner name, address, and phone number;

B. List of facility components, e.g., septic tank, pump tank, gravel drainfield trench, gravelless chambers, pressure drainfield, etc.;

C. Design flow in gallons per day and number and type of connections;

D. Type of waste treated and disposed, i.e., residential, restaurant, other commercial establishment, etc.;

E. Checklist of inspections performed including the date of the inspection and a list of findings. The report must include, where pertinent:

1. measured sludge and scum levels;

2. date tanks were last pumped;

3. verify pumps, floats; and control panel are operating as designed;

4. date pump filter last cleaned;

5. date pressure laterals last cleaned and flushed and squirt height recorded;

6. any surfacing in absorption field; and

7. any observed or suspected system malfunction;

F. Packed Bed media system sampling results, where pertinent.

G. Name of the certified individual per Rule R317-11, conducting the inspection;

H. Signature of owner or certified operator, and date.

KEY: water pollution, large underground wastewater, sewerage, engineering

Date of Enactment or Last Substantive Amendment: [September 24, 2015]2014

Notice of Continuation: June 18, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

**Health, Family Health and
Preparedness, Emergency Medical
Services
R426-8
Emergency Medical Services
Ambulance Rates and Charges**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38272

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department by order has authorized agencies to adjust rates according to the agency's fiscal data as reviewed by the Department. Currently, the published ambulance rates in rule need to be adjusted. Rule R426-8 is revised to reflect the 10/18/2013 revised ambulance rates.

SUMMARY OF THE RULE OR CHANGE: Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all emergency medical services (EMS) agencies statewide. The data collected showed EMS Rates need to be increased at 6.35% so agencies statewide will have revenues matching expenses. Rule R426-8 needs to be amended to reflect these ground ambulance transport changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-403

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** State budget will not be impacted as this is a user fee.

◆ **LOCAL GOVERNMENTS:** Local government budgets will not be impacted significantly. The rates listed in the rule are increased 6.35%. The EMS agency billings increase by 6.35% which will offset declining collections, wages increases, and the increased fuel and equipment costs.

◆ **SMALL BUSINESSES:** EMS budgets will not be impacted. The ambulance transport rate increase is 6.35% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

EMS budgets will not be impacted. The ambulance transport rate increase is 6.35% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: EMS agencies are allowed to bill the rates listed in the proposed rule and there are no costs to the agency for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I approve of the changes for Rule R426-8 for publication.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Allan Liu by phone at 801-273-6664, by FAX at 801-273-4165, or by Internet E-mail at aliu@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-8. Emergency Medical Services Ambulance Rates and Charges.

R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

R426-8-2. Ambulance Transportation Rates and Charges.

(1) Licensed services operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(c) An agency may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by

the department to be submitted as detailed under R426-8-2(9). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport to care facility -

(a) Ground Ambulance - [~~\$615.00~~]\$655.00 per transport.

(b) Advanced EMT and EMT-IA Ground Ambulance - [~~\$813.00~~]\$865.00 per transport.

(c) Paramedic Ground Ambulance - [~~\$1,189.00~~]\$1,265.00 per transport.

(d) Ground Ambulance with Paramedic on-board - [~~\$1,189.00~~]\$1,265.00 per transport if:

(i) a dispatch agency dispatches a paramedic licensee to treat the individual;

(ii) the paramedic licensee has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) an ambulance service that interfaces with a paramedic rescue service and has an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to a maximum of [~~\$253.74~~]\$269.82 per transport.

(4) Mileage Rate-

(a) \$31.65 per mile or fraction thereof.

(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.

(c) A fuel fluctuation surcharge of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon or gasoline exceeds \$4.25 as invoiced.

(5) Surcharge-

(a) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.

(6) Special Provisions -

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

(7) Supplies and Medications -

(a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:

(i) supplies shall be priced fairly and competitively with similar products in the local area;

(ii) the individual does not refuse services; and

(iii) the ambulance personnel assess or treats the individual.

(8) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the Department for permission to make a temporary service-specific surcharge. The petition shall

specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(9) Operating report -

(a) The licensed service shall file with the Department within 90 days of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(10) Fiscal audits -

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

R426-8-3. Penalty for Violation of Rule.

As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: emergency medical services

Date of Enactment or Last Substantive Amendment: [~~October 18, 2013~~]**2014**

Notice of Continuation: January 5, 2011

Authorizing, and Implemented or Interpreted Law: 26-8a

Insurance, Administration **R590-186-8** Investigating Unprofessional Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38273

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes to this rule have been discussed and agreed upon in Bail Bond Advisory Board meetings. Changes are an effort to clarify the responsibilities of the Board and the Commissioner in the investigation of unprofessional conduct.

SUMMARY OF THE RULE OR CHANGE: In the first subsection of Section R590-186-8 "and" is replaced with "or" to clarify that investigations can be done by either the department or the Commission, not both at the same time. Also, new wording is included to clarify that a bail bond

producer may be subject to an investigation of unprofessional conduct as well as a bail bond company and agency. Subsection R590-186-8(1)(b) clarifies that the respondent in an investigation has 15 days to respond to a complaint. Subsection R590-186-8(1)(c) clarifies that the Board will be given an opportunity to provide input into an investigation of unprofessional conduct. In Subsection R590-186-8(1)(d) the word "or" is added to clarify that one, not all options listed, is to be chosen. Wording regarding the Board conducting its own investigation have been eliminated from Subsection R590-186-8(1). New wording is added requiring the Board to treat investigation information as confidential and provides a process when the Board requests additional investigation of a complaint.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-35-104 and Section 31A-35-301 and Section 31A-35-401 and Section 31A-35-406

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no fiscal impact to the department or the state as a result of these changes. Changes are an effort to clarify the responsibilities of the Board and the Commissioner in the investigation of unprofessional conduct. Very few complaints result in violations of unprofessional conduct. The Board can request further investigation on a case, which would be handled by existing staff. Additional revenues or costs are not expected as a result of these changes.

♦ **LOCAL GOVERNMENTS:** This rule deals with the relationship between the department and its licensees and has no impact on local governments.

♦ **SMALL BUSINESSES:** The changes to Section R590-186-8 of this rule deal with the relationship between the Bail Bond Advisory Board and the department in regards to investigations of unprofessional conduct. These changes would have no fiscal impact on bail bond agencies.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to Section R590-186-8 of this rule deal with the relationship between the Bail Bond Advisory Board and the department in regards to investigations of unprofessional conduct. These changes would have no fiscal impact on bail bond producers, insurers or their customers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to Section R590-186-8 of this rule deal with the relationship between the Bail Bond Advisory Board and the department in regards to investigations of unprofessional conduct. The changes would have no fiscal impact on the bail bond industry, their clients, the department or the state.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on Utah or out of state businesses.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

R590-186. Bail Bond Surety Business.

R590-186-8. Investigating Unprofessional Conduct.

The Board ~~and~~or the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, ~~or~~ bail bond surety agent, or bail bond producer. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to ~~him~~respondent.

(c) At the next meeting of the Board, the commissioner shall present ~~to the Board~~the complaint and the action undertaken by the Department to ~~investigate the complaint~~receive comment from the Board.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, or request additional investigation ~~or conduct its own investigation~~.

