UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed January 3, 2001, 12:00 a.m. through January 16, 2001, 11:59 p.m.

Number 2001-3
February 1, 2001

Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.state.ut.us/

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Bulletin* and *Digest* are printed and distributed semi-monthly by Legislative Printing. Annual subscription rates (24 issues) are $174 for the *Bulletin* and $48 for the *Digest*. Inquiries concerning subscription, billing, or changes of address should be addressed to:

LEGISLATIVE PRINTING
PO BOX 140107
SALT LAKE CITY, UT 84114-0107
(801) 538-1103
FAX (801) 538-1728

ISSN 0882-4738

TABLE OF CONTENTS

1. EDITOR'S NOTES

2. SPECIAL NOTICES

3. NOTICES OF PROPOSED RULES

4. NOTICES OF CHANGES IN PROPOSED RULES

5. NOTICES OF 120-DAY (EMERGENCY) RULES

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

EDITOR'S NOTES

LEGISLATION WHICH MAY AFFECT THE RULEMAKING PROCESS

As of January 22, 2001, two bills have been filed that affect administrative rules in general.

H.B. 27 "Electronic Government Services Amendments - Administrative Rules and Procedures" by Rep. R. Siddoway (R)
This bill originated in the Information Technology Commission. It amends both the Utah Administrative Rulemaking Act (Utah Code Title 63, Chapter 46a) and the Utah Administrative Procedures Act (Utah Code Title 63, Chapter 46b). It standardizes language to facilitate the electronic conduct of state business in regards to rulemaking and administrative procedures.

The bill passed the House on January 15 under suspension of the rules, and was favorably recommended by the Senate State and Local Affairs Standing Committee on January 22, 2001. It awaits further action by the full Senate.

H.B. 37 "Reauthorization of Administrative Rules" by Rep. David Ure (R)
This is the Administrative Rules Review Committee's annual bill which is required by Section 63-46a-11.5. The long title of H.B. 37 indicates that the bill "reauthorizes all state agency administrative rules except those enumerated." As introduced, the bill reauthorized all administrative rules EXCEPT Subsection R156-55b-102(2)–Commerce, Division of Occupational and Professional Licensing (DOPL), "Electricians Licensing Rules," "Definitions," definition of "In or out of the immediate presence of the supervising person". The bill provides for an effective date of May 1, 2001.

Based on information provided by DOPL, the House Government Operations Standing Committee amended the bill to also "not reauthorize" Subsection R156-55c-102(3)–Commerce, DOPL, "Construction Trades Licensing Act Plumber Licensing Rules," "Definitions," definition of "Reasonable direction, oversight, inspection, and evaluation of an apprentice plumber by a supervising journeyman plumber". At the House Governmental Operation Standing Committee meeting, a representative from DOPL indicated that the agency did not intend to proceed with administrative rule amendments currently in process (see UTAH STATE BULLETIN, Vol. 2001, No. 1, pages 4-6–No. 23374 and No. 23375), but that additional changes would be filed with the Division of Administrative Rules for publication in an upcoming issue of the UTAH STATE BULLETIN.

The House Governmental Operations Standing Committee gave a favorable recommendation to H.B. 37 as amended at its meeting held January 18, 2001. The bill now awaits further action by the House on the House 3rd Reading Calendar.

Additional Information
Up-to-date information about legislation related to rulemaking is available on the Internet at ***http://www.rules.state.ut.us/law/legis.htm***. Additional information about the 2001 General Session and specific legislation is available from the Legislature's Office of Legislative Research and General Counsel at **http://www.le.state.ut.us/~2001/2001.htm**. The Legislature's home page can be found at **http://www.le.state.ut.us/**.

*Questions about this legislation may be directed to Ken Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: **khansen@das.state.ut.us***

End of the Editor's Notes Section

SPECIAL NOTICES

EXECUTIVE ORDER

I, MICHAEL O. LEAVITT, GOVERNOR OF THE STATE OF UTAH, authorize Lieutenant Governor Olene S. Walker to sign State Bonding Commission documents for me, vote on my behalf as a member of the commission, and act in all other respects as my agent and proxy on the commission until January 1, 2005. The State Bonding Commission was created by Section 63-561-1 and Chapter 1, Title 63B, of the Utah Code, as amended.

IN TESTIMONY WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 9th day of January, 2001.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

Attest:
OLENE WALKER
Lieutenant Governor

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY

PUBLIC NOTICE OF AVAILABLE UTAH STATE PUBLICATIONS

The Utah State Library Division has made available Utah State Publications List No. 01-01, dated January 5, 2001 (http://www.state.lib.ut.us/01-01.html); and List No. 01-02, dated January 19, 2001 (http://www.state.lib.ut.us/01-02.html). For copies of the complete lists, contact the Utah State Library Division at: 1950 West 250 North, Suite A, Salt Lake City, UT 84116-7901; phone: (801) 715-6777; or the Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007; phone: (801) 538-3218; FAX: (801) 538-1773; or view them on the World Wide Web at the addresses above.

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 3, 2001, 12:00 a.m., and January 16, 2001, 11:59 p.m., are included in this, the February 1, 2001, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (• • • • • •) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the 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 5, 2001. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 1, 2001, 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 31 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

Agriculture and Food, Chemistry Laboratory
R63-1
Fee Schedule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23405
FILED: 01/10/2001, 12:35
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the fees to be charge for analytical services.

SUMMARY OF THE RULE OR CHANGE: Update the tests being provided by the laboratory.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-2-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No cost or savings to the state budget. The cost is to the customer requesting the test.
❖LOCAL GOVERNMENTS: No cost or savings to local government. The cost is to the customer requesting the test.
❖OTHER PERSONS: Customer will be charged the cost established for each test. Analytical services will be computed on a fee of $30 per hour.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost. The cost is for tests being provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact on businesses will be the charge for the tests being provided by the laboratory at the customers request.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Chemistry Laboratory
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dr. David Clark at the above address, by phone at (801) 538-7128, by FAX at (801) 538-7126, or by Internet E-mail at dclark@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R63. Agriculture and Food, Chemistry Laboratory.
R63-1. Fee Schedule.
R63-1-1. Authority.
Promulgated under authority of Section 4-2-10.

R63-1-2. Analytical Service Fees.
Effective [~~August 1, 1984~~]January 3, 2001 all charges made for analytical services by the Department of Agriculture and Food Laboratory will be computed on a fee of $30.00 per hour.
Examples:

TABLE 1

Feed and Meat:	One Sample Only	Two/Five Samples	Six or more Samples
Moisture	15.00	10.00	5.00
Fat	30.00	25.00	20.00
Fiber	45.00	40.00	35.00
Protein	25.00	20.00	15.00
NPN	20.00	15.00	10.00
Ash	15.00	10.00	5.00
NAC1	25.00	20.00	15.00
Iodine	25.00	20.00	15.00

TABLE 2

Fertilizer:	One Sample Only	Two/Five Samples	Six or more Samples
Nitrogen	25.00	20.00	15.00
[~~P_2O_5~~]Phosphorus	30.00	25.00	20.00
[~~K_2O~~]Potash	25.00	20.00	15.00

TABLE 3

[~~Trace Elements (Atomic Absorption):~~	~~One Sample Only~~		
~~Iron~~	~~20.00~~		
~~Copper~~	~~20.00~~		
~~Zinc~~	~~20.00~~		
~~Mn~~	~~20.00~~		
~~Mo~~	~~40.00~~		
~~Pb~~	~~20.00~~]	Mineral Analysis (ICP)	Feed/Fertilizer/Soil	Water
A1, Ba, Be, B, Cd, Ca			
Ch, Co, Cu, Fe, Pb, Li		20.00	10.00
Mo, Ni, P, Mg, Mn, Se,			
Si, Na, S, V, Zn			

[~~TABLE 4~~

~~Trace Elements in Water:~~	~~One Sample Only~~
~~Iron~~	~~10.00~~
~~Copper~~	~~10.00~~
~~Zinc~~	~~10.00~~

~~Mn 10.00~~
~~Mo 10.00~~
~~Pb 10.00~~

]

TABLE [~~5~~]4

Vitamins:	One Sample Only	Two/Five Samples	Six or more Samples
Vitamin A	60.00	55.00	50.00[
~~Vitamin B~~	~~60.00~~	~~55.00~~	~~50.00~~
~~Vitamin B^6~~	~~60.00~~	~~55.00~~	~~50.00~~
~~Vitamin C~~	~~60.00~~	~~55.00~~	~~50.00~~
~~Riboflavin~~	~~60.00~~	~~55.00~~	~~50.00~~
~~Minerals:~~			
~~Calcium~~	~~25.00~~	~~20.00~~	~~15.00~~
~~NaCl~~	~~25.00~~	~~20.00~~	~~15.00~~
~~Iodine~~	~~25.00~~	~~20.00~~	~~15.00~~

~~TABLE 6~~

~~Toxicology:~~	~~One Sample Only~~
~~Strychnine~~	~~30.00~~
~~Arsenic~~	~~30.00~~
~~Other Poisons~~	~~30.00/hour~~
~~Coggins Test:~~	~~7.50~~]

Cost for other analytical tests would depend upon the time required at the rate of $30.00 per hour.

KEY: chemical testing
[~~1987~~]2001 **4-2-2**
Notice of Continuation August 8, 1996

Agriculture and Food, Regulatory Services

R70-420

Chickens

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 23428
FILED: 01/16/2001, 12:47
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah has adopted 9 CFR 381.66 in rule R58-10, Meat and Poultry Inspection, under the Division of Animal Industry. This is an updated requirement which adresses refrigeration, as well as other special instruction for handling poultry products.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-2-2

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The rule is being repealed, therefore, there is no anticipated cost to state budget.
❖LOCAL GOVERNMENTS: The rule is being repealed, therefore, there is no anticipated cost to local government.
❖OTHER PERSONS: The rule is being repealed, therefore, there is no anticipated cost to any other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is being repealed, therefore, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed. There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas Pearson at the above address, by phone at (801) 538-7144, by FAX at (801) 538-4949, or by Internet E-mail at dpearson@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
[**~~R70-420. Chickens.~~**
~~R70-420-1. Authority.~~
~~Promulgated Under the authority of Section 4-2-2.~~

~~R70-420-2. Grade Designations.~~
~~A. All packages of chicken sold, offered for sale, exposed for sale, or held for the purpose of sale by grade, shall bear on the label the official grade of the chickens as established and graded by the U.S. Department of Agriculture and the bird shall bear the USDA wing tag. The label information herein required must be prominently placed on the package with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.~~
~~B. Chickens that are offered for sale by grade in other than packaged form must bear wing tags and be accompanied by a suitable sign or placard stating the official grade of the chickens as established and graded by the U.S. Department of Agriculture.~~

~~C. It is permissible to cut up and repackage USDA graded wing-tagged poultry at places not operating under a USDA grading service, provided that the wing tag is visible and that the product is packaged either as an individual whole bird or in bulk as cut-up whole birds. It is not permissible to cut up graded poultry and separately package parts bearing the USDA grade mark. Plants not having a USDA grading service may not cut up non-tagged graded poultry and affix grade labels. (MPI-W Notice 103 USDA June 5, 1972).~~

~~D. Mixed grades of chickens or parts may be sold but may not claim any grade.~~

~~E. Packages of added-to product such as double breasted or three legged chicken may show a USDA grade only if packaged under USDA's grading service.~~

~~R70-420-3. Definitions.~~

~~This rule incorporates by reference the provisions of 9 CFR 381.129 and 9 CFR 381.66. The terms "fresh or frozen poultry" as used in the afore cited federal regulations, apply correspondingly to fresh or frozen chicken as used herein.~~

~~R70-420-4. Labeling Requirements for Food Products Which Require Special Handling.~~

~~Packaged products which require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable - Keep Under Refrigeration," or such similar statements. The immediate containers for products that are frozen during distribution and intended to be thawed prior to or during display for sale shall bear the statement "Shipped/Stored and Handled Frozen for Your Protection, Keep Refrigerated."~~

~~KEY: food inspection~~
~~November 15, 1996 4-2-2~~
~~Notice of Continuation September 25, 1996~~]

Agriculture and Food, Regulatory Services
R70-430
Turkeys

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 23429
FILED: 01/16/2001, 12:47
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah has adopted 9 CFR 381.66 in Rule R58-10, Meat and Poultry Inspection, under the Division of Animal Industry. This is an updated requirement which adresses refrigeration, as well as other special instruction for handling poultry products.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-2-2

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The rule is being repealed, therefore, there is no anticipated cost to state budget.
❖LOCAL GOVERNMENTS: The rule is being repealed, therefore, there is no anticipated cost to local government.
❖OTHER PERSONS: The rule is being repealed, therefore, there is no anticipated cost to any other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is being repealed, therefore, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being repealed. There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas Pearson at the above address, by phone at (801) 538-7144, by FAX at (801) 538-4949, or by Internet E-mail at dpearson@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
[**~~R70-430. Turkeys.~~**
~~R70-430-1. Authority.~~

~~Promulgated under the authority of Section 4-2-2.~~

~~R70-430-2. Grade Designations.~~

~~A. All packages of turkey sold, offered for sale, exposed for sale, or held for the purpose of sale by grade, shall bear on the label the official grade of the turkey as established and graded by the U.S. Department of Agriculture.~~

~~B. Turkeys offered for sale by grade in other than packaged form must be accompanied by a suitable sign or placard displayed with the turkey stating the official grade of the turkey as established and graded by the U.S. Department of Agriculture.~~

~~**R70-430-3. Definitions.**~~

~~This rule incorporates by reference the provisions of 9 CFR 381.129 and 9 CFR 381.66. The terms "fresh or frozen-poultry" as used in the afore cited federal regulations, apply correspondingly to fresh or frozen turkey as used herein.~~

~~**R70-430-4. Labeling Requirements for Products Which Require Special Handling.**~~

~~Packaged products which require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable-Keep Under Refrigeration," or such similar statements. The immediate containers for products that are frozen during distribution and intended to be thawed prior to or during display for sale shall bear the statement "Shipped, Stored and Handled Frozen for Your Protection, Keep Refrigerated".~~

~~**KEY: food inspection**~~
~~**November 15, 1996** **4-2-2**~~
~~**Notice of Continuation September 25, 1996**~~]

Agriculture and Food, Regulatory Services

R70-620

Enrichment of Flour and Cereal Products

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23433
FILED: 01/16/2001, 15:03
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt the current edition of the CFR.