~~(i) If the Board conducts its own investigation it may take and record witness statements under oath and may request any documents or other evidence from any person, including necessary financial records.~~

~~(ii) Witnesses may be compensated for their appearances as specified in 31A-2-301.~~

~~(iii) The Board may request a Subpoena from the commissioner to compel the production of documents or other evidence or to compel the testimony of a witness.~~

~~(iv) After the Board completes its investigation, it shall:~~

~~(A) close the investigation if the allegations have been shown to be unfounded or if the matter complained of is satisfactorily resolved; or~~

~~(B) if the investigation shows that unprofessional conduct did occur that requires the imposition of sanctions, it shall compile the evidence necessary to pursue the matter in an administrative proceeding by the Department of Insurance, and shall make a written report of its findings and of its recommendations for the penalties to be applied, and forward the report and evidence to the commissioner for further action within 15 days of the conclusion of the investigation.~~

~~(2) Except for matters referred to the commissioner for further proceedings, the Board shall retain in the Utah Insurance Department a file on each of the investigations it conducts concerning unprofessional conduct for a period of 5 years. Files regarding investigations conducted by the Board shall be classified as protected under Governmental Records Access and Management Act (GRAMA):~~

~~(i) Disclosures made to the Board under Sections (c) and (d) shall be treated as confidential. Board members may not disclose or act upon any confidential information obtained pursuant to investigations conducted under this Section.~~

~~(ii) If the Board requests additional investigation, the commissioner shall reasonably conduct additional investigation in compliance with the policies and procedures of the Department.~~

~~(a) The commissioner shall present findings to the Board at the next scheduled board meeting, or at a meeting no sooner than 30 days after the Board's request, at the discretion of the Board.~~

~~(b) Upon hearing the results of any additional investigation by the commissioner, the Board shall provide to the commissioner its recommendation within 30 days.~~

KEY: insurance

Date of Enactment or Last Substantive Amendment: [February 10, 2011] 2014

Notice of Continuation: July 12, 2013

Authorizing, and Implemented or Interpreted Law: 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

**Workforce Services, Employment
Development
R986-100-117**

**Disqualification For Fraud (Intentional
Program Violations or IPVs)**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38268

FILED: 01/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make the rule more clear.

SUMMARY OF THE RULE OR CHANGE: This change adds the word "using" to the definition of fraud or intentional program violation. Some clients use benefits that were accepted by another and it needs to be clear that each person is liable.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-310 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs so there are no costs or savings to local governments.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change.

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.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
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 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-100. Employment Support Programs.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

- (a) knowingly making false or misleading statements;
- (b) misrepresenting, concealing, or withholding facts or information;
- (c) posing as someone else;
- (d) knowingly taking, using or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;
- (e) not reporting a material change as required by and in accordance with these rules;
- (f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity; or
- (g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that:
 - (i) exclusively or primarily sells intoxicating liquor,
 - (ii) allows gambling or gaming, or
 - (iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment:
~~September 10, 2013~~ 2014

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

**Workforce Services, Employment
 Development
 R986-700
 Child Care Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38269

FILED: 01/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify overpayment procedures.

SUMMARY OF THE RULE OR CHANGE: The Division has standardized the language used in the rules. In places the child care rule referred to fraud which is the same as an intentional program violation. This change makes that clear. This change also provides that a provider who has committed an intentional program violation against child care will not be eligible for a child care subsidy or child care grant during the disqualification period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-310 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs so there are no costs or savings to local governments.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change.

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.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 EMPLOYMENT DEVELOPMENT
 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 03/17/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/24/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers. Beginning March 1, 2014 at least one person who is trained in first aid and infant/child CPR must be with the children at all times including when the children are being transported in a vehicle. Centers approved to receive CC subsidies as of March 1, 2014 will be allowed 30 days from the date of notification from the Department of Health, Child Care Licensing (CCL) to submit a complete application together with certification of completion of these requirements; or

(ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated. Beginning October 1, 2014 this category of child care provider will be replaced with DWS Family, Friend and Neighbor approved providers (FFN). The requirements for FFN approval are provided in subsection (7) of this section and in Department policy.

(c) homes with a Residential Certificate obtained from CCL.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that

household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

- (b) a sibling of the child living in the home;
- (c) household members whose income must be counted in determining eligibility for CC;
- (d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;
- (e) illegal aliens;
- (f) persons under age 18;
- (g) a provider providing care for the child in another state;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the ~~Department~~ Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;

- (i) any provider disqualified under R986-700-718;
- (j) a provider who does not cooperate with a Department investigation of a potential overpayment;
- (k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met; or
- (l) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(7) FFN providers, as provided in subsection (1)(b), will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed:

- (a) complete, sign and submit an application to the CCL;
- (b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;
- (c) provide a copy of a fire clearance from the State Fire Marshal or designated local fire authority.
- (d) pass a home inspection as provided in Department policy,
- (e) complete an infant/child CPR training,
- (f) complete first aid training and,
- (g) pass a background check as required in R986-700-751 et seq.

(8) CC providers that have been approved as a license exempt provider, or apply to be an FFN approved provider will be given a grace period to complete the requirements in subsection (7) of this section as follows:

- (a) the provider or applicant will be allowed up to 60 days from notification from CCL and no later than September 30, 2014 to submit a complete application to CCL together with a certification of completion of infant/child CPR training and first aid training;
- (b) all requirements in subsection (7) of this section must be completed by August 31, 2014 to prevent a delay in future benefits and no later than September 30, 2014;

(c) the provider will be denied if the requirements are not met within the due dates given. After the grace period expires, all providers will be required to obtain an FFN approval and meet all requirements before being approved to care for children receiving a Department subsidy payment;

(d) an approved FFN approved provider is authorized to provide care for a limited number of children or families as defined in Department policy.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed an IPV as defined in R986-100-117, including forging a provider's name on a two party CC check, or committing an IPV as a provider, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

- (a) for a period of one year for the first IPV;
- (b) for a period of two years for the second IPV; and
- (c) for life for the third IPV.

(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

KEY: child care

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-310

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends March 17, 2014.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through June 15, 2014, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

**Environmental Quality, Radiation
Control
R313-14
Violations and Escalated Enforcement**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38076
FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the formal comment period for the proposed amendment to Rule R313-14, public comments were received. In the January 2014 Radiation Control Board meeting, the comments were evaluated and the Board decided to make some changes based on the comments received.

SUMMARY OF THE RULE OR CHANGE: In Subsection R313-14-15(1)(c)(iv), after "within 90 days" the wording was added: "or other period approved by the Director". The addition of this wording gives a licensee the opportunity to ask the Director for additional time to correct a violation. In Subsection R313-14-15(2)(a), fixed a typographical error. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 15, 2013, issue of the Utah State Bulletin, on page 45. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-104 and Subsection 19-3-103.5(1)(a) and Subsection 19-3-109(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** With the possibility of fewer Notices of Violation being issued because licensees will now have the opportunity to ask for additional time to correct a violation, the number of civil penalties will also likely decrease. Since civil penalties are deposited into the state general fund, there is the potential of less money being deposited into the fund from Notices of Violation/civil penalties.

◆ **LOCAL GOVERNMENTS:** It is expected that local governments may be affected by this amendment. There are some local governments in the State of Utah that have a Radioactive Material License. Subsection R313-14-15(c) in part states: "The Director shall not generally issue Notices of Violation for a violation that meets the five following tests." Correcting the violation within 90 days is one of the tests. The addition of the wording "or other period approved by the

Director" gives a licensee the opportunity to ask for additional time to correct a violation. If the violation is corrected during that approved time period, a violation may not be issued where it might have before. The potential for fewer Notices of Violation issued means the potential for fewer civil penalties.

◆ **SMALL BUSINESSES:** It is expected that small businesses may be affected by this amendment. The majority of the Utah Division of Radiation Control licensees are small businesses. Subsection R313-14-15(c) in part states: "The Director shall not generally issue Notices of Violation for a violation that meets the five following tests." Correcting the violation within 90 days is one of the tests. The addition of the wording "or other period approved by the Director" gives a licensee the opportunity to ask for additional time to correct a violation. If the violation is corrected during that approved time period, a violation may not be issued where it might have before. The potential for fewer Notices of Violation issued means the potential for fewer civil penalties.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is expected that some individuals and/or corporations may be affected by this amendment. Subsection R313-14-15(c) in part states: "The Director shall not generally issue Notices of Violation for a violation that meets the five following tests." Correcting the violation within 90 days is one of the tests. The addition of the wording "or other period approved by the Director" gives a licensee the opportunity to ask for additional time to correct a violation. If the violation is corrected during that approved time period, a violation may not be issued where it might have before. The potential for fewer Notices of Violation issued means the potential for fewer civil penalties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensees, permittees, and registrants regulated by the Utah Division of Radiation Control may be fined less often will the additional wording at Subsection R313-14-15(1)(c)(iv).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If the change in proposed rule is promulgated, licensees, permittees, and registrants regulated by the Utah Division of Radiation Control may have additional time to correct an observed violation with the additional wording at Subsection R313-14-15(1)(c)(iv).

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:

◆ Gwyn Galloway by phone at 801-536-4258, by FAX at 801-533-4097, or by Internet E-mail at ggalloway@utah.gov

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-14. Violations and Escalated Enforcement.

R313-14-1. Introduction, Purpose, and Authority.

(1) The purpose of the radiation control inspection and compliance program is to assure the radiological safety of the public, radiation workers, and the environment by:

- (a) ensuring compliance with Utah Radiation Control rules or license conditions;
- (b) obtaining prompt correction of violations;
- (c) deterring future violations; and
- (d) encouraging improvement of licensee, permittee, or registrant performance, including the prompt identification, reporting, and correction of potential safety problems.

(2) Consistent with the purpose of the radiation control inspection and compliance program, prompt and vigorous enforcement action shall be taken when dealing with licensees, permittees, or registrants who fail to demonstrate adherence to these rules. Enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of these standards. Sanctions have been designed to ensure that a licensee, permittee, or registrant does not deliberately profit from violations of the Utah Radiation Control rules.

(3) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.5(1)(d), 19-3-104(4) and 19-3-104(8), 19-3-108, 19-3-109, and 19-3-111.

R313-14-3. Definitions.

As used in Rule R313-14, the following definitions apply:

(1) "Material False Statement" means a statement that is false by omission or commission and is relevant to the regulatory process.

(2) "Requirement" means a legally binding mandate such as a statute, rule, license condition, permit, registration, technical specification, or order.

(3) "Similar" means those violations which could have been reasonably expected to have been prevented by the licensee's, permittee's, or registrant's corrective action for a previous violation.

(4) "Willfulness" means the deliberate intent to violate or falsify, and includes careless disregard for requirements. Acts which do not rise to the level of careless disregard are not included in this definition.

R313-14-10. Severity of Violations.

(1) Violations are placed in one of two major categories. These categories are:

- (a) electronically produced radiation operations; or
- (b) radioactive materials operations.

(2) Regulatory requirements vary in public health and environmental safety significance. Therefore, it is essential that the relative importance of violations be identified as the first step in the

enforcement process. Based upon their relative hazard, violations are assigned to one of five levels of severity.

(3) Severity Level I is assigned to violations that are the most significant and Severity Level V violations are the least significant. In general, violations that are included in Severity Levels I and II involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern, however, if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

(4) The severity of a violation shall be characterized at the level best suited to the significance of the particular violation. A severity level may be increased if circumstances surrounding the violation involve careless disregard of requirements, deception, or other indications of willfulness. In determining the specific severity level of a violation involving willfulness, relevant factors will be considered, including the position of the person involved in the violation, the significance of an underlying violation, the intent of the violator, and the economic advantage gained by the violation. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

(5) The severity level assigned to material false statements may be Severity Level I, II, or III, depending on the circumstances surrounding the statement. In determining the specific severity level of a violation involving material false statements or falsification of records, consideration is given to factors like the position of the person involved in the violation, for example, a first line supervisor as opposed to a senior manager, the significance of the information involved, and the intent of the violator. Negligence not amounting to careless disregard would be weighted differently than careless disregard or deliberateness. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

R313-14-15. Enforcement Actions.

This Section describes the enforcement sanctions available to the Director and specifies the conditions under which they are to be used.

(1) Notice of Violation

(a) A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The licensee, permittee, or registrant may be required to provide a written statement describing:

- (i) corrective steps which have been taken by the licensee, permittee, or registrant and the results achieved;
- (ii) corrective steps which shall be taken to prevent recurrence; and
- (iii) the date when full compliance will be achieved.

(b) The Director may require responses to Notices of Violation to be under oath.

(c) A Notice of Violation is used by the Director as a method for formalizing the existence of a violation. The Notice may be the only enforcement action taken or it may be used as a basis for other enforcement actions. Licensee, permittee, or registrant initiative for self-identification and correction of problems is encouraged. The Director shall not generally issue Notices of Violation for a violation that meets the five following tests:

- (i) it was identified by the licensee, permittee, or registrant;
- (ii) it fits in Severity Level IV or V;
- (iii) it was reported, in writing, to the Director;
- (iv) it was or will be corrected, including measures to prevent recurrence, within 90 days or other period approved by the Director; and
- (v) it was not a violation that could reasonably be expected to have been prevented by the licensee's, permittee's, or registrant's corrective action for a previous violation.

(d) Licensees, permittees, or registrants are not ordinarily cited for violations resulting from matters outside of their control, like equipment failures that were not avoidable by reasonable quality assurance measures or management controls. However, licensees, permittees, and registrants are held responsible for acts of their employees. Accordingly, the rules should not be construed to excuse personal errors.

(2) Civil Penalty.

(a) A civil penalty is a monetary penalty that may be imposed for violation of Utah Radiation Control Rules or lawful orders issued by the Director. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations. Generally, civil penalties are imposed for Severity Level I and Severity Level II violations. In the absence of mitigating circumstances, civil penalties are considered for Severity Level III violations. Penalties are not ordinarily imposed for Severity Level IV and V violations unless those violations are similar to previous violations for which the licensee, permittee, or registrant failed to take effective corrective action.

(b) The level of a civil penalty may not exceed \$10,000 per violation. Except as modified by provision of the next paragraphs, the base civil penalties are as follows:

TABLE

Severity Level I Violations	\$10,000
Severity Level II Violations	\$8,000
Severity Level III Violations	\$5,000
Severity Level IV Violations	\$1,500
Severity Level V Violations	\$ 500

(i) Comprehensive licensee, permittee, or registrant programs for detection, correction and reporting of problems that may constitute, or lead to, violation of regulatory requirements are important and consideration may be given for effective internal audit programs. When licensees, permittees, or registrants find, report, and correct a violation expeditiously and effectively, the Director may apply adjustment factors to reduce or eliminate a civil penalty.

(ii) Ineffective licensee, permittee, or registrant programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant violations, repeated poor performance in an area of concern, or serious breakdown in management controls, the Director may apply the full enforcement authority.

(iii) The Director may review the proposed civil penalty case on its own merits and adjust the civil penalty upward or downward appropriately. After considering the relevant circumstances, adjustments to these values may be made for the factors identified below:

(A) Reduction of the civil penalty may be given when a licensee, permittee, or registrant identifies the violation and promptly reports, in writing, the violation to the Director. No consideration will

be given to this factor if the licensee, permittee, or registrant does not take immediate action to correct the problem upon discovery.

(B) Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee, permittee, or registrant takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed.

(C) Reduction of the civil penalty may be given for prior good performance in the general area of concern.

(D) The civil penalty may be increased as much as 50%, up to the \$10,000 maximum, for cases where the licensee, permittee, or registrant had prior knowledge of a problem as a result of an internal audit, or specific Director or industry notification, and had failed to take effective preventive steps.

(E) The civil penalty may be increased as much as 50%, up to the \$10,000 maximum, where multiple examples of a particular violation are identified during the inspection period.

(c) A violation of a continuing nature shall, for the purposes of calculating the proposed civil penalty, be considered a separate violation for each day of its continuance. A continuing violation is not considered a repeat violation. In the event a violation is repeated within five years, the scheduled amount of the civil penalty may be increased 50%, up to the \$10,000 maximum; and for repeat violations of Severity Levels II and III, the penalty will not be avoided by compliance. Other rights and procedures are not affected by the repeat violation.

(d) Payment of civil penalties shall be made within 30 working days of receipt of a Notice of Violation and Notice of Proposed Imposition of a Civil Penalty. An extension may be given when extenuating circumstances are shown to exist. Payment shall be made by check, payable to the Division of Radiation Control and mailed to the Division at the address shown with the Notice of Violation.

(3) Orders.

(a) An Order is a written directive to modify, suspend, or revoke a license, permit, or registration; to cease and desist from a given practice or activity; to issue a civil penalty; or to take other action that may be necessary.

(b) Modification Orders are issued when some change in licensee, permittee, or registrant equipment, procedures, or management control is necessary.

(c) Suspension Orders may be used:

(i) to remove a threat to the public health and safety or the environment;

(ii) when the licensee, permittee, or registrant has not responded adequately to other enforcement action;

(iii) when the licensee, permittee, or registrant interferes with the conduct of an inspection; or

(iv) for a reason not mentioned above for which license, permit, or registration revocation is authorized.

(v) Suspensions may apply to all or part of the regulated activity. Ordinarily, an activity is not suspended, nor is a suspension prolonged for failure to comply with requirements when the failure is not willful or when adequate corrective actions have been taken.