SUMMARY OF THE RULE OR CHANGE: Adopt the CFR, April 1, 2000, edition, in which there were no significant changes made.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-6-3
FEDERAL REQUIREMENT FOR THIS RULE: 21 CFR 137 and 139

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 21 CFR 137 and 139, April 1, 2000, edition

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There are no anticipated costs or savings to state budget. This rule is established to meet CFR's enrichment standards and labeling requirements for flour and cereal to be manufactured or sold in Utah.
❖LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule is established to meet CFR's enrichment standards and labeling requirements for flour and cereal to be manufactured or sold in Utah.
❖OTHER PERSONS: The cost would be to business or manufactures in meeting the requirements for the labeling and providing the label.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost associated with this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses would be the cost of the label.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Becky Shreeve at the above address, by phone at (801) 538-7149, by FAX at (801) 538-4949, or by Internet E-mail at bshreeve@state.ut.ut.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-620. Enrichment of Flour and Cereal Products.
R70-620-1. Authority.

A. Promulgated under authority of 4-6-3.

B. The Utah Department of Agriculture and Food adopts and incorporates by reference the Code of Federal Regulations, April 1, [~~1996~~]2000 edition Title 21, parts 137 and 139, as its enrichment standards and labeling requirements governing the identity and quantity of vitamins and minerals to be added to flour and cereal manufactured or sold in Utah.

. . . . . .

KEY: food inspection
[~~February 15, 1997~~]2001 **4-6-3**
Notice of Continuation December 26, 1996

Corrections, Administration
R251-301
Employment, Educational or Vocational Training for Community Correctional Center Residents

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23400
FILED: 01/08/2001, 11:08
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The term "resident" was vague and confusing. "Offender" more accurately represents the definition. There is no intention of a different meaning of the term, merely clarification.

SUMMARY OF THE RULE OR CHANGE: Changed the word "resident" to "offender".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 64-13-10 and 64-13-14.5

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There are no costs or savings to the state budget because the revisions in this rule merely change terminology in order to better describe the object of this rule.
❖LOCAL GOVERNMENTS: There are no costs or savings to the state budget because the revisions in this rule merely change terminology in order to better describe the object of this rule.
❖OTHER PERSONS: There are no costs or savings to the state budget because the revisions in this rule merely change terminology in order to better describe the object of this rule.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because it is a process that only involves the Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses because it only involves the Department.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Corrections
Administration
Suite 304
6100 South Fashion Boulevard
Murray, UT 84107, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pam Elliott at the above address, by phone at (801) 265-5514, by FAX at (801) 265-5523, or by Internet E-mail at crdeptdo.crdept.pelliott@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Mike Chabries, Executive Director

R251. Corrections, Administration.
R251-301. Employment, Educational or Vocational Training for Community Correctional Center [~~Residents~~]Offenders.
R251-301-1. Authority and Purpose.

(1) This rule is authorized by Sections 63-46a-3, 64-13-10 and 64-13-14.5.

(2) The purpose of this rule is to provide the requirements for employers who employ [~~residents~~]offenders. This rule also provides the requirements for [~~residents'~~]offenders' participation in an educational or vocational training program.

R251-301-2. Definitions.

(1) "Center" means a community correctional halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Educational or vocational training" means that [~~a resident~~]an offender is participating or is enrolled in an educational or vocational training program that is recognized as being fully accredited by the state, which includes academic, applied-technology or correspondence courses, and in which the student is matriculated or has declared intent to be involved in program-completion or degree-attainment within a reasonable period of time.

(3) "Minimum wage" means compensation paid for hours worked in accordance with federally established guidelines.

(4) [~~"Resident"~~]"Offender" means a person under the jurisdiction of the Department of Corrections residing in a community correctional center.

R251-301-3. Policy.

It is the policy of the Department that:

(1) Center [~~residents~~]offenders should be employed or participate in educational or vocational training on a full-time basis;

(2) [~~residents~~]offenders participating in educational or vocational training should have sufficient means to meet their financial obligations; and

(3) employers and [~~residents~~]offenders shall be informed in writing of the Center's rules governing employment, including:

(a) [~~residents~~]Offenders shall be accountable for all time spent away from the Center;

(b) employers shall contact Center staff when they need the [~~resident~~]offender to work overtime or work on a day off;

(c) [~~residents~~]offenders shall not consume alcoholic beverages;

(d) [~~residents~~]offenders shall have legitimate employment and shall not be allowed to work for less than the prevailing minimum wage, nor under substandard conditions;

(e) employers shall contact Center staff if the [~~resident~~]offender terminates or is terminated from his position, is excessively late, or leaves work early;

(f) [~~residents~~]offenders shall not borrow money nor secure an advance in salary without prior approval of Center staff;

(g) [~~residents~~]offenders shall notify employers of illness, absence or tardiness;

(h) Center staff shall contact the employer periodically to monitor the [~~resident's~~]offender's performance and to verify the [~~resident's~~]offender's work hours;

(i) within two weeks, employers shall send to the Center staff a signed acknowledg[~~e~~]ment of the rules and willingness to notify Center staff of any violations; and

(j) employers shall contact Center staff with any questions or concerns.

KEY: corrections, halfway houses, training

[~~October 18, 1996~~]2001	**63-46a-3**
Notice of Continuation August 13, 1996	**64-13-10**
	64-13-14.5

Education, Administration
R277-469
Textbook Commission Operating Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23426
FILED: 01/16/2001, 12:06
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments are to update terminology, to update the list of course materials subject to review, to clarify the adoption categories, and to provide for a request for reconsideration process for materials not initially approved.

SUMMARY OF THE RULE OR CHANGE: The rule amendments change "textbook" to "instructional materials," more clearly identify adoption categories, explain the appropriate use of pilot and free materials, and make wording changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated cost or savings. The changes do not create more work for staff or Instructional Materials Commission members.

❖LOCAL GOVERNMENTS: There are no anticipated cost or savings for school districts. Changes provide greater clarity, and may provide for savings to school districts in preventing buying materials that cannot be used with students.

❖OTHER PERSONS: There are no anticipated cost or savings. An additional opportunity for the Instructional Materials Commission to review materials is offered to publishers, but there are no additional costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional compliance costs for affected persons. Amendments are primarily to clarify and update terminology.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Carol B. Lear, Coordinator School Law and Legislation

R277. Education, Administration.
R277-469. [~~Textbook~~]Instructional Materials Commission Operating Procedures.
R277-469-1. Definitions.

A. "Pilot program" or "pilot use" means the use by a school or schools on a limited basis of previously unreviewed instructional materials and materials not yet submitted to the [~~Utah State Textbook~~]Instructional Materials Commission for formal review, consistent with Section R277-469-[~~10~~]9.

B. "Pilot approval" means approval authorized under Section R277-469-10 using the form developed and provided by the USOE[~~Instructional Materials Specialist~~].

C. "Instructional materials" means systematically arranged text materials, in harmony with the [~~s~~]State Core [~~c~~]Curriculum framework and courses of study, which may be used by students as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use;

(2) may be accompanied by or contain teaching guides and study helps;

(3) shall appear on the list of state-adopted instructional materials or be approved for pilot use by the [~~State Textbook~~]Instructional Materials Commission.

D. "State Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools.

[~~E. "Comprehensive materials" means instructional materials that satisfy the Core Curriculum in a specific subject area.~~

~~F. "Supportive materials" means instructional materials that satisfy a portion or portions of the Core Curriculum in a specific subject area.~~

~~G~~]E. "Board" means the Utah State Board of Education.

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

[~~I~~]G. "Commission" means the [~~Utah State Textbook~~]Instructional Materials Commission.

[~~J~~]H. "Previously unreviewed materials" means instructional materials that have neither been approved by the [~~State Textbook~~]Instructional Materials Advisory Commission through the formal approval process nor approved as pilot materials under Section R277-469-[~~10~~]9.

I. "International Baccalaureate" means college level work limited in subject areas balancing humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

J. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

K. "ASCII" means American Standard Code for Information Interchange from which Braille versions of all or part of the instructional materials can be produced.

L. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Its operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 through 53A-14-106 which directs the Board to appoint a [~~State Textbook~~]Instructional Materials Commission and directs the Commission to recommend instructional materials for adoption by the Board, and by Subsection 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and provisions for final, pilot, and limited approvals of instructional materials.

R277-469-3. Use of State Funds for Instructional Materials.

A. Districts may use funds designated for state instructional materials only:

(1) for materials on the approved instructional materials list;[~~or~~]

(2) [~~on~~]for materials approved under Section R277-469-10 for pilot use[~~:~~]; or

(3) for advanced placement, International Baccalaureate, concurrent enrollment, and college-level course materials. Use of these materials may require parental permission consistent with R277-474.

B. Schools or school districts that use any funding source to purchase materials that have not been approved through the formal Commission process or consistent with [~~Section R277-469-10 for pilot use~~]this rule, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53A-1-401(3).

C. Free instructional materials:

(1) may be used as student instructional materials only consistent with the law and this rule; and

(2) shall be reviewed and approved by school districts prior to use.

R277-469-4. [~~Textbook~~]Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Subsection 53A-14-102(1).

B. Members shall serve four year staggered terms beginning with the 1998 appointments with the option, jointly expressed by the Commission member and the Commission, for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. All materials used in Utah schools shall be reviewed by the Commission consistent with this rule or qualify under the [~~adoption~~]exceptions to review categories of Section R277-469-6.

B. The Commission may review materials in the following subject areas on timelines as determined by the Commission based upon district needs and requests and using forms and procedures provided by the USOE[~~Instructional Materials Specialist~~]:

(1) Bilingual education/English as a second language ([~~E~~]elementary and [~~S~~]secondary),

(2) Character education ([~~E~~]elementary and [~~S~~]secondary),

(3) Driver education ([~~S~~]secondary),

(4) Early childhood education,

(5) Fine arts ([~~E~~]elementary and [~~S~~]secondary),

(6) Foreign language ([~~E~~]elementary and [~~S~~]secondary),

(7) Health education and fitness ([~~E~~]elementary and [~~S~~]secondary),

(8) Information technology ([~~E~~]elementary and [~~S~~]secondary),

(9) Language arts ([~~E~~]elementary and [~~S~~]secondary),

(10) Mathematics ([~~E~~]elementary and [~~S~~]secondary),

(11) Science ([~~E~~]elementary and [~~S~~]secondary),

(12) Social studies ([~~E~~]elementary and [~~S~~]secondary),

(13) Applied technology/vocational subjects,

(14) Technology education,[~~and~~]

(15) Technology and industrial arts[~~:~~],

(16) Special education/resource materials, and

(17) Human sexuality instructional materials.

C. The Commission's determination of a materials category for review purposes is final.

D. Unless materials meet the exceptions of this rule, or are reviewed consistent with this rule by the Commission, they may not be purchased with state or federal funds.

E. Commission review of material is available in April and October of each year.

R277-469-6. Review and Adoption Categories.

A. Materials may be considered for review and [~~categorized~~]designated under the following categories. They may be purchased with state funds and used as follows:

[~~(1) Comprehensive:~~

~~(a) Consistent with Core Curriculum;~~

~~(b) Provides comprehensive overview of course content;~~

~~(c) Designed for student use;~~

~~(d) Accompanied by or includes teaching guides or study aids or both;~~

~~(2) Supportive:~~

~~(a) Consistent with Core Curriculum;~~

~~(b) May not provide comprehensive overview of course;~~

~~(c) Used to complement or supplement comprehensive materials.~~

~~(3) Limited Adoption:~~

~~(a) Not consistent with Core Curriculum;~~

~~(b) Narrow or restricted in scope and sequence;~~

~~(c) Use of limited-adoption materials by a school or district requires specific USOE approval for the use of those materials prior to purchase. Prior approval process:~~

~~(i) District shall submit plan for using limited materials in conjunction with other resources to fulfill Core requirements.~~

~~(ii) Plan shall be reviewed by the USOE subject area specialist and Instructional Materials Specialist who shall make recommendations for desired use of materials.~~

~~(iii) If, after recommendations and modifications by USOE specialists, the plan is not acceptable, the district may petition the Commission for direct approval of materials.~~

~~(4) Teacher Resource:~~

~~(a) Materials shall be consistent with Core Curriculum as course resource materials;~~

~~(b) If the content of materials originally intended for student use is inconsistent with state law or the Core Curriculum, those materials may only be used by teachers as teacher resource materials;~~

~~(c) Materials may be accompanied by or contain teaching guides or study aids or both;~~

~~(d) Materials may provide information on only a portion of a course.~~

~~(5) Resource materials not evaluated by the Commission--these materials are not designed as organized instructional programs and may include:~~

~~(a) Encyclopedias and similar reference books;~~

~~(b) Library or trade books;~~

~~(c) Audiovisual or manipulative materials which are not parts of an integrated system or program;~~

~~(d) Consumable workbooks;~~

~~(e) Resource file materials such as learning experiences and evaluation;~~

~~(f) Teachers' manuals and teachers' professional materials in specific subject areas.~~

~~(6) Materials not recommended: Materials of questionable value to the schools due to:~~

~~(a) inaccuracies in content;~~

~~(b) misleading connotations;~~

~~(c) undesirable presentation of visual or textual material;~~

~~(d) content, style, or wording in conflict with expressed Board philosophy; or~~

~~(e) the failure of materials to be based on current research or best strategies.~~

~~(7) Rejected materials: Materials containing objectionable visual or textual content, unsuitable for use by students or teachers in Utah's public schools, either as text or enrichment materials, as part of prescribed curriculum.~~

~~(8) Inappropriate materials: Materials judged by the Commission to be inappropriate for use by students or teachers in the content category under which they were submitted by the publisher.~~

~~(9) Incomplete materials: Materials submitted by the publisher which are incomplete or otherwise unsatisfactory for accurate and comprehensive appraisal by the Commission.~~](1) Adopted: Instructional materials that may be used or purchased and are in alignment with content, philosophy and instructional strategies of the State Core Curriculum which may be used by students as principle sources of study and provide comprehensive coverage of course content.

(2) Limited: Instructional materials that may be used or purchased and are in limited alignment with the State Core Curriculum or are narrow or restricted in their scope and sequence. Use of these materials should be supplemented with additional materials to assure State Core Curriculum coverage.

(3) Teacher Resource: These materials may be used or purchased for or by teachers for use as resource material only.