(d) Revocation Orders may be used:

(i) when a licensee, permittee, or registrant is unable or unwilling to comply with these rules;

(ii) when a licensee, permittee, or registrant refuses to correct a violation;

(iii) when a licensee, permittee, or registrant does not respond to a Notice of Violation;

(iv) when a licensee, permittee, or registrant does not pay a fee required by the Department; or

(v) for any other reason for which revocation is authorized.

(e) Cease and Desist Orders are used to stop unauthorized activity that has continued despite notification by the Director that the activity is unauthorized.

(f) Orders may be made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the Order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing is afforded. For cases in which a basis could reasonably exist for not taking the action as proposed, the licensee, permittee, or registrant shall be afforded an opportunity to show cause why the Order should not be issued in the proposed manner.

(4) Escalation of Enforcement Sanctions.

(a) In accordance with the provisions of Section 19-3-111 the radioactive material of a person may be impounded. Administrative procedures will be conducted as provided by Section R313-14-20, prior to disposal of impounded radioactive materials.

(b) Violations of Severity Levels I, II, or III are considered to be very serious. If repetitive very serious violations occur, the Director may issue Orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter their recurrence. In accordance with the criteria contained in this section, the Director shall carefully consider the circumstances of cases when selecting and applying the appropriate sanctions.

(c) The progression of enforcement actions for repetitive violations may be based on violations under a single license, permit, or registration. The actual progression to be used in a particular case may depend on the circumstances. When more than one facility is covered by a single license, permit, or registration, the normal progression may be based on repetitive violations under the same license, permit, or registration. It should be noted that under some circumstances, for example, where there is common control over some facet of facility operations, repetitive violations may be charged even though the second violation occurred at a different facility or under a different license, permit, or registration.

(5) Related Administrative Actions.

(a) In addition to the formal enforcement mechanisms of Notices of Violation and Orders, the Director may use administrative mechanisms, like enforcement conferences, bulletins, circulars, information notices, generic letters, and confirmatory action letters as part of the enforcement and regulatory program. Licensees, permittees, and registrants are expected to adhere to obligations and commitments resulting from these processes and the Director shall, if necessary, issue appropriate orders to make sure that expectation is realized.

(b) Enforcement Conferences are meetings held by the Director with licensee, permittee, or registrant management to discuss safety, public health, or environmental problems, compliance with regulatory requirements, proposed corrective measures, including schedules for implementation, and enforcement options available to the Director.

(c) Bulletins, Circulars, Information Notices, and Generic Letters are written notifications to groups of licensees, permittees, or registrants identifying specific problems and calling for or

recommending specific actions on their part. Responses to these notifications may be required.

(d) Confirmatory Action Letters are letters confirming a licensee's, permittee's, or registrant's agreement to take certain actions to remove significant concerns about health and safety, or the environment.

R313-14-25. Public Disclosure of Enforcement Actions.

Enforcement actions and responses are publicly available for inspection. In addition, press releases are generally issued for Notices of Proposed Imposition of a Civil Penalty and Orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases may be issued at the time of the Order or the Notice of Proposed Imposition of the Civil Penalty. Press releases are not normally issued for Notices of Violation.

KEY: violations, penalties, enforcement

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: July 7, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-109; 19-3-111

Environmental Quality, Radiation Control **R313-25**

License Requirements for Land Disposal of Radioactive Waste - General Provisions

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38082

FILED: 01/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the comment period for proposed amendment to Rule R313-25, a comment was received that the removal of the words "generally" and "frequent" from the requirements in Subsection R313-25-24(5) would cause the rule to read differently from the corresponding rule found in 10 CFR 61.51(a)(5). A representative from the Utah Attorney General's Office indicated that the modification may cause the requirement to be more restrictive than the corresponding federal requirement. Therefore, the Utah Radiation Control Board determined that the words should be returned to the requirement to ensure compatibility with the federal requirements.

SUMMARY OF THE RULE OR CHANGE: The modifications for Subsection R313-25-24(5) in the proposed rule are being removed in this change in proposed rule and the requirement is being restored to its original wording. Additionally, a few minor formatting changes were made that have no effect on

the requirements found in Rule R313-25. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 15, 2013, issue of the Utah State Bulletin, on page 49. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-103.5(1)(a) and Section 19-3-104

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Prior to the recently filed proposed changes to the requirements in Subsection R313-25-24(5), the requirement was approved as provided in this change in proposed rule. Since the rule has been in place as written in the change in proposed rule, the state budget will not be impacted.

◆ LOCAL GOVERNMENTS: Prior to the recently filed proposed changes to the requirements in Subsection R313-25-24(5), the requirement was approved as provided in this change in proposed rule. Since the rule has been in place as written in the change in proposed rule, local government budgets will not be impacted.

◆ SMALL BUSINESSES: Prior to the recently filed proposed changes to the requirements in Subsection R313-25-24(5), the requirement was approved as provided in this change in proposed rule. Since the rule has been in place as written in the change in proposed rule, the agency does not anticipate small businesses to be affected by the change in proposed rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Prior to the recently filed proposed changes to the requirements in Subsection R313-25-24(5), the requirement was approved as provided in this change in proposed rule. Since the rule has been in place as written in the change in proposed rule, the agency does not anticipate persons other than small businesses, businesses, or local government entities to be affected by the change in proposed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the rule has been in place for a number of years, as written in the change in proposed rule, the restoration of the rule to its original wording will not result in any additional costs or savings for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Prior to the previous proposed changes to the requirements in Subsection R313-25-24(5), the requirements of Subsection R313-25-24(5) have been in place for a number of years with wording that was identical to the requirements in 10 CFR 61.51(a)(5). As this change in proposed rule restores the requirements of Subsection R313-25-24(5) to wording identical to the Federal requirements in 10 CFR 61.51(a)(5),

there are essentially no changes to this requirement. Therefore, the Department does not anticipate any additional costs or savings for 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:

◆ John Hultquist by phone at 801-536-4623, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2014

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.

R313-25-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe the requirements for the issuance of licenses for the land disposal of wastes received from other persons.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4), 19-3-104(8), 19-3-104(11), and 19-3-104(12).

(3) The requirements of Rule R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in Rule R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in Sections R313-25-20 and R313-25-21 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Approval application" means an application by a radioactive waste facility regulated under Title 19, Chapter 3 or Title 19, Chapter 5, for a permit, permit modification, license, license amendment, or other authorization.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction

monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Day" for purposes of this Rule means calendar days.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under Rule R313-25.

"Groundwater permit" means a groundwater quality discharge permit issued under the authority of Title 19, Chapter 5 and Rule R317-6.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in Rule R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Tolling period," for purposes of this Rule, means a period during which days are not counted toward the deadlines specified in Subsections R313-25-6(3)(c), (4)(c)(i), (5)(b)(i), and (6)(b)(i).

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level

radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in (b), (c), and (d) of the definition for byproduct material found in Section R313-12-3.

R313-25-3. Pre-licensing Plan Approval Criteria for Siting of Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Director before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3.

(2) The siting criteria and plan approval requirements in Section R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet distant from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles distant from existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles distant from surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 1000 feet distant from archeological sites to which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas designated by the Utah Drinking Water Board;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas of extensive withdrawal of water, mineral or energy resources.

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Commercial radioactive waste disposal facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of five years ground water travel time plus 1000 feet.

(5) The plan approval siting application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(6) The plan approval siting application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(7) Emergency response and safety.

(a) The plan approval siting application shall demonstrate the availability and adequacy of services for on-site emergencies, including medical and fire response. The application shall provide written evidence that the applicant has coordinated on-site emergency response plans with the local emergency planning committee (LEPC).

(b) The plan approval siting application shall include a comprehensive plan for responding to emergencies at the site.

(c) The plan approval siting application shall show proposed routes for transportation of radioactive wastes within the state. The plan approval siting application shall address the transportation means and routes available to evacuate the population at risk in the event of on-site accidents, including spills and fires.

(8) The plan approval siting application shall provide evidence that if the proposed disposal site is on land not owned by state or federal government, that arrangements have been made for assumption of ownership in fee by a state or federal agency.

(9) Siting Authority. The Director recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in Section R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Director pursuant to Rules R313-25 and R313-22.