(4) Reviewed, but not Adopted: Instructional materials may not be used or purchased that are not in alignment with the State Core Curriculum, inaccurate in content, include misleading connotations, contain undesirable presentation, are in conflict with existing law and rules, or are unsuitable for use by students.

(5) the following materials are not reviewed, but may be purchased consistent with the law and this rule and are subject to district review:

(a) advanced placement materials,

(b) International Baccalaureate materials,

(c) concurrent enrollment materials,

(d) library or trade books,

(e) reference materials,

(f) teachers' professional materials which are not components of an integrated instructional program.

(6) Galley proofs or unfinished copies shall not be reviewed.

B. [~~Specific types of materials, such as dictionaries, may be reviewed and have a limited range of evaluation categories.~~

~~C.~~]When [~~the Commission determines that a variety of materials, perhaps submitted separately, constitutes~~]an integra[~~l~~]ted instructional [~~package~~]program, [~~the total package or instructional system shall be reviewed and evaluated collectively~~]as determined by the Commission, is submitted for review, the program shall be reviewed and evaluated collectively. Review shall take place once all parts of the program are submitted.

R277-469-7. Criteria for Selection of Instructional Materials.

A. Instructional materials shall:

[~~A.~~](1) be [~~C~~]consistent with State Core Curriculum.

[~~B.~~](2) [~~P~~]provide[~~s~~] an objective and balanced viewpoint on issues.

[~~C.~~](3) [~~I~~]include[~~s~~] enrichment and extension possibilities.

[~~D.~~](4) be [~~A~~]appropriate to varying levels of learning.

[~~E.~~](5) [~~Authoritative, realistic, factual and~~]be accurate, factual and research-based.

[~~F.~~](6) be arranged [~~C~~]chronologically or systematically, [~~organized~~]or both.

[~~G.~~](7) [~~R~~]reflect[~~ive of~~] the pluralistic character and culture of the American people.

[~~H.~~](8) be [~~F~~]free from sexual, ethnic, age, gender or disability stereotyping.

[~~I.~~](9) [~~P~~]provide[~~s~~] accurate representation of diverse ethnic groups.

[~~J.~~](10) [~~Is~~]be of acceptable technical quality.

[~~K~~]B. Upon request [~~from the USOE Instructional Materials Specialist or a~~]by the district, a publisher of instructional materials shall furnish computer diskettes of materials for literary subjects in the American Standard Code for Information Interchange (ASCII)[~~from which Braille versions of all or part of the instructional materials can be produced~~].

[~~L~~]C. USOE monitoring:

(1) The USOE may require a district to provide a report of instructional materials purchase[~~s~~]d by the district in the previous four years.

(2) The USOE may initiate a[~~n~~] formal or informal audit of instructional materials purchase[~~s~~]d.

R277-469-8. Directives and Procedures for Publishing Companies Seeking to Sell Instructional Materials to School Districts.

A. The Commission shall not designate any individual, corporation or business as an official instructional materials depository.

B. Publishers desiring to sell adopted materials to Utah schools or districts shall have adopted materials on deposit at an instructional materials distributor in the business of selling instructional materials to schools or districts in Utah.

C. Depository agreements may be made between publishers of materials and local vendors.

D. Revised adopted materials:

(1) If a revised edition of adopted materials retains the original title and authorship, the publisher may request its substitution for the edition currently adopted providing that:

(a) the original contract[~~ed~~] price and contract date do[~~es~~] not change;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes.

(2) If Subsection R277-469-8D[~~(1)~~] is not satisfied, a new edition shall be submitted for adoption as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for an adopted edition with assistance from the state subject area specialist.

E. Publishers' Increase in Contract Prices

(1) Publishers may request one increase in contract prices to be effective during either the third or fourth year of the contract for [~~text~~]instructional materials adopted by the Commission.

(2) Price increases shall be limited to the consumer price index (CPI) for the last fiscal year unless good cause is [~~shown~~]demonstrated consistent with designated deadlines and forms provided by the Commission.

[~~**R277-469-9. Instructional Materials Appropriate for Review.**~~

~~A. Text materials: printed volumes, consisting of a text and other components including:~~

~~(1) teacher materials;~~

~~(2) workbooks;~~

~~(3) computer software;~~

~~(4) videodiscs; and~~

~~(5) other multimedia which constitute organized learning systems.~~

~~B. Laserdiscs (or videodiscs): laserdisc-based instructional materials in which the major learning tool consists of a videodisc and includes teacher and student materials.~~

~~C. Multimedia: multiple forms of communications media, which may be controlled, coordinated, and integrated by the microcomputer.~~

~~D. Software: software-based programs in which the major learning tool consists of a software program which is supplemented by teacher and student materials.~~

~~E. Compact discs: a compact disc-based (CD ROM) program in which the major learning tool consists of a compact disc supplemented by teacher and student materials.~~

~~F. Materials which shall not be considered for adoption by the Commission:~~

~~(1) encyclopedias and other reference books and software;~~

~~(2) library or trade books;~~

~~(3) audiovisual or other instructional material(s) which are not components of an integrated system or are not a substantial program of study or cannot stand alone as the instructional materials for the classroom; and~~

~~(4) consumable workbooks which are not components of an integrated system or program.~~

~~G. The Commission's determination of how materials are categorized for review is final.~~]

R277-469-[~~10~~]9. Pilot Use of Instructional Materials.

A. Pilot approval for previously unreviewed instructional materials shall be given for no more than:

(1) ten percent of the districts in the state; and

(2) ten percent of the schools in a single district with the grade levels (elementary, junior high/middle or high school) [~~in a single district~~]for which the materials are designated;

B. Publishers shall present a completed pilot application form when applying to the USOE [~~Associate Superintendent~~]for pilot approval.

C. Publishers shall present proof of pilot approval from the USOE [~~Associate Superintendent for Instructional Services~~]to the school or district prior to distribution of materials.

D. The Commission shall not review materials submitted by a publisher who has acted in violation of this rule[~~, R277-469,~~] for a two year period beginning January 1 of the year following the year in which the violation occurred.

E. Samples (defined as one copy or one set of an instructional [~~materials~~]program) may be given to a school or district upon request [~~for preview purposes only~~]by administrators or teachers for preview purposes only.

F. Publishers, in cooperation with districts using the materials, may be required to provide an evaluation to the USOE completed by the district of pilot materials based on criteria and [~~using a~~]forms provided by the USOE.

G. Pilot materials may only be used for one school year anywhere in the state under pilot approval prior to seeking final approval through the formal Commission process.

H. The USOE may require a report of pilot program materials used in district schools in the past year.

I. Districts or schools or both shall assume [~~the~~]any costs of pilot materials not approved for further use by the Commission.

J. [~~Districts shall be responsible to collect instructional materials used in a pilot program following the pilot period. Materials reviewed by the Commission and designated under Subsections R277-469-6A(6)(7)(8) and (9) shall be collected from the pilot schools by the district which sponsored the pilot program and disposed of. The USOE Instructional Materials Specialist shall be notified of this collection and disposal~~]All materials used in pilot programs that are not approved through the Commission process for continued use shall be collected by the district at the end of the pilot period and disposed of.

R277-469-10. Request for Reconsideration.

A. A request for reconsideration is a single additional opportunity provided to a publisher for each submission and review of instructional materials with which the publisher disagrees.

B. The request for reconsideration procedure is as follows:

(1) A request for reconsideration shall be received by the USOE only from a publisher.

(2) The publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(3) The publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next adoption cycle.

(4) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until approved through the official Commission process.

(5) A publisher may be asked to send a second set of sample materials to the USOE.

(6) Any written information provided by the publisher shall be available to the advisory committees during the second review.

(7) After the second review by the subject area advisory committee, the publisher shall be notified of the completion of the appeals process and the decision after the scheduled Board meeting.

(8) Materials shall be voted on by the Commission during the next scheduled meeting. A revised status of instructional materials shall be made after Board approval the following month.

(9) The publisher shall receive a second letter stating that recommendations are official and a copy of the new evaluation. Evaluations may now appear on the Internet if materials are adopted.

C. Publishers shall be given only one opportunity to request that materials be reconsidered.

KEY: instructional materials
[~~April 7, 1998~~]2001 **Art X, Sec 3**
53A-14-101 through 53A-14-106
53A-1-401(3)

◆ ◆

Environmental Quality, Air Quality
R307-103-2
Initial Proceedings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23407
FILED: 01/11/2001, 12:28
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is made in response to public comments.

SUMMARY OF THE RULE OR CHANGE: Amend Subsection R307-103-2(2)(b) to change the issuance date for initial orders from the date of signing to the date of mailing. While Utah case law indicates that the norm is for an initial order's date of issuance to be its signature date, Utah Administrative Procedures Act (UAPA Title 63, Chapter 46b) also provides for the mailing date as the date of issuance. A commenter on the adoption of the rule (the proposed new rule under DAR No. 23093, published in the *Utah State Bulletin* on September 1, 2000), pointed out that because nothing protects against errors that delay mailing of an order, the mailing date is preferable in order to give the recipient a fair amount of time to respond. Because of the timing of implementation of associated rules, the comment is being accommodated in a separate filing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104; and Title 63, Chapter 46b

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no difference in cost from the existing rule.
❖LOCAL GOVERNMENTS: There is no difference in cost from the existing rule.
❖OTHER PERSONS: No change in costs, but the change may give affected parties a few additional days to respond.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No change in costs, but the change may give affected parties a few additional days to respond.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change may give responders a few additional days to respond if an initial order is not mailed immediately after it is signed. Dianne R. Nielson

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 02/21/2001, 1:30 p.m., Room 201, Department of Environmental Quality Building, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 03/08/2001

AUTHORIZED BY: Rick Sprott, Director

R307. Environmental Quality, Air Quality.
R307-103. Administrative Procedures.
R307-103-2. Initial Proceedings.

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) certification for tank vapor tightness testing under R307-342;

(e) certification of asbestos contractors under R307-801;

(f) fees imposed for major source reviews under R307-414;

(g) assessment of other fees except as provided in R307-103-14(7);

(h) eligibility of pollution control equipment for tax exemptions under R307-120, R307-121, and R307-122;

(i) requests for variances, exemptions, and other approvals;

(j) requests or approvals for experiments, testing or control plans; and

(k) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840.

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is [~~signed~~]mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

KEY: air pollution, administrative procedure, hearings*
[~~December 7, 2000~~]2001 **63-46b**

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-1
Utah Hazardous Waste Definitions and References

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23409
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates Method 1664 and Method 9071B and deletes Method 9070. This change also adds the definitions of "remediation waste management site," "staging pile," and "dioxins and furans."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 260.10, 2000 ed.; 40 CFR 270.2, 1999 ed.; and 40 CFR 260.11, 1999 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste

Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10 and 279.1, [~~1995~~]2000 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace" where "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 1997 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and [~~plan approval~~]permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, [~~1996~~]1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act; and

(2) "Director" or "State Director" means "Executive Secretary."

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Division" means the Division of Solid and Hazardous Waste.

(3) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(4) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(5) "POHC's" means principle organic hazardous constituents.

(6) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(7) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(8) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(9) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1)"The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, C=Mean + t x Standard Deviation/$n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, C=exp (Mean of lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x H/$(n - 1)^{1/2}$), where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, [~~1997~~]1999 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

KEY: hazardous waste
[~~July 15, 2000~~]2001 19-6-105
Notice of Continuation March 12, 1997 19-6-106

Environmental Quality, Solid and Hazardous Waste

R315-2

General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23410
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with EPA rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates a decision by the District of Columbia Court of Appeals which ruled that the Environmental Protection Agency (EPA) had exceeded its authority when it attempted to regulate certain types of reuse and recycling of material processing secondary materials. This rule change adds "dredged material" to exclusions of hazardous waste when it is subject to a permit issued under the Water Pollution Control Act, it removes the wastes K140, K064, K065, K066, K090, and K091 from the list of wastes from specific sources and also removes U408. It also corrects some typographical errors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 261.31, 2000 ed.; 40 CFR 2261.32, 2000 ed.; and 40 CFR 261.38, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and

understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Secondary materials, i.e., sludges, by-products, and spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10 and 11, which incorporates by reference 40 CFR 261 Subpart D, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The secondary material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The secondary material is not accumulated speculatively;

(iii) Except as provided in (iv), the secondary material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing secondary materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing secondary materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous

constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing secondary material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides a notice to the Executive Secretary, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in nonland-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(b)(7), mineral processing secondary materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(17) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from ortanic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under [~~paragraph (b) of this section~~]R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge, There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

• • • • • • • • • • •

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, [~~1998~~]2000 ed.,[~~ as amended by 63 FR 42110, August 6, 1998,~~] is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, [~~1998~~]2000 ed.,[~~ as amended by 63 FR 42110, August 6, 1998,~~] is adopted and incorporated by reference, excluding the following waste[~~s~~]:

[~~(1) K064 -- Acid Plant blowdown slurry or sludge resulting from the thickening of blowdown slurry from primary copper production. (T)~~

~~(2) K065 -- Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. (T)~~
~~(3) K066 -- Sludge from treatment of process wastewater or acid plant blowdown or both from primary zinc production. (T)~~
~~(4) K090 -- Emission control dust or sludge from ferrochromium silicon production. (T)~~
~~(5) K091 -- Emission control dust or sludge from ferrochromium production. (T)~~
~~(6) ~~]K160 -- Solids from the production of thiocarbamates and solids from the treatment of wastes from thiocarbamates.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, [~~1998~~]2000 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous waste
[~~July 15, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-3
Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23411
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change streamlines permitting for treatment, storage, and disposal of remediation wastes managed at cleanup sites, i.e., it allows the use of Remediation Action Plans as an alternative to traditional Resource Conservation and Recovery Act (RCRA) permits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 2670.42, 2000 ed.; and 40 CFR 270.79 through 270.230, 1999 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-3-2. Permit Application.

. . . . . .