(2) Persons shall file an application with the Director pursuant to Section R313-22-32 and obtain a license as provided in Rule R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in Section R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in Sections R313-25-7 through R313-25-11.

R313-25-6. Director Review of Application.

(1) The Director shall review each approval application to determine whether it complies with applicable statutory and regulatory requirements. Approval applications will be categorized as Category 1, 2, 3 and 4 applications, as provided in Subsections R313-25-6(2) through (5).

(2) Category 1 applications.

(a) A Category 1 application is an application that:

- (i) is administrative in nature;
- (ii) requires limited scrutiny by the Director; and
- (iii) does not require public comment.

(b) Examples of a Category 1 application include an application to:

- (i) correct typographical errors;
- (ii) Change the name, address, or phone number of persons or agencies identified in the license or permit;
- (iii) change the procedures or location for maintaining records; or
- (iv) extend the date for compliance with a permit or license requirement by no more than 120 days.

(c) The Director shall review and approve or deny a Category 1 application within 30 days after the day on which the Director Receives the application.

(3) Category 2 applications:

(a) A Category 2 application is one that is not a Category 1, 3 or 4 application.

(b) Examples of a Category 2 application include:

- (i) Increase in process, storage, or disposal capacity
- (ii) Change engineering design, construction, or process controls;
- (iii) Approve a proposed corrective action plan; or
- (iv) Transfer direct control of a license or groundwater permit.

(c)(i) The Director shall review and approve or deny a Category 2 application within 180 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(3)(c)(i) shall be tolled as provided in Subsection R313-25-6(7).

(4) Category 3 applications.

(a) Category 3 application is an application for:

- (i) a radioactive waste license renewal;
- (ii) a groundwater permit renewal;
- (iii) an amendment to an existing radioactive waste license or groundwater permit to allow a new disposal cell;
- (iv) an amendment to an existing radioactive waste license or groundwater permit that would allow the facility to eliminate groundwater monitoring; or
- (v) approval of a radioactive waste disposal facility closure plan.

(b)(i) The Director shall review and approve or deny a Category 3 application within 365 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(4)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).

(5) Category 4 applications.

(a) A Category 4 application is an application for:

- (i) a new radioactive waste license; or
- (ii) a new groundwater permit.
- (b)(i) The Director shall review and approve or deny a Category 4 application within 540 days after the day on which the Director receives the application.

(ii) The period described in Subsection R313-25-6(5)(b)(i) shall be tolled as provided in Subsection R313-25-6(7).

(6)(a) Within 60 days after the day on which the Director receives a Category 2, 3 or 4 approval application, the Director shall determine whether the application is complete and contains all the

information necessary to process it for approval and make a finding by issuance of a written:

(i) notice of completeness to the applicant; or
 (ii) notice of deficiency to the applicant, including a list of the additional information necessary to complete the application.

(b) The Director shall review written information submitted in response to a notice of deficiency within 30 days after the day on which the Director receives the supplemental information and shall again follow the procedures specified in Subsection R313-25-6(1)(a).

(c) If a document that is submitted as an application is substantially deficient, the Director may determine that it does not qualify as an application. Any such determination shall be made within 45 days of the document's submission and will include the Director's written findings.

(7) Tolling Periods. The periods specified for the Director's review and approval or denial under Subsections R313-25-6(3)(c)(i), (4)(b)(i), and (5)(b)(i) shall be tolled:

(a) while an owner or operator of a facility responds to the Director's request for information;

(b) during a public comment period; and

(c) while the federal government reviews the application.

(8) The Director shall prepare a detailed written explanation of the technical and regulatory basis for the Director's approval or denial of an approval application.

R313-25-7. General Information.

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under Subsection R313-25-7(1).

(2) Qualifications of the applicant shall include the following:

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in Subsection R313-25-7(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-8. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of Rule R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of Rule R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in Section R313-25-20 and monitoring of occupational radiation exposure to ensure compliance with the requirements of Rule R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in Section R313-25-33.

R313-25-9. Technical Analyses.

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Director approval prior to accepting any radioactive waste if:

(a) the waste was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782. U.S. Nuclear Regulatory Commission. September 1981, or

(b) the waste is likely to result in greater than 10 percent of the dose limits in Section R313-25-19 during the time period at which peak dose would occur, or

(c) the waste will result in greater than 10 percent of the total site source term over the operational life of the facility, or

(d) the disposal of the waste would result in an unanalyzed condition not considered in Rule R313-25.

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under Subsection R313-25-9(1) shall notify the Director of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Director has approved the information submitted pursuant to Subsections R313-25-9(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of Rule R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation

by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in Section R313-25-20.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of Rule R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding Subsection R313-25-9(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Director's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Director of the performance assessment required in Subsection R313-25-9(5)(a).

(c) For purposes of this Subsection R313-25-9(5) only, "concentrated depleted uranium" means waste with depleted uranium concentrations greater than 5 percent by weight.

R313-25-10. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of Section R313-25-17 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-11. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of Rule R313-25.

R313-25-12. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Director upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of Section R313-25-20;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of Section R313-25-21;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with Rule R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of Rule R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in Subsections R313-25-12(3) through (6) and that the institutional control meets the requirements of Section R313-25-29.

(9) the financial or surety arrangements meet the requirements of Rule R313-25.

R313-25-~~12~~13. Conditions of Licenses.

(1) A license issued under Rule R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Director finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Director may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Director.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Director. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Director pursuant to Rule R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Director has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Director may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Director deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Director deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-14. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under Section R313-25-15 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with Sections R313-25-5 and R313-25-7 through 25-11. Applications for closure shall be filed in accordance with Section R313-25-15. Information contained in previous applications, statements, or reports filed with the Director under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Director has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Director will apply the criteria set forth in Section R313-25-12.

R313-25-15. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Director, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under Section R313-25-8(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste

migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

- (c) proposed revision of plans for:
 - (i) decontamination or dismantlement of surface facilities;
 - (ii) backfilling of excavated areas; or
 - (iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with Subsection R313-25-15(1), the Director shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of Rule R313-25 will be met.

R313-25-16. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Director in accordance with Section R313-25-17. The licensee shall remain responsible for the disposal site for an additional five years. The Director may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-17. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Director finds:

- (1) that the disposal site was closed according to the licensee's approved disposal site closure plan;
- (2) that the licensee has provided reasonable assurance that the performance objectives of Rule R313-25 have been met;
- (3) that funds for care and records required by Subsections R313-25-33(4) and (5) have been transferred to the disposal site owner;
- (4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and
- (5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Subsection R313-25-12(8) will be met.

R313-25-18. Termination of License.

(1) Following the period of institutional control needed to meet the requirements of Section R313-25-12, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of Section R313-22-32.

(3) A license shall be terminated only when the Director finds:

- (a) that the institutional control requirements of Subsection R313-25-12(8) have been met;
- (b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by Subsections R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Director immediately prior to license termination.

R313-25-19. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in Sections R313-25-20 and 25-23.

R313-25-20. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-21. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-22. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in Rule R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by Section R313-25-20. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-23. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-24. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of Rule R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of Rule R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Director will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of Rule R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of Rule R313-25 or significantly mask the environmental monitoring program.

R313-25-25. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the

contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-26. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to Section R313-15-1009 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of Rule R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of Subsection R313-15-1009(2)(b).

(2) Wastes designated as Class C pursuant to Section R313-15-1009 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in Subsection R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of Subsections R313-25-26(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of Section R313-15-105 at the time the license is transferred pursuant to Section R313-25-17.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Subsection R313-25-27(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Director for approval.

R313-25-27. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-28. Alternative Requirements for Design and Operations.

The Director may, upon request or on the Director's own initiative, authorize provisions other than those set forth in Sections R313-25-25 and 25-27 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of Rule R313-25.

R313-25-29. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Director, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Director, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Director approved cost estimates reflecting the Director approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Director will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Director will accept these arrangements only if they are considered adequate to satisfy the requirements of Section R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Director to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Director; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Director, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Director include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Director. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Director, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Director approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Director to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in Subsection R313-25-32(1) relevant to institutional control shall be submitted to the Director for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Director.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in Subsection R313-25-33(4) as a condition of license termination unless the Director otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to Rule R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding Subsections R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Director at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Director regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Director as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified

financial statement annually with the Director in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to Rule R313-25, shall submit annual reports to the Director. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Director may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in Section R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, (2006), which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in Subsection R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Director to perform, any tests the Director deems appropriate or necessary for the administration of the rules in Rule R313-25, including, but not limited to, tests of:

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Director Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Director, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Director for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Director may copy and take away copies of, for the Director's use, any records required to be kept pursuant to Rule R313-25.