2.2 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

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

(1) For a corporation: by a principal executive officer of at least the level of vice-president;

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

(3) For a municipality, State, Federal, or other public agency; by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Executive Secretary shall be signed by a person described in R315-3-2.2(a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in R315-3-2.2(a);

(2) The authorization specified either an individual or a position having responsibility for overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

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

(c) Changes to authorization. If an authorization under R315-3-2.2(b) is no longer accurate because different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of R315-3-2.2(b) shall be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d)(1) Certification. Any person signing a document under R315-3-2.2(a) or (b) shall make the following certification:

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

(2) For remedial action plans (RAPs) under R315-3-8, which incorporates by reference 40 CFR subpart H, if the operator certifies according to R315-3-2.2(d)(1), then the owner may choose to make the following certification instead of the certification in R315-3-2.2(d)(1):

"Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

• • • • • • • • • • •

2.10 SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS

For facilities that incinerate hazardous waste, except as R315-8-15.1 and R315-3-2.10(e) provides otherwise, the applicant shall fulfill the requirements of R315-3-2.10(a), (b), or (c).

(a) When seeking exemption under R315-8-15.1(b) or (c) (ignitable, corrosive or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii) and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of the trial burn, including all required determinations, in accordance with R315-3-6.3; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR part 261 Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in R315-8-15.4.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in R315-3-2.10(c)(1). This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in R315-8-15.4.

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with R315-8-15.4 and R315-8-15.6 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Any supplemental information as the Executive Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in R315-3-2.10(c)(1), sufficient to allow the Executive Secretary to specify as permit Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Executive Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under R315-8-15.6, operating conditions that will ensure that the performance standards in R315-8-15.4 will be met by the incinerator.

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of R315-3-2.10 do not apply. Nevertheless, the Executive Secretary may apply the provisions of R315-3-2.10, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j) and R315-3-3.3(b)(2).

• • • • • • • • • • •

2.13 SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

For facilities that burn hazardous wastes in boilers and industrial furnaces which R315-14-7 applies, which incorporates by reference 40 CFR subpart H, 266.100 through 266.112, the requirements of 40 CFR 270.22, [~~1991~~]2000 ed.,[~~as amended by 56 FR 32688, July 17, 1991,~~] are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

• • • • • • • • • • •

R315-3-4. Changes to Permit.

4.1 TRANSFER OF PERMITS

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R315-3-4.1(b) or R315-3-4.2(b)(2) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Executive Secretary in accordance with R315-3-4.3, which incorporates by reference 40 CFR 270.42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the Executive Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of R315-8-8, which incorporates by reference 40 CFR 264, subpart H, until the new owner or operator has demonstrated that he is complying with the requirements of that subpart. The new owner or operator shall demonstrate compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H, the Executive Secretary shall notify the old owner or operator that he no longer needs to comply

with R315-8-8, which incorporates by reference 40 CFR 264, subpart H as of the date of demonstration.

4.2 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS

When the Executive Secretary receives any information, for example, inspects the facility, receives information submitted by the permittee as required in the permit see R315-3-3.1, receives a request for modification or revocation and reissuance under R315-4-1.5 or conducts review of the permit file, he may determine whether one or more of the causes listed in R315-3-4.2(a) and (b) for modification or revocation and reissuance or both exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, subject to the limitations of R315-3-4.2(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See R315-4-1.5(c)(2). If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Executive Secretary shall approve or deny the request according to the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42. Otherwise, a draft permit shall be prepared and other procedures in R315-4 followed.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits, and the following may be causes for revocation and reissuance as well as modification under any program when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the approved facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Executive Secretary has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised rules, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or rules. The standards or rules on which the permit was based have been changed by statute, through promulgation of new or amended standards or rules or by judicial decision after the permit was issued.

(4) Compliance schedules. The Executive Secretary determined good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Executive Secretary under R315-3-5.1(d), the Executive Secretary shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in these rules.

(b) Causes for modification or revocation and reissuance. The following are causes to modify, or, alternatively, revoke and reissue a permit;

(1) Cause exists for termination under R315-3-4.4 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Executive Secretary has received notification as required in the permit, see R315-3-3.1(l)(3) of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location may not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

4.3 PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE

The requirements of 40 CFR 270.42, including Appendix I, [~~1998~~]2000 ed., are adopted and incorporated by reference with the following exception;

substitute "Executive Secretary" for all Federal regulation references made to "Director" or "Administrator";

4.4 TERMINATION OF PERMITS

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Executive Secretary shall follow the applicable procedures in R315-4 in terminating any permit under R315-3-4.4.

R315-3-6. Special Forms of Permits.

6.1 PERMITS BY RULE

Notwithstanding any other provision of R315-3 and R315-4, the following shall be deemed to have an approved hazardous waste permit if the conditions listed are met:

(a) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under State or Federal law.

(2) Complies with the conditions of that permit and the requirements in R317-7, Underground Injection Control Program, for managing hazardous waste in a well.

(3) For UIC permits issued after November 8, 1984:

(i) Complies with R315-8-6.12; and

(ii) Where the UIC well is the only unit at a facility which requires a permit, complies with R315-3-2.5(d).

(b) Publicly owned treatment works. The owner or operator of a POTW which accepts hazardous waste, for treatment if the owner or operator:

(1) Has an NPDES permit;

(2) Complied with the conditions of that permit;

(3) Complies with the following rules;

(i) R315-8-2.2, Identification number;

(ii) R315-8-5.2, Use of manifest system;

(iii) R315-8-5.4, Manifest discrepancies;

(iv) R315-8-5.3, which incorporates by reference 40 CFR 264.73(a) and (b)(1), Operating record;

(v) R315-8-5.6, Biennial report;

(vi) R315-8-5.7, Unmanifested waste report; and

(vii) R315-8-6.12, For NPDES permits issued after November 8, 1984.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(c) Elementary Neutralization Units and Wastewater Treatment Units, as defined in 40 CFR 270.2, which R315-1-1(d) incorporates by reference.

6.2 EMERGENCY PERMITS

(a) Notwithstanding any other provision of R315-3 or R315-4, in the event the Executive Secretary finds an imminent and substantial endangerment to human health or the environment the Executive Secretary may issue a temporary emergency permit: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous waste to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Executive Secretary at any time without process if he determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under R315-4-1.10(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted hazardous waste management facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of R315-3,R315-8, and R315-14.

6.3 HAZARDOUS WASTE INCINERATOR PERMITS

When an owner or operator demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of R315-3-6.3 do not apply. Nevertheless, the Executive Secretary may apply the provisions of R315-3-6.3, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j) and R315-3-3.3(b)(2).

(a) For the purposes of determining operational readiness following completion of physical construction, the Executive Secretary shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Executive Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(1) Applicants shall submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit and specify requirements for this period sufficient to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(b) For the purpose of determining feasibility of compliance with the performance standards of R315-8-15.4, and of determining adequate operating conditions under R315-8-15.6, the Executive Secretary shall establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under R315-3-6.3(b)(2) with part B of the permit application.

(2) The trial burn plan shall include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity, if applicable, or description of physical form of the waste.

(C) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or, their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system type and feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations of the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Executive Secretary's decision under R315-3-6.3(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) All other information as the Executive Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purpose of this paragraph and the criteria in R315-3-6.3(b)(5).

(3) The Executive Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Executive Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Executive Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in R315-2-10, the hazardous waste organic constituent or constituents identified in R315-50-9 as the basis for listing.

(5) The Executive Secretary shall approve a trial burn plan if it finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by R315-8-15.4 can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Executive Secretary to determine operating requirements to be specified under R315-8-15.6; and

(iv) The information sought in R315-3-6.3(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Executive Secretary shall send a notice to all persons on the facility mailing list as set forth in R315-4-1.10(c)(1)(v) and to the appropriate units of State and local government as set forth in R315-4-1.10(c)(1)(iv) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Executive Secretary has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Division.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in R315-8-15.4(a).

(v) If the HC1 emission rate exceeds 1.8 kilograms of HC1 per hour (4 pounds per hour), a computation of HC1 removal efficiency in accordance with R315-8-15.4(b).

(vi) A computation of particulate emissions in accordance with R315-8-15.4(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) All other information as the Executive Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in R315-8-15.4 and to establish the operating conditions required by R315-8-15.6 as necessary to meet that performance standard.

(8) The applicant shall submit to the Executive Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in R315-3-6.3(b)(7). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Executive Secretary.

(9) All data collected during any trial burn shall be submitted to the Executive Secretary following the completion of the trial burn.

(10) All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under R315-3-2.2.

(11) Based on the results of the trial burn, the Executive Secretary shall set the operating requirements in the final permit

according to R315-8-15.6. The permit modification shall proceed according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(c) For the purpose of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Executive Secretary may establish permit conditions, including but no limited to allowable waste feeds and operating conditions sufficient to meet the requirements of R315-8-15.6, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Executive Secretary.

(1) Applicants shall submit a statement, with part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(d) For the purposes of determining feasibility of compliance with the performance standards of R315-8-15.4 and of determining adequate operating conditions under R315-8-15.6, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with R315-3-2.10(b) and R315-3-6.3(b)(2) through (b)(5) and (b)(7) through (b)(10) or, instead, submit other information as specified in R315-3-2.10(c). The Executive Secretary shall announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of R315-3-6.3(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under R315-3-6.10(a) are exempt from compliance with R315-8-15.4 and R315-8-15.6 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in R315-3-6.3(b)(7), with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Executive Secretary to establish a later date for submission of the part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Executive Secretary will specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

• • • • • • • • • • •

6.6 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

The requirements of 40 CFR 270.66, [~~1996~~]2000 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director."

6.7 REMEDIAL ACTION PLANS

Remedial Action Plans (RAPs) are special forms of permits that are regulated under R315-3-8, which incorporates by reference 40 CFR subpart H.

R315-3-7. Interim Status.

7.1 QUALIFYING FOR INTERIM STATUS

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State or Federal Act that render the facility subject to the requirement to have a RCRA permit or State permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the Federal requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity or the notification requirements of these rules.

Comment: Some existing facilities may not be required to file a notification under section 3010(a) of RCRA. These facilities may qualify for interim status by meeting R315-3-7.1(a)(2).

(2) Complied with the requirements of 40 CFR 270.10 or R315-3-2.1 governing submission of part A applications;

(b) Failure to qualify for interim status. If the Executive Secretary has reason to believe upon examination of a part A application that it fails to meet the requirements of R315-3-2.4, the Executive Secretary shall notify the owner or operator in writing of the apparent deficiency. The notice shall specify the grounds for the Executive Secretary's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to the notification and to explain or cure the alleged deficiency in his part A application. If, after the notification and opportunity for response, the Executive Secretary determines that the application is deficient he may take appropriate enforcement action.

(c) R315-3-7.1(a) shall not apply to any facility which has been previously denied a permit or RCRA permit or if authority to operate the facility under State or Federal authority has been previously terminated.

7.2 OPERATION DURING INTERIM STATUS

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in part A of the permit or permit application;

(2) Employ processes not specified in part A of the permit or permit application; or

(3) Exceed the design capacities specified in part A of the permit or permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in R315-7.

7.3 CHANGES DURING INTERIM STATUS

(a) Except as provided in R315-3-7.3(b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in part A of the permit application and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification if the owner or operator submits a revised part A permit application prior to treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised part A permit application prior to a change, along with a justification explaining the need for the change, and the Executive Secretary approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised part A permit application prior to such change, along with a justification explaining the need for the change, and the Executive Secretary approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of R315-7-15, which incorporates by reference 40 CFR 265 subpart H, until the new owner or operator has demonstrated to the Executive Secretary that he is complying with the requirements of that subpart. The new owner or operator shall demonstrate compliance with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, the Executive Secretary shall notify the old owner or operator in writing that he no longer needs to comply with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued, under 19-6-105(d), or by EPA under section 3008(h) RCRA or other Federal authority or by a court in a judicial action brought by EPA or by an authorized State. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under this paragraph, changes listed under R315-3-7.3(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of R315-7-17, which incorporates by reference 40 CFR 265.193, for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o) of RCRA.

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued, under subsection 19-6-105(d), or by EPA under section 3008(h) of RCRA or other Federal authority, or by a court in a judicial proceeding brought by EPA, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks or containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by R315-13, which incorporates by reference 40 CFR 268, or R315-8, provided that these changes are made solely for the purpose of complying with R315-13, which incorporates by reference 40 CFR 268, or R315-8.

(7) Addition of newly regulated units under R315-3-7.3(a)(6).

(8) Changes necessary to comply with standards under 40 CFR part 63, subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

7.4 TERMINATION OF INTERIM STATUS

Interim status terminates when:

(a) Final administrative disposition of a[~~permit or~~] permit application, except an application for a remedial action plan (RAP) under R315-3-8, which incorporates by reference 40 CFR subpart H, is made.[~~; or~~]

(b) Interim status is terminated as provided in R315-3-2.1(d)(5).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a part B application for a permit for a facility prior to that date; and

(2) The owner or operator certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Federal Act that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to the permit requirement unless the owner or operator of the facility:

(1) Submits a part B application for a permit for the facility before the date 12 months after the date on which the facility first becomes subject to the permit requirement; and

(2) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under R315-3-7.3(a)(1), (2) or (3), on the date 12 months after the effective date of the requirement, unless the owner or operator certifies that this unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a part B application for a permit for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility, other than a land disposal or an incinerator facility, which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for the facility by November 8, 1988.

R315-3-8. Remedial Action Plans (RAPs).

The requirements of 40 CFR subpart H, sections 270.79 through 270.230, 2000 ed., are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all Federal regulation references made to "Director."

KEY: hazardous waste
[~~October 20, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

Environmental Quality, Solid and Hazardous Waste

R315-5-3

Pre-Transport Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23412
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change allows large quantity generators of F006 wastes up to 180 days to accumulate F006 waste on-site without a hazardous waste storage permit provided certain requirements are met.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 262.34, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-5. Hazardous Waste Generator Requirements.
R315-5-3. Pre-Transport Requirements.

3.30 PACKAGING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the Department of Transportation regulations on packaging under 49 CFR 173, 178, and 179.

3.31 LABELING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall label each hazardous waste package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR 172.

3.32 MARKING

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the Department of Transportation regulations on hazardous materials under 49 CFR 172.

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address

Manifest Document Number

3.33 PLACARDING

Prior to transporting hazardous waste or offering hazardous waste for transporting off-site, a generator shall placard or offer the initial transporter the appropriate placards according to the Department of Transportation regulations for the movement of hazardous materials under 49 CFR 172, subpart F.

3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, [~~1998~~]2000 ed.,[~~as amended by 64 FR 3382, January 21, 1999,~~] are adopted and incorporated by reference with the following addition.

(b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

KEY: hazardous waste
[~~October 20, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

◆ ◆

Environmental Quality, Solid and Hazardous Waste

R315-7

Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23413
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change adds part of the language from 40 CFR that was not included earlier and it finalizes National Emissions Standards for Hazardous Air Pollutants for three source categories referred to collectively as hazardous waste combustors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste

Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 [~~and~~]through 264.55[~~3~~]4, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2. R315-7 also applies to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in R315-7-8.1(a).

(c) The requirements of R315-7 do not apply to the following:

(1) The owner or operator of a POTW with respect to the treatment or storage of hazardous wastes which are delivered to the POTW;

(2) The owner or operator of a facility approved by the State of Utah to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-7 by R315-2-5;

(3) The owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2), (3), and (4), which is incorporated by reference in R315-2-6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR subpart D, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G;

(4) A generator accumulating hazardous waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34, except to the extent the requirements are included in R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(6) The owner or operator of a totally enclosed treatment facility, as defined in R315-1;

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in the Table of Treatment Standards for Hazardous Wastes in 40 CFR 268.40 as incorporated by reference at R315-13, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in R315-7-9.8(b);

(8) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(9)(i) Except as provided in R315-7-8(c)(9)(i), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this section shall comply with all applicable requirements of R315-7-10 and R315-7-11.

(iii) Any person who is covered by R315-7-8(c)(9)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-7 and of R315-3 for those activities.

(10) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and R315-7-9.8(b), R315-7-16.2 and R315-7-16.3 are complied with;

(11) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7) handling the wastes listed below. These handlers are subject to regulation under section R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.6

(d) Notwithstanding any other provisions of these rules enforcement actions may be brought pursuant to R315-2-14 or Section 19-6-115 Utah Solid and Hazardous Waste Act.

(e) The following hazardous wastes shall not be managed at facilities subject to regulation under R315-7.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of R315-8-12.1(c) as well as all other applicable requirements of R315-8-12;

(iv) The waste is burned in incinerators that are certified pursuant to the standard and procedures in R315-7-22.6; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in R315-7-23.7.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268, and the R315-13 standards are considered material conditions or requirements of the R315-7 interim status standards.

R315-7-18. Surface Impoundments.

18.1 APPLICABILITY

The rules in this section apply to the owners and operators of facilities that use surface impoundments for the treatment, storage, or disposal of hazardous waste, except as provided otherwise in R315-7-8.1.

18.2 ACTION LEAKAGE RATE

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) must submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-18.9(b). Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-18.9(a). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-7-18.5(b), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit closes in accordance with R315-7-18.6, which incorporates by reference 40 CFR 265.228(a)(2), monthly during the post-closure care period when monthly monitoring is required under R315-7-18.5(b).

18.3 CONTAINMENT SYSTEM

All earthen dikes shall have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

18.4 WASTE ANALYSIS AND TRIAL TESTS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, whenever a surface impoundment is used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator shall, before treating the different waste or using the different process:

(i) Conduct waste analyses and trial treatment tests, e.g., bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with R315-7-9.8(b).

The owner or operator shall record the results from each waste analysis and trial test in the operating record of the facility, see R315-7-12.4, which incorporates by reference 40 CFR 265.73.

18.5 MONITORING AND INSPECTIONS

(a) The owner or operator shall inspect:

(1) The freeboard level at least once each operating day to ensure compliance with R315-7-18.2, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leads, deterioration, or failures in the impoundment.

(b)(1) An owner or operator required to have a leak detection system under R315-7-18.9(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with R315-7-18.2(a).

The owner or operator shall remedy any deterioration or malfunction he finds.

18.6 CLOSURE AND POST-CLOSURE

The requirements as found in 40 CFR 265.228, 1992 ed., are adopted and incorporated by reference.

18.7 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f); and

(2) R315-7-9.8(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react; and

(2) Maintain and monitor the leak detection system in accordance with R315-8-11.2(c)(2)(iv) and (3) and R315-7-18.5(b) and comply with all other applicable leak detection system requirements of R315-7;

(3) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

([~~b~~]c) The surface impoundment is used solely for emergencies.

18.8 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same surface impoundment, unless they will not generate heat, fumes, fires, or explosive reactions that could damage the structural integrity of the impoundment, or otherwise threaten human health or the environment.

18.9 DESIGN REQUIREMENTS

(a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with R315-7-18.9(c), unless exempted under R315-7-18.9(d), (e), or (f). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(b) The owner or operator of each unit referred to in paragraph (a) of this section shall notify the Board at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the receipt of the notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from R315-7-18.9(a) if:

(1) The existing unit was constructed in compliance with the design standards of Section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in R315-7-18.9(a) may be waived by the Board for any monofill, if;

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and these wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in R315-2-9(g) with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of R315-7-18.9(a) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of the impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable given the specific site conditions and the nature and extent of contamination. If all contaminated soil is not removed or decontaminated, the owner or operator of the impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR; 144.3; and

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of R315-7-18.9(a) and in good faith compliance with R315-7-18.9(a) and with guidance documents governing liners and leachate collection systems under R315-7-18.9(a), no liner or leachate collection system which is different from that which was so installed pursuant to R315-7-18.9(a) will be required for the unit by the Board when issuing the first permit to the facility, except that the Board will not be precluded from requiring installation of a new liner when the Board has reason to believe that any liner installed pursuant to the requirements of R315-7-18.9(a) is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent overtopping of the dike by overfilling, wave action, or a storm. Except as provided in R315-7-18.2(b), there shall be at least 60 centimeters, two feet, of freeboard.

(g) A freeboard level less than 60 centimeters, two feet, shall be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

(h) Surface impoundments that are newly subject to R315-7-18 due to the promulgation of additional listings or characteristics

for the identification of hazardous waste must be in compliance with R315-7-18.9(a), (c) and (d) not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under R315-13, which incorporates by Reference 40 CFR 268, or the granting of an extension to the effective date of a prohibition pursuant to 40 CFR 268.5, within this 48-month period.

18.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-18.2. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in R315-7-18.10(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-18.10(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-18.10(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

18.11 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of R315-7-27, which incorporates by reference 40 CFR subpart BB, and R315-7-30, which incorporates by reference 40 CFR subpart CC.

R315-7-22. Incinerators.

22.1 INCINERATORS APPLICABILITY

(a) R315-7-22 applies to owners or operators of facilities that incinerate hazardous waste, except as R315-7-8.1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-7-22.1(b)(2), the standards of R315-7 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d), documenting compliance with the requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE: R315-7-22.5 (closure) and the applicable requirements of R315-7-8 through R315-7-15 , R315-7-27, and R315-7-30.

([~~b~~]c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of R315-7-22, except R315-7-22.5, Closure, provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, and the documentation is retained at the facility, if the waste to be burned is:

(1) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(b), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9, or

(4) A hazardous waste solely because it possesses the reactivity characteristics described by R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii), and will not be burned when other hazardous wastes are present in the combustion zone.

22.2 GENERAL OPERATING REQUIREMENTS

During start-up and shut-down of an incinerator, the owner or operator shall not feed hazardous waste unless the incinerator is at steady state, normal, conditions of operation, including steady state operating temperature and air flow.

22.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state, normal, operating conditions, including waste and auxiliary fuel feed and air flow, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

22.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The complete incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

22.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including but not limited to ash, scrubber waters, and scrubber sludges from the incinerator. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

22.6 INTERIM STATUS INCINERATORS BURNING PARTICULAR HAZARDOUS WASTES

(a) Owners or operators of incinerators subject to R315-7-22 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner of operator will submit an application to the Board containing applicable information in R315-3 demonstrating that the incinerator can meet the performance standards in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the incinerator can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the incinerator.

KEY: hazardous waste
[~~July 15, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

Environmental Quality, Solid and Hazardous Waste

R315-8

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23414
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change expands the use of Corrective Action Management Units and Temporary Units to include implementing clean up remedies at permitted facilities that are not subject to corrective action for solid waste management units and it finalizes National Emissions Standards for Hazardous Air Pollutants for three source categories referred to collectively as hazardous waste combustors.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 264.73, 2000 ed.; 40 CFR 264.603, 2000 ed.; and 40 CFR 264.552 through 264.554, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule

change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

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

Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-8-1. Purpose, Scope and Applicability.

(a) The purpose of R315-8 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in R315-8 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in R315-8 or R315-2.

(c) The requirements of R315-8 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under the Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by R315-3. R315-8 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(d) The requirements of R315-8 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under R315-3.

(e) The requirements of R315-8 do not apply to:

(1) The owner or operator of a state approved facility managing municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-2-5, conditionally exempt small quantity generator exemption;

(2) A generator accumulating waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(3) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(4) The owner or operator of a totally enclosed treatment facility. A totally enclosed treatment facility is a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment;

(5) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(6)(i) Except as provided in R315-8-1(e)(6)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste; and

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by R315-8 shall comply with all applicable requirements of R315-8-3 and R315-8-4.

(iii) Any person who is covered by R315-8-1(e)(6)(i), and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-8 and R315-3 for those activities.

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in R315-13, which incorporates by reference 40 CFR 268.40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in R315-8-2.8(b);

(8) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with;

(9) The owner or operator of a facility managing recyclable materials described in R315-2-6, which incorporates by reference 40 CFR 261.6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR 266 subpart C, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G; and

(10) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7), handling the wastes listed below. These handlers are subject to regulation under R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.6.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268.

(g) The requirements of R315-8-2 through 8-4 and R315-8-6.12 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste plan approval because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, R315-8-2 through 8-4 and R315-8-6.12 do apply to the facility subject to the traditional hazardous waste permit). Instead of the requirements of R315-8-2 through 8-4, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Division of Solid and Hazardous Waste using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation waste to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to R315-8 and R315-13, which incorporates by reference 40 CFR 268, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Executive Secretary that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of R315-8;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of R315-8, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under R315-8-9 through 8-15, and R315-8-16, which incorporates by reference 40 CFR 264.600 - 603, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of R315-8-2.9(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d) at the remediation waste management site, according to the requirements of R315-8-2.10;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in R315-8-1.1(g)(2) through (g)(6) and R315-8-1.1(g)(9) through (g)(10); and

(13) Maintain records documenting compliance with R315-8-1.1(g)(1) through (g)(12).

1.2 RELATIONSHIP TO INTERIM STATUS STANDARDS

A facility owner or operator who has fully complied with the requirements for interim status--as defined in section 3005(e) of the Federal RCRA Act and regulations under R315-3-7.1 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his permit application is made, except as provided under R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553.

R315-8-5. Manifest System, Recordkeeping, and Reporting.

5.1 APPLICABILITY

The rules in this section apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-8-1. R315-8-5.2, R315-8-5.4, and R315-8-5.7 do not apply to owners and operators of on-site facilities that do not receive hazardous waste from off-site sources.

R315-8-5.3, incorporates by reference 40 CFR 264.73, July 1, 1992. However, 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where the wastes were generated.

5.2 USE OF MANIFEST SYSTEM

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest, as defined in R315-8-5.4(c), on each copy of the manifest;

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-8-5.4(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the shipping paper signed and dated to the generator; and

Comment: R315-5-2.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

Comment: The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315 -5-8, which incorporates by reference 40 CFR 262, subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

5.3 OPERATING RECORD

The requirements as found in 40 CFR 264.73, [~~1997~~]2000 ed.,[~~as amended by 62 FR 64636, December 8, 1997,~~] are adopted and incorporated by reference.

• • • • • • • • • • •

R315-8-6. Groundwater Protection.

• • • • • • • • • • •

6.12 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the permit in accordance with R315-8-6-12 and R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553. The permit will contain schedules of compliance for the corrective action, where such corrective action cannot be completed prior to issuance of the permit, and assurances of financial responsibility for completing the corrective action.

(c) The owner or operator shall implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis. Assurances of financial responsibility for corrective action shall be provided.

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

R315-8-15. Incinerators.

15.1 APPLICABILITY

(a) The rules in this section apply to owners or operators of facilities that incinerate hazardous waste, as defined in 40 CFR 260.10, except as R315-8-1.1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-8-15.1(b)(2), the standards of R315-8 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d), documenting compliance with the requirements of 307-214-2, which incorporates by reference 40 CFR 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, hazardous waste permit conditions that were based on the standards of R315-8 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of R315-8-15.8 or the applicable requirements of R315-8-1 through R315-8-8, R315-8-18, which incorporates by reference 40 CFR 264 subpart BB, and R315-8-22, which incorporates by reference 40 CFR 264 subpart CC.

([~~b~~]c) After consideration of the waste analysis included with part B of the permit, the Executive Secretary, in establishing the permit conditions, shall exempt the applicant from all requirements of this section except R315-8-15.2, Waste Analysis and R315-8-15.12 Closure.

(1) If the Executive Secretary finds that the waste to be burned is:

(i) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is ignitable, Hazard Code I, corrosive Hazard Code C, or both; or

(ii) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristics of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under R315-2-9, or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by R315-2-9(f)(1)(i), (ii), (iii), (vi), (vii), and (viii) and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which could reasonably be expected to be in the waste.

([~~c~~]d) If the waste to be burned is one which is described by R315-8-15.1(b)(1)(i), (ii), (iii), or (iv) and contains insignificant concentrations of the hazardous constituents listed in R315-50-10, which incorporates by Reference 40 CFR 261 Appendix VIII, then the Executive Secretary may, in establishing permit conditions, exempt the applicant from all requirements of this section except R315-8-15.2, Waste analysis and R315-8-15.12, Closure, after consideration of the waste analysis included with part B of the permit, unless the Executive Secretary finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

([~~d~~]e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-6.3.

. . . . . .

R315-8-16. Miscellaneous Units.

The requirements as found in 40 CFR subpart X sections 264.600 through 264.603, [~~1996~~]2000 ed., are adopted and incorporated by reference.

R315-8-21. Corrective Action for Solid Waste Management Units.

The requirements of 40 CFR subpart S sections 264.552 [~~and~~]through 264.55[~~3~~]4, 2000 ed.,[~~as found in 58 FR 8658, February 16, 1993,~~] are adopted and incorporated by reference with the following exception:

[~~(1)~~]substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste
[~~October 20, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-13-1
Land Disposal Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23415
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies and/or makes technical corrections to the regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, regulations promulgating LDR treatment standards for metal-bearing wastes, as well a amending the LDR treatment standards for soil contaminated with hazardous waste, a revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes, and revised treatment standards for spent aluminum potliners from primary aluminum production.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 268

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-13. Land Disposal Restrictions.
R315-13-1. Land Disposal Restrictions.