KEY: radiation, radioactive waste disposal, depleted uranium
Date of Enactment or Last Substantive Amendment: 2014
Notice of Continuation: September 23, 2011
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

**Insurance, Title and Escrow
 Commission
 R592-11**

**Title Insurance Producer Annual and
 Controlled Business Reports**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38156
 FILED: 01/21/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed as a result of comments received during comment period and hearing for the proposed amendment.

SUMMARY OF THE RULE OR CHANGE: References to producers and agencies throughout the rule are being updated here to comply with the change in terminology in H.B. 47, Insurance Law Amendments, passed during the 2013 General Legislative Session. A new subsection has been added to Section R592-11-1 to require the maintenance of a physical address in Utah. Wording in Sections R592-11-1 and R592-11-2 has been added to define, specifically for this rule, an attorney. Section R592-11-3 corrects a code citation and requires expenses and the physical address of the Utah operation be reported in the Title Insurance Producer's Annual Report. Reporting the percentage of ownership of each owner must be reported in the Controlled Business Report and not the Title Insurance Producer's Annual Report. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 15, 2013, issue of the Utah State Bulletin, on page 34. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-413 and Subsection 31A-2-404(2)(a) and Subsection 31A-23a-406(1)(g) and Subsection 31A-23a-503(8)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to the rule will have no fiscal impact on the department. They will not require

additional work over and above what is already being done, nor will they impact expenses and revenues.

◆ **LOCAL GOVERNMENTS:** This rule will have no impact on local governments since the rule deals only with the relationship between the department and its licensees, in this case, title agencies and producers.

◆ **SMALL BUSINESSES:** Except for the changes to terminology referring to producers and agents, the other changes being made clarify what has already in the law. The requirement to include the reporting of expenses along with title premium for endorsement income and escrow income is being included to verify profitability of each line. This information is already required in the Title Insurance Producer Annual Report. These changes should create no additional expense or workload to agencies or producers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only large businesses this rule impacts are large title insurance agencies and the producers that prepare the annual Title Insurance Producer Annual Report and the Controlled Business Report. The impact would be the same as noted under "Small businesses" above. Consumers and other businesses would not be impacted by the rule or its changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Title agencies and producers will have no fiscal impact as a result of the changes to this rule. The changes are technical and for clarification purposes only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on businesses in or outside of the state.

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

INSURANCE
 TITLE AND ESCROW COMMISSION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2014

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R592. Insurance, Title and Escrow Commission.**R592-11. Title Insurance Producer Annual and Controlled Business Reports.****R592-11-1. Authority.**

This rule is promulgated pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission (Commission) to make rules related to title insurance;

(2) Section 31A-23a-413, which requires the annual filing of a report by each agency title insurance producer, individual title insurance producer, and attorney licensed to practice law in Utah, who is also an individual title insurance producer not designated to a title insurance agency~~[as defined in R592-11-3]~~, containing a verified statement of the producer's financial condition, transactions, and affairs;~~and~~

(3) Subsection 31A-23a-503(8), which requires the annual filing of a controlled business report~~[-]; and~~

~~(4) Subsection 31A-23a-406(1)(g), which requires the maintenance of a physical address in Utah.~~

R592-11-2. Purpose and Scope.

(1) The purpose of this rule is to establish the form and filing deadline for the Title Insurance Producer Annual Report and Controlled Business Report required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).

(2) This rule applies to all agency title insurance producers, individual title insurance producers, and attorneys licensed to practice law in Utah, who are also individual title insurance producers not designated to a title insurance agency~~[as defined in R592-11-3]~~.

R592-11-3. Title Insurance Producer Annual Report.

(1) The following shall file a Title Insurance Producer Annual Report containing the information shown in Subsection R592-11-~~4~~³(2):

(a) an agency title insurance producer;

(b) an individual title insurance producer not designated to an agency title insurance producer; and

(c) an attorney licensed to practice law in Utah, who is also an individual title insurance producer not designated to a title insurance agency.

(2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;

(i) title premium, including endorsement income and expenses, shall be reported separately from the escrow income and expenses;

(b) the name and address of each financial institution where a title or escrow trust account is maintained;

(c) proof of financial protection that complies with Subsection 31A-23a-204(2) shall consist of one or more of the following:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection~~[-; and]~~ approved by the commissioner;

(d) ~~[the name, address, and percentage of ownership of each owner, and~~

~~(e)]~~the name of the individual title insurance producer designated as the "qualifying licensee," as provided in 31A-23a-204~~[-]; and~~

(e) the physical address in Utah maintained by the agency title insurance producer or individual title insurance producer, pursuant to 31A-23a-406(1)(g).

(3) Subsection R592-11-~~4~~³(2)(c) does not apply to an attorney exempted under 31A-23a-204(8).

(4) Agency title insurance producers, individual title insurance producers not designated to an agency title insurance producer and an attorney licensed to practice law in Utah, who is also an individual title insurance producer, not designated to a title insurance agency, shall file a Title Insurance Producer Annual Report not later than April 30 of each year.

(5) The Title Insurance Producer Annual Report period shall be the preceding calendar year.

(6) A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309.

R592-11-4. Controlled Business Report.

(1) The following shall file an annual Controlled Business Report not later than April 30 of each year:

(a) an agency title insurance producer;

(b) an individual title insurance producer not designated to an agency title insurance producer; and

(c) an attorney licensed to practice law in Utah, who is also an individual title insurance producer not designated to a title insurance agency.

(2)~~(a)~~ The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a)~~[-]; and~~

(b) contain the name, address, and percentage of ownership of each owner.

(3) A Controlled Business Report is a public record upon filing.

R592-11-5. Electronic Filing of Title Insurance Producer Annual Report and Controlled Business Report.

(1) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted together electronically via email to market.uid@utah.gov.

(2) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted not later than April 30 of each year as attachments to the Title Insurance Agency Annual Reports Transmittal Form.

(3) The following report forms, which are available on the department's website, shall be used to submit the Title Insurance Producer Annual Report and the Controlled Business Report:

(a) Title Insurance Producer Annual and Controlled Business Reports Transmittal form; and

(b) Controlled Business Report form.

(4) Actual copies of the forms may be used or may be adapted to a particular word processing system, however, if adapted, the content, size, font, and format shall be similar.

R592-11-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-11-7. Enforcement Date.

The commissioner will begin enforcing this rule 5 days from the rule's effective date.

R592-11-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect

without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: June 15, 2011

**Authorizing, and Implemented or Interpreted Law: ~~31A-23-313;~~
~~31A-23-403~~~~31A-2-404(2)(a);~~ 31A-23a-406(1)(g); 31A-23a-413;
~~31A-23a-503(8)~~**

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Animal Industry **R58-20**

Domesticated Elk Hunting Parks

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38251
FILED: 01/17/2014

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 4-39-106 authorizes the Department of Agriculture and Food to make and enforce rules after considering the recommendations of the Domestic Elk Advisory Council. The rule specifies procedures for applying and renewing licenses for the operation of a domesticated elk facility; governs disposal or removal of domesticated elk from a domesticated elk facility for which the license has lapsed or been revoked; sets standards and requirements for operating a domesticated elk facility, health requirements and standards for health inspections; and governs the possession, transportation, and accompanying documentation of domesticated elk carcasses.

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 supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule established and sets the standards

for the licensing and operation of elk hunting parks. All in an effort to protect the domestic elk industry, as well as Utah wildlife. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
- ◆ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/17/2014

Commerce, Consumer Protection **R152-21**

Credit Services Organizations Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38266
FILED: 01/29/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 13-2-5(1) grants the Division Director authority to issue rules to administer the Credit Services Organizations Act.

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 were received in support of or opposing the administrative rule.

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 the rule is necessary for the Division to administer and enforce the Credit Services Organizations Act and to clarify the legal mandates and prohibitions of the Act.