The requirements as found in 40 CFR 268, [~~1998~~]2000 ed.,[~~as amended by 63 FR 42110, August 6, 1998, 63 FR 46332, August 31, 1998, 63 FR 47409, September 4, 1998, 63 FR 48124, September 9, 1998, and 63 FR 51254, September 24, 1998,~~] are adopted and incorporated by reference including Appendices IV, VI, VII, VIII, IX, and XI, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).[

~~(b) Substitute the words "plan approval" for all federal references made to "permit."~~]

([~~c~~]b) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

([~~d~~]c) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

([~~e~~]d) The universal wastes listed at 40 CFR 268.1(f) are exempted from the requirements under 40 CFR 268.7 and 268.50, including mercury-containing wastes, as described in R315-16-1.6.

KEY: hazardous waste
[~~December 15, 1999~~]2001 **19-6-106**
Notice of Continuation November 4, 1996 **19-6-105**

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-14-7
Hazardous Waste Burned in Boilers and Industrial Furnaces

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23416
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change exempts secondary lead smelters from all provisions of the boilers and industrial furnaces requirements except for 40 CFR 266.101 and it incorporates the term "treatment" from 266.101(c) to clarify that fuel blending activities that are conducted in units other than 90-day tanks or containers also are subject to full regulation under Title R315.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 266.100 through 266.112, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces.

The requirements as found in 40 CFR 266, Subpart H, 266.100 - 266.112, [~~1998~~]2000 ed.,[~~as amended by 63 FR 42110, August 6, 1998,~~] are adopted and incorporated by reference.

KEY: hazardous waste
[~~December 15, 1999~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-16
Standards for Universal Waste Management

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23417
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates EPA's final requirements for adding spent hazardous waste lamps to the list of universal wastes. The streamlined universal waste management requirements should lead to better management of spent lamps and will facilitate compliance with hazardous waste requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-16. Standards for Universal Waste Management.
R315-16-1. General.

1.1 SCOPE

(a) This rule establishes requirements for managing the following:

(1) Batteries as described in section 1.2;

(2) Pesticides as described in section 1.3;

(3) Thermostats as described in section 1.4; and

(4) Mercury-containing lamps as described in section [~~1.6~~]1.5.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

1.2 APPLICABILITY - BATTERIES

(a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section [~~1.7~~]1.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under R315-14-6.

(2) Batteries, as described in section [~~1.7~~]1.9, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section [~~1.7~~]1.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(2) An unused battery becomes a waste on the date the handler decides to discard it.

1.3 APPLICABILITY - PESTICIDES

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section [~~1.7~~]1.9, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-7. R315-5-7 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2 , including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has

not decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

1.4 APPLICABILITY - MERCURY THERMOSTATS

(a) Thermostats covered under R315-16. The requirements of this section apply to persons managing thermostats, as described in section 1.[~~7~~]9, except those listed in paragraph (b) of this section.

(b) Thermostats not covered under R315-16. The requirements of this section do not apply to persons managing the following thermostats:

(1) Thermostats that are not yet wastes under R315-2. Paragraph (c) of this section describes when thermostats become wastes.

(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste thermostats.

(1) A used thermostat becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused thermostat becomes a waste on the date the handler decides to discard it.

[~~1.5~~]1.8 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section [~~1.7~~]1.9; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section [~~1.7~~]1.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

[~~1.6~~]1.5 APPLICABILITY - [~~MERCURY-CONTAINING~~]LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section [~~1.7~~]1.9, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of [~~this rule~~]R315-16 do not apply to persons managing the following lamps:

(1) Lamps[~~, as described in section 1.7,~~] that are not yet wastes under R315-2[~~, including those that do not meet the criteria for waste generation~~] as provided in paragraph (c) of this section.

(2) Lamps[~~, as described in section 1.7~~], that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in [~~section 2.12.~~]R315-2-9(a) and (d) - (g).

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused lamp becomes a waste on the date the handler decides to discard it.

[~~1.7~~]1.9 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.[

~~(c) "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet, UV, visible, and infra-red, IR, regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.~~]

([~~d~~]c) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

([~~e~~]d) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(e) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively,[~~ or 35,000 or more mercury-containing lamps~~] at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste[~~, or 35,000 mercury-containing lamps,~~] is accumulated.[

~~(g) "Mercury-containing lamp" or "lamp" means an electric lamp in which mercury is purposely introduced by the manufacturer for the operation of the lamp.~~]

([~~h~~]g) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

([~~i~~]h) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

([~~j~~]i) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or thermostats, calculated collectively,[~~or less than 35,000 universal waste lamps,~~] at any time.

([~~k~~]j) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

([~~l~~]k) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

(1) Batteries as described in section 16-1.2;

(2) Pesticides as described in section 16-1.3;

(3) Thermostats as described in section 16-1.4; and

(4) [~~Mercury-containing l~~]Lamps as described in section 16-1.[~~6~~]5.

([~~m~~]l) "Universal Waste Handler":

(1) Means:

(i) A generator, as defined in this section, of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

([~~n~~]m) "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

([~~o~~]n) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

R315-16-2. Standards for Small Quantity Handlers of Universal Waste.

2.1 APPLICABILITY

This section applies to small quantity handlers of universal waste as defined in section 16-1.[~~7~~]9.

2.2 PROHIBITIONS

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-2.8; or by managing specific wastes as provided in section 16-2.4.

2.3 NOTIFICATION

A small quantity handler of universal waste is not required to notify the Division of universal waste handling activities.

2.4 WASTE MANAGEMENT

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, must determine whether the electrolyte or other solid waste exhibit a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) Except for 40 CFR 265.197(c), 265.200, and 265.201, a tank that meets the requirements of R315-7-17, which incorporates 40 CFR part 265, subpart J by reference; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:

(A) Mercury or clean-up residues resulting from spills or leaks; or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.

(ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and must manage it subject to R315-5.

(iii) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) [~~Universal waste l~~]Lamps. A small quantity handler of universal waste must manage[~~ universal waste~~] lamps in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:

(1)[~~(i)~~] A small quantity handler of universal waste [~~must at all times manage any universal waste lamps in a way that minimizes lamp breakage;~~

~~(ii) contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and~~

~~(iii) contain broken lamps in packaging that will minimize releases of lamp fragments and residues.~~]shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2)[~~(i)~~] A small quantity handler of universal waste [~~must immediately contain all releases of residues from hazardous waste lamps;~~

~~(ii) A small quantity handler of universal waste must determine whether any materials resulting from the release are hazardous wastes, and if so, he must manage the waste in accordance with all applicable requirements of R315-1 through R315-101.~~]shall immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

2.5 LABELING/MARKING

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 16-1.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 16-1.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide" or "Universal Waste Pesticides."

(d) Universal waste thermostats, i.e., each thermostat, or a container in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats."

(e) [~~Universal waste lamps, i.e., each lamp, or a container in which the lamps are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury-Containing Lamp" or "Universal Waste Mercury-Containing Lamps."~~]Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

• • • • • • • • • • •

R315-16-3. Standards for Large Quantity Handlers of Universal Waste.

3.1 APPLICABILITY

This section applies to large quantity handlers of universal waste as defined in section 16-1.[~~7~~]9.

3.2 PROHIBITIONS

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-3.8; or by managing specific wastes as provided in section 16-3.4.

3.3 NOTIFICATION

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the [~~Director~~]Executive Secretary, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram[~~-total combined~~] storage limit[~~-for batteries, pesticides, lamps, and thermostats, or 35,000 total storage limit for universal waste lamps only~~].

(2) A large quantity handler of universal waste who has already notified the Division of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in section 16-1.3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler, e.g., batteries, pesticides, thermostats, lamps;

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste[~~, or more than 35,000 universal waste lamps,~~] at one time and the types of universal waste, e.g., batteries, pesticides, thermostats, and lamps, the handler is accumulating above this quantity.

3.4 WASTE MANAGEMENT

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products as a result of the activities listed above, must determine whether the electrolyte or other solid waste, or both, exhibits a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of R315-7-17, which incorporates by reference 40 CFR part 265 subpart J, excluding the requirements of 40 CFR 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Universal waste thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste thermostats provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:

(A) Mercury or clean-up residues resulting from spills or leaks; or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.

(ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and is subject to R315-5.

(iii) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) [~~Universal waste l~~]Lamps. A large quantity handler of universal waste [~~must~~]shall manage[~~ universal waste~~] lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1)(i) A large quantity handler of universal waste [~~must at all times manage any universal waste lamps in a way that minimizes lamp breakage;~~

~~(ii) contain unbroken lamps in packaging that will minimize breakage during normal handling conditions; and~~

~~(iii) contain broken lamps in packaging that will minimize releases of lamp fragments and residues.~~]shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such continers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2)[~~(i)~~] A large quantity handler of universal waste [~~must immediately contain all releases of residues from hazardous waste lamps;~~

~~(ii) A large quantity handler of universal waste must determine whether any materials resulting from the release are hazardous wastes, and if so, he must manage the waste in accordance with all applicable requirements of R315-1 through R315-101.~~]shall immediately clean up and place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

3.5 LABELING/MARKING

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container or tank in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in R315-16-1-3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in R315-16-1-3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides".

(d) Universal waste thermostats, i.e., each thermostat, or a container or tank in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats".

(e) [~~Universal waste lamps, i.e., each lamp, or a container in which the lamps are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury-Containing Lamps".~~]Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

• • • • • • • • • • •

R315-16-4. Standards for Universal Waste Transporters.

4.1 APPLICABILITY

This [~~subpart~~]section applies to universal waste transporters, as defined in R315-16-1.[~~7~~]9.

4.2 PROHIBITIONS

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-4.5.

4.3 WASTE MANAGEMENT

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste, shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste."

4.4 ACCUMULATION TIME LIMITS

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of sections 16-2 or 16-3 of this rule while storing the universal waste.

4.5 RESPONSE TO RELEASES

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of R315-1 through R315-101. If the waste is determined to be a hazardous waste, the transporter is subject to R315-5.

4.6 OFF-SITE SHIPMENTS

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

4.7 EXPORTS

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the transporter is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

R315-16-5. Standards for Destination Facilities.

5.1 APPLICABILITY

(a) The owner or operator of a destination facility as defined in section 16-1.[~~7~~]9 is subject to all applicable requirements of R315-3, R315-7, R315-8, R315-13, R315-14, and the notification requirement under section 3010 of RCRA:

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with 40 CFR 261.6(e)(2), as incorporated by reference at R315-2-6.

5.2 OFF-SITE SHIPMENTS

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The Division will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

5.3 TRACKING UNIVERSAL WASTE SHIPMENTS.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

R315-16-7. Petitions to Include Other Wastes Under R315-16.

7.1 GENERAL

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to [~~this rule~~]R315-16 may petition for a regulatory amendment under this section and R315-2.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Executive Secretary that regulation under the universal waste regulations of R315-16 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by R315-2-17(b). The petition should also address as many of the factors listed in R315-16-7.2 as are appropriate for the waste or waste category addressed in the petition.

(c) The Executive Secretary will evaluate petitions using the factors listed in R315-16-7.2. The Executive Secretary will grant or deny a petition using the factors listed in section 16-7-2. The decision will be based on the weight of evidence showing that regulation under R315-16 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Executive Secretary may request additional information needed to evaluate the merits of the petition.

7.2 FACTORS FOR PETITIONS TO INCLUDE OTHER WASTES UNDER R315-16

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in R315-2-10 of these rules, or if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in R315-2-9. When a characteristic waste is added to the universal waste regulations of R315-16 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in section 16-1.[~~7~~]9 will be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of R315-16;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments, including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities;

(c) The waste or category of waste is generated by a large number of generators, e.g., more than 1,000 nationally, and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste, including packaging, marking, and labeling practices, would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner, e.g., waste management requirements appropriate to be added to R315-16, sections 2.4, 3.4, and 4.3; and applicable Department of Transportation requirements would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under R315-16 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems, e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, and municipal sewer or stormwater systems, to recycling, treatment, or disposal in compliance with Utah Code Annotated 19-6.

(g) Regulation of the waste or category of waste under R315-16 will improve implementation of and compliance with the hazardous waste regulatory program; and

(h) Such other factors as may be appropriate.

KEY: hazardous waste
[~~July 15, 2000~~]2001 19-6-105
Notice of Continuation September 15, 2000 19-6-106

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-50
Appendices

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23418
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change incorporates by reference finalized National Emissions Standards for Hazardous Air Pollutants and adds polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans to the table in 40 CFR 266, Appendix VIII. Also through incorporation by reference, it removes the listing of the waste K140 from 40 CFR 261, Appendix VII, and it removes from 40 CFR 261, Appendix VIII, the waste 2,4,6-Tribromophenol.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 261, Appendix VII, 2000 ed.; 40 CFR 261, Appendix VIII, 2000 ed.; and 40 CFR 266, Appendices I - IX and XI - XIII, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or saving impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-50. Appendices.
R315-50-9. Basis for Listing Hazardous Wastes.

The requirements of 40 CFR 261, Appendix VII, [~~1998~~]2000 ed.,[~~ as amended by 63 FR 42110, August 6, 1998,~~] are adopted and incorporated by reference, with the following additions, excluding the constituents for which K064, K065, K066, K090, and K091 are listed:

1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-50-10. Hazardous Constituents.

The requirements of 40 CFR 261, Appendix VIII, [~~1997~~]2000 ed.,[~~ as amended by 63 FR 24596, May 4, 1998,~~] are adopted and incorporated by reference.

R315-50-16. Appendices to 40 CFR 266.

The requirements of 40 CFR 266, Appendices I - IX and XI - XIII, [~~1998~~]2000 ed.,[~~ as amended by 63 FR 42110, August 6, 1998,~~] are adopted and incorporated by reference.

KEY: hazardous waste

[~~December 15, 1999~~]2001	**19-6-106**
Notice of Continuation March 12, 1997	**19-6-108**
	19-6-105

◆ ◆

Environmental Quality, Solid and Hazardous Waste
R315-101-7
Public Participation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23419
FILED: 01/12/2001, 09:14
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adopt equivalent federal regulations to maintain equivalency with Environmental Protection Agency (EPA) rules and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change is intended to be more consistent with EPA's goal of accelerated corrective action and early public participation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The cost to the State budget will not be effected since the rule change only requires that public involvement begin early in the cleanup process.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or saving impact.
❖OTHER PERSONS: The compliance costs for affected persons will not change since the rule change requires that the State provide for more public involvement in the cleanup process.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change requires that the State provide for more public involvement in the cleanup process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/15/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-7. Public Participation.

(a) The Executive Secretary shall provide [~~public notice, public comment period, and public hearing(s) for the site management plan in accordance with R315-4-1.10 through 1.12 and 1.17.~~]for public participation early in the cleanup action process to involve all aspects of site characterization, data presentation, and risk assessment methodologies. Pertinent work plans shall, at a minimum, contain proposed time frames for public input, either in the form of public meetings, hearings, or repositories. The Executive Secretary shall also provide public notice, public comment period, and public hearing(s) for the site management in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

KEY: hazardous waste
[~~July 15, 2000~~]2001 **19-6-105**
Notice of Continuation June 13, 1997 **19-6-106**

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-303
Coverage Groups

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23420
FILED: 01/16/2001, 09:42
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement a section of Title XIX of the Social Security Act that requires states to provide continued Medicaid assistance to certain eligible families who have increased income from child support payments or from earnings. Qualified families with increased child support payments can receive four months of continued Medicaid and families with increased income can receive up to twelve months of increased Medicaid. Text is deleted in Section R414-303-1 which refers to the substantial gainful activity level as a test for determining when a person meets disability criteria because this language is included in the incorporated materials. The language in Section R414-303-11 is modified to say that the earned income deduction will equal the substantial gainful activity level defined in the Social Security Laws.

SUMMARY OF THE RULE OR CHANGE: This rule adopts the provisions of Section 1931 of Title XIX of the Social Security Act that requires states to provide Medicaid to families who would have qualified for Aid to Families with Dependent Children (AFDC) under the State Plan in effect on July 16, 1996.
(**DAR Note:** A corresponding 120-day (emergency) rule that is effective as of January 3, 2001, is under DAR No. 23396 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Department of Health (DOH) could incur an annual cost of about $200,000 to provide this continued Medicaid assistance. About 120 families would qualify for this coverage each year.

❖LOCAL GOVERNMENTS: This rule does not apply to local governments, therefore, there should be no fiscal impact.
❖OTHER PERSONS: Individuals qualifying for continued Medicaid could anticipate a personal savings because they would not have to pay for medical expenses out of pocket. This personal savings to an eligible family could equal from zero to several thousand dollars a year.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the workforce meets important public needs. Few, if any, will have affordable health insurance in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Christensen at the above address, by phone at (801) 538-3949, by FAX at (801) 538-6952, or by Internet E-mail at cchristen@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

The definitions in R414-1 apply to this rule.

(1) The Department shall provide Medicaid coverage to individuals as described in 42 CFR 435.116, 435.120, 435.122, 435.131 through 435.133, 435.135, 435.138, 435.210, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, 1998 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, 1998 ed., which is incorporated by reference. The Department shall provide coverage to individuals as required by Sections 470 through 479, 1634(b), (c) and (d), 1902(a)(10)(E) and 1902(e) of Title XIX of the Social Security Act.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).[

~~(3) A client who earns more than $700 a month will be denied disability without being reviewed by the State Medicaid Disability Office.~~]

([~~4~~]3) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

([~~5~~]4) The age requirement for A Medicaid is 65 years of age.

([~~6~~]5) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

([~~7~~]6) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act for a given year. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.115, 435.211, 435.217, 435.223, 435.233.9, 435.233.90, and 435.300 through 435.310, 1997 ed., and 45 CFR 211, 1997 ed., [~~which are incorporated by reference. The Department adopts~~]and Title XIX of the Social Security Act as in effect January 1, 2000, Sections 1931(a), (b), and (g), which are incorporated by reference.

(2) [~~"AFDC", as used in this rule, means the eligibility requirements described in Title XIX of the Social Security Act, Sections 1931(a) and (b).~~]The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 1999 that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are [~~AFDC~~]1931 FM qualified,[~~, including families meeting the requirements for a two-parent household,~~] as described in 45 CFR 233.39,[~~, and~~] 233.90, and 233.100, 1998 ed., which are incorporated by reference.

(4) The Department [~~elects to include children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before age 19.~~]provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

[~~(5)~~](7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household[~~a TANF recipient~~] or a 1931 Family Medicaid household, the child [~~will~~]shall be included in the FEP or 1931 FM case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative [~~does~~]is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

([~~6~~]8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

([~~7~~]9) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

([~~8~~]10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

([~~9~~]11) The Department imposes no suitable home requirement.

([~~10~~]12) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

([~~11~~]13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) [~~have an incapacity that is visually observable;~~

~~(d)~~]provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.[

~~(12) To qualify for Medicaid for two-parent families with an unemployed parent, the family must meet the following criteria:~~

~~(a) The parent who has made the most money in the previous 24 months is the primary wage earner.~~

~~(b) The Department shall not require the primary wage earner to have an employment history.~~

~~(c) The primary wage earner must not have refused work in the past 30 days.~~

~~(d) The primary wage earner must have worked less than 100 hours in the last 30 days or must have worked less than 100 hours in the 30 day period immediately preceding a point of eligibility.~~

~~(e) A person who has worked 100 hours or more in one month shall be deemed to be working less than 100 hours if that person is expected to work less than 100 hours next month and that person worked less than 100 hours in the previous two months.~~]

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 1999, which are incorporated by reference.[~~requires compliance with Public Law 74-271(1925).~~]

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months, because they received a FEP Diversion payment.[~~The following definition applies to this section:~~

~~"Good cause" means an acceptable reason or reasons, as allowed by the Department, for not complying with one or more factors of eligibility.~~

~~(3) Individuals receiving 12 month continued medical assistance are required to report quarterly gross earnings and child care expenses paid by the household.~~

~~(4) The parent must have earnings in each month of the first, second and third quarters of the 12 month continued medical assistance period or the parent must have good cause for no earnings.~~

~~(5) The household's gross income, less employment related child care paid by the household, must average 185% or less of the federal poverty level in the second and third quarters.~~

~~(6) New household members may be added to the transitional medical assistance program if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn in the month the household became ineligible for Family Medicaid under Section 1931 of Title XIX of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for members who leave the household.~~

~~(7) Income from new household members must be reported at the time the household files its quarterly report. Income from new household members will be counted, regardless of program participation, if a new household member has legal responsibility for any household member receiving 12 month continued medical assistance.~~]

• • • • • • • • • • •

R414-303-11. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1997 ed., which are incorporated by reference. The Department complies with Public Law 74-271(1915)(c).

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable.

(6) To determine spenddown the Department will deduct [~~$700 of earned income for disabled individuals and $1110 for blind individuals.~~]from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 1999.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for spenddown will be the amount of income that exceeds the personal needs allowance after allowable deductions.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

• • • • • • • • • • •

R414-303-13. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1998 ed., which are incorporated by reference. The Department complies with Public Law 74-271(1915)(c).

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and temporarily extended from December 27, 1998 through March 27, 1999, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to rec[~~t~~]eive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-11, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-11.

• • • • • • • • • • •

KEY: income, coverage groups*
[~~January 26, 2000~~]2001 **26-18**
Notice of Continuation February 6, 1998

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-304
Income and Budgeting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23421
FILED: 01/16/2001, 09:42
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is needed to allow the Department of Health to change the method for determining the amount of business expenses for self-employed individuals who apply for Medicaid. The intent is to liberalize the way countable self-employment income is determined.

SUMMARY OF THE RULE OR CHANGE: For self-employed individuals, the Department of Health will allow a flat rate of 40% of the gross self-employment income as the individual's deduction for business expenses. If the business expenses exceed 40% or the individual wishes to claim actual expenses, the Department of Health will allow the same expenses as are allowed for federal income tax computations. This change will be applied to Medicaid applicants for A, B, and D programs that use a percentage of the federal poverty guidelines as an income limit, for 1931 Family Medicaid, and for Family Medicaid programs that use a percentage of the federal guidelines as an income limit.
(**DAR Note:** A corresponding 120-day (emergency) rule that is effective as of January 3, 2001, is under DAR No. 23397 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5; and Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This rule change will have some net increase of the state funds that would otherwise be expended for the Medicaid program. However, the cost will be minimal. Based upon a report that showed the average amount of allowable expenses for self-employed individuals who were currently receiving Medicaid was more than 40% of their gross self-employment income, we estimate that no more than 30 additional families per year could qualify for Medicaid as a result of this change. We also estimate that the annual cost for the additional 30 families would be approximately $170,640 ($474 per month). The current state share of Medicaid costs is 28.56%. Therefore, the impact on the annual state budget would be approximately $48,734. However, because the eligibility determination process will be simplified, some of this cost will be offset by the value of the time saved by the case managers who determine Medicaid eligibility.
❖LOCAL GOVERNMENTS: This rule has no application to local government, so there should not be a fiscal impact.
❖OTHER PERSONS: Self-employed individuals who apply for Medicaid will be afforded more liberal requirements for Medicaid eligibility. Case managers who determine Medicaid eligibility will save a significant amount of time because of simplified guidelines.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no involvement for affected persons other than that described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the work force meets important public needs. Few, if any, will have affordable health insurance available in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gayleen Henderson at the above address, by phone at (801) 538-6135, by FAX at (801) 538-6952, or by Internet E-mail at ghenders@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-1. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(2) "Basic maintenance standard (BMS)" means the income level for eligibility based on the number of family members who are counted in the medical assistance unit.

(3) "Benefit month" means a month in which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for means tested federal programs.

(5) Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(6) "Poverty-related program" means a medical assistance program that uses a percentage of the federal poverty guideline for the household size involved to determine eligibility

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33(4735) enacted August 5, 1997 which is incorporated by reference. The Department adopts Pub. L. No. 104-204(1805)(c) and (d) enacted September 26, 1996 and 105-306(7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(c) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(d) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI payment plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of child support received a month is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Reimbursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI-Group 2 coverage are not countable income.

(11) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(12) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(13) The following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse shall not be considered in determining Medicaid eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall

be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to the two-person poverty g[~~u~~]uideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B)or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household. SSI income shall not be counted.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled, does not receive Part A Medicare, or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(f) If any parent in the home receives SSI, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(14) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

• • • • • • • • • • •

R414-304-4. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 199[~~8~~]9 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.[~~The cost of doing business shall be deducted from the gross income to determine the countable net income from self-employment.~~]

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for A, B, or D category programs that use a percentage if the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for A, B, or D category programs that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, no deductions shall be allowed for the following business expenses:

(a) transportation to and from work;

(b) payments on the principal for business resources;

(c) net losses from previous [~~periods~~]tax years;

(d) taxes;

(e) money set aside for retirement;

(f) work-related personal expenses;

(g) depreciation.

([~~8~~]10) Net losses of self-employment from the current tax year may be deducted from other earned income.

([~~9~~]11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-5. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B<u>A</u>), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 199[~~8~~]9 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.[

~~(e) "Ratable reduction" means a 25% deduction of net income allowed in the AFDC program as in effect on June 16, 1996.~~]

([~~f~~]e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

([~~g~~]f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

([~~h~~]g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.[~~The AFDC rateable reduction is not allowed for Medicaid.~~]

(5) [~~For Family Institutional Medicaid, the Department shall not allow the AFDC rateable reduction as a deduction.~~]To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for 1931 Medicaid and for Family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for Family Medicaid categories that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

([~~6~~]7) For Family Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per child under age 2 and $175.00 per child age 2 and older may be deducted. A maximum of up to $160.00 per child under age 2 and $140.00 per child age 2 and older a month may be deducted from the earned income of clients working less than 100 hours in a calendar month.

([~~7~~]8) For Family Institutional Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a

month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

([~~8~~]9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

([~~9~~]10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility for FEP cash assistance because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months after the FEP assistance ends to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income and the household has a dependent child living in the home, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

• • • • • • • • • • •

R414-304-10. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for A or D poverty-related Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304–2.

(6) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(7) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

• • • • • • • • • • •

KEY: financial disclosure, income, budgeting
[~~August 2, 2000~~]2001 **26-18-1**
Notice of Continuation February 6, 1998

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-305

Resources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23422
FILED: 01/16/2001, 09:42
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement a section of Title XIX of the Social Security Act that requires states to provide Transitional

Medicaid assistance to certain families who have lost eligibility for various reasons.

SUMMARY OF THE RULE OR CHANGE: This rule implements a Social Security Act directive that describes how a Medicaid client may qualify for Transitional Medicaid assistance after having lost eligibility for regular Medicaid coverage. The rule change allows some leeway in the evaluation of resources and assets.
(**DAR Note:** A 120-day (emergency) rule that is effective as of January 3, 2001, is under DAR No. 23398 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this Social Security Act (SSA) policy could create a cost of $396,000 in general state funds, for a total cost of $1,400,000. This can be covered within existing appropriations.
❖LOCAL GOVERNMENTS: This rule does not apply to local governments, so there would be no fiscal impact.
❖OTHER PERSONS: Clients who have lost eligibility for Medicaid coverage could continue to receive assistance under Transitional Medicaid coverage, made possible by the leeway granted in the evaluation of resources and assets.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than that described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the work force meets important public needs, Few, if any, will have affordable health insurance available in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.

. . . . . .

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

1. The Department adopts 45 CFR 206.10(a)(vii), 233.20(a)(3), and 233.51(b)(2), 1997 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e) of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts Pub. L. No. 105-33(4735) and Pub. L. No. 105-306(7)(b) and (c) which are incorporated by reference.

(2) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the clients own benefit.

(3) The resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(4) Except for the exclusion for a vehicle, [~~T~~]the methodology for treatment of resources is the same for all medically needy and categorically needy individuals.

(5) Medicaid eligibility is based on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

(6) The resources of a sanctioned household member are counted.

(7) The resources of a ward which are controlled by a legal guardian are counted as the ward's resources.

(8) If a resource is potentially available, but a legal impediment to making it available exists, it is not countable until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(9) Except for determining countable resources for 1931 Family Medicaid, [~~T~~]the maximum exemption for the equity of one car is $1,500.

(10) Maintenance items essential for day-to-day living are not countable resources.

(11) Life estates are not countable resources if the life estate is the principal residence of the applicant or recipient. If the life estate is not the principle residence see Subsection R414-305-1(18).