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

COMMERCE
 CONSUMER PROTECTION
 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:

♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

AUTHORIZED BY: Daniel O'Bannon, Director

EFFECTIVE: 01/29/2014

**Commerce, Occupational and Professional Licensing
 R156-42a
 Occupational Therapy Practice Act
 Rule**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38254
 FILED: 01/21/2014

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 42a, provides for the licensure of occupational therapists and occupational therapy assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-42a-201(3) provides that the Occupational 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 42a, with respect to occupational therapists and occupational therapy 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 the rule was last reviewed in February 2009, it has been amended once in December 2009. However, the Division has not received any written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 42a, with respect to occupational therapists and occupational therapy 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:

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/21/2014

Commerce, Occupational and
Professional Licensing
R156-44a
Nurse Midwife Practice Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38249
FILED: 01/16/2014

**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 44a, provides for the licensure of certified nurse midwives. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-44a-201(3) provides that the Certified Nurse Midwife 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 44a with respect to certified nurse midwives.

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 the rule was last reviewed in February 2009, it has been amended once in January 2013. However, the Division has not received any written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 44a, with respect to certified nurse midwives. 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:

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/16/2014

Commerce, Occupational and
Professional Licensing
R156-46a
Hearing Instrument Specialist Licensing
Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 38257
FILED: 01/27/2014

**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 46a, provides for the licensure of hearing instrument specialists and hearing instrument interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-46a-201(3)(a) provides that the Hearing Instrument Specialists 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 46a, with respect to hearing instrument specialists and hearing instrument interns.

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 the rule was last reviewed in February 2009, it has been amended once in January 2014. No written comments have been received by the Division with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 46a, with respect to hearing instrument

specialists and hearing instrument interns. 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: 01/27/2014

Environmental Quality, Air Quality **R307-150** Emission Inventories

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38261
FILED: 01/28/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(c) allows the Air Quality Board to make rules "...requiring persons engaged in operations which result in air pollution to...file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant...." Rule R307-150 implements that statute by specifying the sources that must submit information, the information that must be submitted, and the due date for submissions. Rule R307-150 meets the requirements of the federal Consolidated Emissions Reporting Rule, 40 CFR 51.30(e) (67 FR 39602).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-150 has not been

amended since its last five-year review in 2009. No comments have been received for this rule since then.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The State of Utah is required under the federal Consolidated Emissions Reporting Rule (CERR), 40 CFR 51.30(e), to submit inventories of emissions from a variety of sources to the federal Environmental Protection Agency on a schedule specified in the federal rule. Rule R307-150 specifies the kinds of sources that must submit inventory information to the state in order for the state to meet its responsibilities under the CERR. In addition, the inventory information is required in order to determine the fees paid by sources subject to 40 CFR Part 70 and Rule R307-415, the Operating Permit Program, and for determining where emission reductions can be achieved if needed for Utah to remain in attainment of the federal health standards for air quality. Therefore, the rule should be continued.

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 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 01/28/2014

Environmental Quality, Air Quality **R307-405**

Permits: Major Sources in Attainment or Unclassified Areas (PSD)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38260
FILED: 01/28/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-108 states that "Notice shall be given to the director by any person planning

to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged...." Rule R307-405 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. Subsection 19-2-104(3)(q) states that the Air Quality Board may meet the requirements of federal laws. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-405 was amended four times since the last five-year review: DAR No. 34052, DAR No. 35413, DAR No. 35872, and DAR No. 36832. No comments were received for these amendments, and no other comments have been received 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: Rule R307-405 is required by Section 19-2-108. Rule R307-405 is also required by Section VIII, Prevention of Significant Deterioration of the State Implementation Plan, which is incorporated by reference under Rule R307-110. This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.166. Without this plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITYROOM 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 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 01/28/2014

Health, Administration **R380-70** Standards for Electronic Exchange of Clinical Health Information

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38256
 FILED: 01/24/2014

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 the authority of Sections 26-1-30 and 26-1-37 to provide standards for exchanging electronic health information between providers, laboratories, and payers and the Utah Department of Health.

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 were received.

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 provides important provisions for the use of nationally recognized standards in the transmission of electronic health information between payers, providers, and the Utah Department of Health. Use of standards promotes interoperability, data security, and is critical for the success of clinical health information exchange and public health. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 ADMINISTRATION
 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:
 ♦ Jeff Duncan by phone at 801-538-7023, by FAX at 801-538-7012, or by Internet E-mail at jduncan@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/24/2014

**Human Services, Child and Family
Services
R512-41**

**Qualifying Adoptive Families and
Adoption Placement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38263
FILED: 01/28/2014

**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-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR 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 define the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement used by Child and Family Services.

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 jhjoness@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 01/28/2014

**Human Services, Child and Family
Services
R512-75**

**Rules Governing Adjudication of
Consumer Complaints**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 38264
FILED: 01/28/2014

**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-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR 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 define consumer complaint procedures, intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

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: 01/28/2014

Human Services, Child and Family
 Services
R512-306

Out-of-Home Services, Transition to
 Adult Living Services, Education and
 Training Voucher Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38265

FILED: 01/28/2014

**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-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR 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 assist individuals in out-of-home care to make a more successful transition to adulthood by providing the Education and Training Voucher 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: 01/28/2014

Natural Resources, Water Rights
R655-13
 Stream Alteration

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 38267

FILED: 01/29/2014

**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 73-3-29 establishes and clarifies the procedures necessary to obtain approval by the state engineer for any project that proposes to alter a natural stream within the state of Utah. Approval does not grant access, authorize trespass, or supersede property rights. Additional procedures may be required to comply with other governing state statute, federal law, federal regulation, or local ordinance.

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 in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule is still required for processing and acceptance by the state engineer. Therefore, this rule should be continued.

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

NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Kent Jones, State Engineer/Director

EFFECTIVE: 01/29/2014

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Division of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Crime Victim Reparations,
Administration

R270-3

ADA Complaint Procedure

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 38258

FILED: 01/27/2014

EXTENSION REASON AND NEW DEADLINE: A notification error resulted in insufficient time for Crime Victim Reparations to file its review. New deadline: 06/19/2014.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 01/27/2014

Crime Victim Reparations,
Administration

R270-4

Government Records Access and
Management Act

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 38259

FILED: 01/27/2014

EXTENSION REASON AND NEW DEADLINE: A notification error resulted in insufficient time for Crime Victim Reparations to file its review. New deadline: 06/19/2014.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 01/27/2014

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Governor

Economic Development
No. 38154 (NEW): R357-7. Utah Capital Investment Board
Published: 12/15/2013
Effective: 01/24/2014

Commerce

Occupational and Professional Licensing
No. 38157 (AMD): R156-1-501. Unprofessional Conduct
Published: 12/15/2013
Effective: 01/21/2014

Economic Development, Pete Suazo Utah Athletic Commission
No. 38033 (AMD): R359-1-604. Boxing - Gloves
Published: 10/15/2013
Effective: 01/24/2014

No. 38155 (AMD): R156-46a. Hearing Instrument Specialist Licensing Act Rule
Published: 12/15/2013
Effective: 01/21/2014

Energy Development (Office of)
No. 38163 (AMD): R362-2. Renewable Energy Systems Tax Credits
Published: 12/15/2013
Effective: 01/22/2014

No. 38151 (AMD): R156-55a. Utah Construction Trades Licensing Act Rule
Published: 12/15/2013
Effective: 01/21/2014

Health

Family Health and Preparedness, Children with Special Health Care Needs
No. 38139 (NEW): R398-4. Cytomegalovirus Public Health Initiative
Published: 12/01/2013
Effective: 01/17/2014

No. 38149 (AMD): R156-69. Dentist and Dental Hygienist Practice Act Rule
Published: 12/15/2013
Effective: 01/21/2014

No. 37984 (AMD): R398-20. Early Intervention
Published: 10/01/2013
Effective: 01/28/2014

Environmental Quality

Drinking Water
No. 38013 (AMD): R309-511. Hydraulic Modeling Requirements
Published: 10/01/2013
Effective: 01/21/2014

Family Health and Preparedness, Licensing
No. 38086 (AMD): R432-2-5. Requirements for a Satellite Service Operation
Published: 11/15/2013
Effective: 01/24/2014

No. 38012 (AMD): R309-515. Facility Design and Operation: Source Development
Published: 10/01/2013
Effective: 01/21/2014

NOTICES OF RULE EFFECTIVE DATES

Insurance

Administration

No. 38069 (AMD): R590-96. Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities

Published: 11/15/2013

Effective: 01/21/2014

Regents (Board Of)

University of Utah, Administration

No. 38018 (NEW): R805-6. University of Utah Shooting Range Access and Use Requirements

Published: 10/15/2013

Effective: 02/11/2014

Workforce Services

Employment Development

No. 38158 (AMD): R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs)

Published: 12/15/2013

Effective: 03/01/2014

No. 38159 (AMD): R986-700. Child Care Assistance

Published: 12/15/2013

Effective: 03/01/2014

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, 2014 through January 31, 2014. 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 the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	Not Printed
ATTORNEY GENERAL					
<u>Administration</u>					
R105-2	Records Access and Management	38245	NSC	01/30/2014	Not Printed
COMMERCE					
<u>Consumer Protection</u>					
R152-21	Credit Services Organizations Act Rules	38266	5YR	01/29/2014	Not Printed
R152-26	Telephone Fraud Prevention Act	38125	AMD	01/07/2014	2013-23/4
<u>Occupational and Professional Licensing</u>					
R156-1-501	Unprofessional Conduct	38157	AMD	01/21/2014	2013-24/6
R156-1-501	Unprofessional Conduct	38253	NSC	01/31/2014	Not Printed
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	Not Printed
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	Not Printed
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	Not Printed
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-67	Utah Medical Practice Act Rule	38106	AMD	01/07/2014	2013-23/5
R156-68	Utah Osteopathic Medical Practice Act Rule	38107	AMD	01/07/2014	2013-23/6
R156-69	Dentist and Dental Hygienist Practice Act Rule	38149	AMD	01/21/2014	2013-24/20
CRIME VICTIM REPARATIONS					
<u>Administration</u>					
R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	Not Printed

R270-4 Government Records Access and Management Act 38259 EXT 01/27/2014 Not Printed

EDUCATION

Administration

R277-497 School Grading System 38111 AMD 01/08/2014 2013-23/8
 R277-525 Special Educator Stipends 38114 AMD 01/08/2014 2013-23/9
 R277-704 Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports 38113 AMD 01/08/2014 2013-23/11
 R277-709 Education Programs Serving Youth in Custody 38116 AMD 01/14/2014 2013-23/13

ENVIRONMENTAL QUALITY

Administration

R305-1 Records Access and Management 38244 NSC 01/30/2014 Not Printed

Air Quality

R307-103-1 Administrative Procedures 38252 NSC 01/31/2014 Not Printed
 R307-110-17 Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits 38061 AMD 01/09/2014 2013-21/8
 R307-150 Emission Inventories 38261 5YR 01/28/2014 Not Printed
 R307-401-19 General Approval Order 37833 AMD 01/06/2014 2013-15/29
 R307-401-19 General Approval Order 37833 CPR 01/06/2014 2013-23/55
 R307-405 Permits: Major Sources in Attainment or Unclassified Areas (PSD) 38260 5YR 01/28/2014 Not Printed

Drinking Water

R309-511 Hydraulic Modeling Requirements 38013 AMD 01/21/2014 2013-19/48
 R309-515 Facility Design and Operation: Source Development 38012 AMD 01/21/2014 2013-19/51

GOVERNOR

Economic Development

R357-7 Utah Capital Investment Board 38154 NEW 01/24/2014 2013-24/22

Economic Development, Pete Suazo Utah Athletic Commission

R359-1-604 Boxing - Gloves 38033 AMD 01/24/2014 2013-20/25

Energy Development (Office of)

R362-2 Renewable Energy Systems Tax Credits 38163 AMD 01/22/2014 2013-24/23

HEALTH

Administration

R380-70 Standards for Electronic Exchange of Clinical Health Information 38256 5YR 01/24/2014 Not Printed

Center for Health Data, Health Care Statistics

R428-15 Health Data Authority Health Insurance Claims Reporting 38144 AMD 01/07/2014 2013-23/43

Children's Health Insurance Program

R382-3 Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program 38102 NEW 01/13/2014 2013-23/23

Disease Control and Prevention, Environmental Services

R392-101 Food Safety Manager Certification 38229 5YR 01/10/2014 2014-3/49

Family Health and Preparedness, Children with Special Health Care Needs

R398-4 Cytomegalovirus Public Health Initiative 38139 NEW 01/17/2014 2013-23/25
 R398-20 Early Intervention 37984 AMD 01/28/2014 2013-19/61

RULES INDEX

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R426-100 Air Medical Service Rules 38079 REP 01/06/2014 2013-22/119

Family Health and Preparedness, Licensing

R432-2-5 Requirements for a Satellite Service Operation 38086 AMD 01/24/2014 2013-22/123

Health Care Financing, Coverage and Reimbursement Policy

R414-14 Home Health Services 38130 AMD 01/10/2014 2013-23/26
 R414-21 Physical and Occupational Therapy 38132 AMD 01/10/2014 2013-23/28
 R414-49 Dental Services 38133 AMD 01/10/2014 2013-23/30
 R414-49 Dental Services 38201 NSC 01/23/2014 Not Printed
 R414-50 Dental, Oral and Maxillofacial Surgeons 38134 REP 01/10/2014 2013-23/32
 R414-51 Dental, Orthodontia 38135 REP 01/10/2014 2013-23/33
 R414-54 Speech-Language Pathology Services 38227 5YR 01/07/2014 2014-3/50
 R414-306-5 Medical Transportation 38129 AMD 01/10/2014 2013-23/35
 R414-503 Preadmission Screening and Resident Review 38141 R&R 01/07/2014 2013-23/37
 R414-511 Medicaid Accountable Care Organization 38103 NEW 01/13/2014 2013-23/42
 Incentives to Appropriately Use Emergency
 Room Services

HUMAN RESOURCE MANAGEMENT

Administration

R477-4-4 Recruitment and Selection for Career Service 38077 AMD 01/14/2014 2013-22/124
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 R477-6-9 Severance Benefit 38092 AMD 01/14/2014 2013-22/125
 R477-7 Leave 38084 AMD 01/14/2014 2013-22/126
 R477-101 Administrative Law Judge Conduct Committee 38091 NEW 01/14/2014 2013-22/129

HUMAN SERVICES

Child and Family Services

R512-41 Qualifying Adoptive Families and Adoption 38263 5YR 01/28/2014 Not Printed
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 R512-75 Rules Governing Adjudication of Consumer 38264 5YR 01/28/2014 Not Printed
 Complaints
 R512-306 Out-of-Home Services, Transition to Adult 38265 5YR 01/28/2014 Not Printed
 Living Services, Education and Training
 Voucher Program

INSURANCE

Administration

R590-96 Rule to Recognize New Annuity Mortality 38069 AMD 01/21/2014 2013-22/137
 Tables for Use in Determining Reserve
 Liabilities for Annuities
 R590-269 Individual Open Enrollment Period 38088 NEW 01/13/2014 2013-22/144

NATURAL RESOURCES

Parks and Recreation

R651-411 OHV Use in State Parks 38216 5YR 01/02/2014 2014-3/51
 R651-636 Procedures for Application to Receive Funds 38225 5YR 01/06/2014 2014-3/51
 From the Zion National Park Restricted
 Account
 R651-700 Administrative Procedures for Real Property 38224 5YR 01/06/2014 2014-3/52
 Management

Water Rights

R655-13 Stream Alteration 38267 5YR 01/29/2014 Not Printed

PUBLIC SERVICE COMMISSION

Administration

R746-350 Application to Discontinue Telecommunications 38234 5YR 01/13/2014 2014-3/52
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TAX COMMISSION

Auditing

R865-7H	Environmental Assurance Fee	38223	5YR	01/06/2014	2014-3/53
R865-16R	Severance Tax	38222	5YR	01/06/2014	2014-3/54
R865-19S-30	Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104	38237	NSC	01/30/2014	Not Printed

TECHNOLOGY SERVICES

Administration

R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	38238	5YR	01/14/2014	2014-3/54
R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	38239	NSC	01/30/2014	Not Printed

TRANSPORTATION

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>administrative law judges</u> Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129
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