(12) The resources of an ineligible child are not counted.

(13) The value of the lot on which the home stands is not counted if the lot does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is a countable resource.

(14) Water rights attached to a home and lot are not counted.

(15) Any resource, or interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from a resource which is given to the child as unearned income is countable.

(16) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, the director may grant one extension. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(17) Retroactive benefits received from the Social Security Administration are not counted for the first 6 months after receipt.

(18) A $1,500 burial and funeral fund exemption is allowed for each eligible household member. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial.

(19) The resources of an alien's sponsor are not considered available to the alien.

(20) Business resources required for employment or self employment are not counted.

(21) For 1931 Family Medicaid households, the state shall disregard the equity value of one vehicle that is used to provide transportation for the household and meets the definition of a "passenger vehicle" as defined in 26-18-2(6). If the vehicle does not meet the definition of a "passenger vehicle" as defined in 26-18-2(6), the state shall disregard $1500 of the equity of one vehicle used to provide transportation for the household.

. . . . . .

KEY: medicaid
[~~July 22, 1999~~]2001 **26-18**
Notice of Continuation February 6, 1998

Natural Resources, Parks and Recreation
R651-601
Definitions as Used in These Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23423
FILED: 01/16/2001, 11:09
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To correct one spelling error, add a word to make a definition more accurate, and add a definition for a "cooperative agreement" - a document used widely throughout state government.

SUMMARY OF THE RULE OR CHANGE: Under Section R651-601-13, the word "consideration" needs an "o" inserted after the "c". Under Section R651-601-14, the definition given actually is for the Concession "Contract" and not the concession. By adding the word, "Contract", the definition becomes accurately stated. Add Section R651-601-16 to define Cooperative Agreement, in order to give a consistent understanding of its purpose in the state park system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This addition to the definitions is for information purposes and to more clearly define terms used in the state park system. There is no aggregate anticipated cost or savings.

❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.

❖OTHER PERSONS: The public will be able to read and better understand terms used throughout the state park system. There is no aggregate anticipated cost or savings to the "other persons."

COMPLIANCE COSTS FOR AFFECTED PERSONS: Parks continually updates its rules, to define more clearly, rules used by the state park system and read by its users. This rule is being amended for information purposes and therefore there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment will have no fiscal impact on business.

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

Natural Resources
Parks and Recreation
Room 116
1594 West North Temple
PO Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: David K. Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.

. . . . . .

R651-601-14. Concession Contract.

"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

. . . . . .

R651-601-16. Cooperative Agreement.

A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

KEY: parks
[~~July 4, 2000~~]March 6, 2001 **63-11-3**
Notice of Continuation June 29, 1999

Natural Resources, Parks and Recreation

R651-608-2

Events Prohibited without Permit

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23424
FILED: 01/16/2001, 11:09
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of the amount of persons, agencies and groups who engage in conducting commercial activities or scheduled events in the state park system, there should be no misunderstanding as to when a permit is required for this commercial activity or event and what type of permit is needed. This amendment clearly defines the permits required to do commercial activities and events in the state parks.

SUMMARY OF THE RULE OR CHANGE: To replace this one-line definition with a more legal and binding definition for dealing with commercial activities/events and the permits required by the state to conduct such activities/events.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: As stated in the State Park Administrative Guidelines, activity or event user fees should be equivalent to or greater than those generated by normal park operation.
❖LOCAL GOVERNMENTS: Since local government has no authority over State Parks, there is no aggregate anticipated cost or savings.
❖OTHER PERSONS: Other persons will pay the fee required by the park manager for each commercial activity or special event.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Special Use Permits currently require a $50 application fee, which will continue under this change. Actual ongoing costs for concessions and Special Use Permits are based on acceptance of a formal proposal from prospective concessionaires that will not be revised by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change will have no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Parks and Recreation
Room 116
1594 West North Temple
PO Box 146001
Salt Lake City, UT 84114-6001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at (801) 538-7320, by FAX at (801) 537-3144, or by Internet E-mail at nrdomain.dguess@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: David K.Morrow, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-608. Events of Special Uses.
R651-608-2. Events Prohibited without Permit.

[~~Conducting or participating in any event is prohibited unless the proper permit has been obtained in advance.~~]Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks
[~~October 4, 1999~~]March 6, 2001 **63-11-17([~~2~~]1)([~~b~~]a)**
Notice of Continuation June 29, 1999

Natural Resources; Forestry, Fire and State Lands
R652-121
Wildland Fire Suppression Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23425
FILED: 01/16/2001, 11:34
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The existing rule was promulgated in response to 1997 legislation which established the fund. The Division and participating counties now have several years of experience in implementing the rule. The proposed amendments address concerns identified by the Division and participating counties, with the objective of increasing efficiency in fund administration. The proposed amendment responds to repeal of Section 65A-8-6.6.

SUMMARY OF THE RULE OR CHANGE: The formula for determining normal fire suppression costs is changed from a straight seven year average to an average of the last seven years, excluding the high year and low year. This change reflects the philosophy of minimizing the fiscal impact to a county of a single bad fire season, and from the Division's perspective, more accurately reflects what an average year is likely to be. This also allows normal suppression costs to increase at a rate that is more acceptable to the counties and Division. The method for taking into account the effect of inflation on the minimum county fire suppression budget is changed to incorporate actual changes in inflation, rather than continuing with a ten percent threshold before the effect of inflation imposes a budget increase. Technical changes are made in response to a change from a start-up to a maintenance program, and to eliminate duplication of statutory text. The date by which participating counties must make payment to the fund is changed from January 15 to March 15 to reduce the likelihood that a participating county will have to borrow in order to make the payment. The requirement for equity payments is clarified to reduce confusion over the extent of equity payments, and the steps required for re-entry to the fund are clarified. The availability of the fund to cover a county's financial obligations is linked to that county's effort to recover suppression costs for human-caused fires, and the disposal to the fund of recovered costs is specified. The priority ranking for use of the fund is eliminated because counties are obligated to cover all applicable costs irrespective of fund availability. The state's financial obligation if the fund is insufficient to cover all county costs is clarified. The time frame within which presuppression projects must be submitted to the state forester for review is changed to two specific periods rather than continue with an open time frame. The cost-share rates for presuppression projects is specified in order to reflect the priorities the state forester believes are most appropriate, and multi-year projects may be approved. The means of documenting and paying for approved presuppression projects is clarified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-8-6.4

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Interest and earnings from investment of fund monies accrue to the fund. The amount of interest and earnings that would accrue to the fund from annual county payments to the fund between January 15 and March 15 may be lost. This would affect the state budget only to the extent that a slightly larger supplemental appropriation would be needed if the fund is not sufficient to cover relevant suppression costs. The change in the formula for determining normal fire suppression costs may obligate the state for increased suppression costs for two to three years. The actual increase, if any, will strongly be influenced by fire season severity. This likely will be offset by taking into account the effect of inflation on a three-year cycle without the ten percent threshold before county budgets are affected.
❖LOCAL GOVERNMENTS: Savings in the form of reduced interest costs will accrue to participating counties that had to borrow money in order to make the required payment to the fund by January 15. Savings in the form of interest earned on money between January 15 and March 15 may accrue to the other participating counties.
❖OTHER PERSONS: No costs or savings are identified.
COMPLIANCE COSTS FOR AFFECTED PERSONS: County participation in the fund is voluntary. There are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses that provide fire suppression goods and services will be paid for those goods and services irrespective of implementation of the proposed rule. There is no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Forestry, Fire and State Lands
Room 3520
1594 West North Temple
PO Box 145703
Salt Lake City, UT 84114-5703, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Karl Kappe at the above address, by phone at (801) 538-5495, by FAX at (801) 533-4111, or by Internet E-mail at nrslf.kkappe@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Karl Kappe, Strategic Planner

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.
R652-121-100. Authority.

This rule implements Article XVIII of the Utah Constitution and provides for administration of the Wildland Fire Suppression Fund under the authority of Section [~~(~~]65A-8-6.4[~~)~~].

R652-121-200. Normal Fire Suppression Costs.

1. Under the terms of a cooperative fire protection agreement, the state forester shall file an annual budget for operation of a cooperative district with each participating county. The county shall budget an amount for actual fire suppression costs determined to be normal by the state forester.

2. Normal fire suppression costs are defined as the actual costs identified by annual audits of a participating county's financial records and costs paid by the state in the county's behalf under the terms of Sections 65A-8-6 and 65A-8-6.2. The most recent seven-year record will be used. The highest year and lowest year will be deducted and the remaining five years averaged.[~~for wildland fire suppression costs averaged over the previous seven year period. Fire suppression costs which are recovered by a county's efforts to prosecute responsible parties for starting a fire will be deleted from identified costs for determining normal fire suppression costs.~~]

3. The seven years[~~-average~~] of fire suppression costs will be in constant dollars, [~~allowing~~]which allows for the effect of inflation[~~-annually~~].

4. The minimum [~~acceptable amount for normal~~]county budget for fire suppression costs shall be[~~is~~] $5,000. The effect of inflation will be considered every three years[~~;~~]. [~~and if a 10% or greater cumulative effect over this period from inflation has occurred, will be added to determine the minimum acceptable amount for normal fire suppression.~~] An amount equal to the accumulated inflation over this period will be added to this base budget for fire suppression. This time period began January 1, 1999.

R652-121-300. [~~Effective Dates For Implementation, Program Year and Following Year.~~]Annual Sign Up, Effective Payment Period, Annual Assessment Payments and Capitalization.

[~~1. The initial sign up period for the Wildland Fire Suppression Fund will be from November 1, 1997, through May 31, 1998.~~

~~2.~~]1. The annual sign up period[~~-each year after the initial sign up period~~] will be from November 1 through January 10 of the following year.

[~~3. The startup date for the first eligible payments out of the Wildland Fire Suppression Fund will be June 1, 1998.~~

~~4.~~]2. The [~~beginning date for annual~~]effective period for payments out of the Wildland Fire Suppression Fund[~~-in a program year~~] will be[~~begin~~] June 1 [~~of each year and cover expenses incurred-~~]through October 31 of[~~-the previous~~] each year. Should the [~~S~~]state [~~F~~]forester determine the need to extend the[~~-statutable~~] fire season as specified in Section 65A-8-9 due to fire severity, all suppression costs incurred during that extension period [~~may~~]will be eligible. A participating county may petition the [~~S~~]state [~~F~~]forester in writing requesting use of the Wildland Fire Suppression Fund to cover wildland fire suppression costs incurred outside the[~~-indicated~~] normal [~~program year~~]fire season.

[~~5.~~]3. A participating county shall make its assessment fee and any required equity payment[~~-that is required~~] by [~~January~~]March 15 of each year.[

~~6. The following year referenced in subsection 65A-8-6.1(5)(b)(i) is defined as the time period from March 31 of any year, when monies in the fund equaled or exceeded $5,000,000, through January 15 of the next calendar year when payment of the assessment would normally be due. There will be no assessment made to any participating county for that time period.~~]

• • • • • • • • • • •

R652-121-600. Determination of Equity Payments.

1. An equity payment is required if a county elects to participate in the Wildland Fire Suppression Fund after the initial sign up period or to reestablish participation in the fund after a county's participation was terminated at the county's choice or for revocation by the [~~S~~]state [~~F~~]forester. The initial sign up period ended on May 31, 1998.

2. The equity payment is based on what the county's annual assessment fee would have been for the previous three years. [~~and time since initial sign up. If a county chooses to participate in the suppression fund one year after the initial sign up period the county must pay its assessment fee plus an equity payment equal to the assessment. If a county decides to participate in the suppression fund two years after the initial sign up period the county must pay its assessment fee plus an equity payment equal to twice the assessment.~~] In no case will the equity payment exceed three years of assessment.

3. If a county elects[~~decides~~] to [~~participate in~~]join the suppression fund for the first time after May 31, 2000, [~~any time more than two years after the initial sign up period the~~]an equity payment will be required that is equal to the previous three years' assessment fees[~~three times the assessment fee~~].[~~-If a county elects to terminate participation or participation is revoked the county may request to reestablish suppression fund participation in writing to the State Forester and the county will be required to make an equity payment equal to three times the county's assessment fee~~].

4. If a county elects to withdraw from the fund or participation is revoked by the state forester, the county may request permission in writing to re-establish participation. Upon acceptance, the county must make an equity payment equal to what its assessment fees would have been for each year it was out of the fund, not to exceed three years.

R652-121-700. Definition of Eligible Suppression and Presuppression Costs.

1. After the County's approved fire suppression budget[~~-of a county~~] has been depleted, all fire suppression costs that occur [~~in the program year~~]during the fire season, as defined in R652-121-300, directly related to the control of wildfires on forest, range and watershed lands within the unincorporated area of a participating county are eligible for coverage by the Wildland Fire Suppression Fund. [~~Area Managers will certify that a county's fire suppression budget has been depleted.~~]The costs of[~~-fire suppression~~] resources directly involved in[~~-the~~] fire suppression[~~-control~~] efforts [~~and~~]that are paid from the county's wildland fire suppression

account are eligible. The county must notify the [~~S~~]state [~~F~~]forester[~~ or a representative~~] in writing when [~~their~~]the county's budget for normal fire suppression costs has been expended. Area managers will verify to the state forester in writing that a county's fire suppression budget has been depleted.[~~Eligible fire costs will be covered 100% unless prorated pursuant to R652-121-800.~~]

[~~2. Presuppression project costs may be covered only when the proposed project has been submitted in a written plan prior to implementation and approved by the State Forester or an authorized representative. Area Managers will certify the completion of projects and authorize the credit or payment. Presuppression projects that may be eligible for credit or reimbursement include the drafting of ordinances or codes that specify requirements reducing fire hazard, enhancement of local initial attack or sustained attack capabilities and fuel management. Eligible costs for presuppression projects will be reimbursed at 75%.~~]2. A good faith effort must be made by the counties to recover suppression costs for human caused fires. If the county has evidence that indicates a responsible party for a fire and chooses not to proceed, suppression cost for that fire is not eligible for reimbursement from the Wildland Fire Suppression Fund. After consultation between the county and state, the state forester will determine if a good faith effort has been made to recover suppression cost.

3. Wildland Fire suppression costs recovered under Section 65A-3-4 will be repaid to the Wildland Fire Suppression Fund.

4. Presuppression projects may be funded from the Wildland Fire Suppression Fund when approved in advance by the state forester.

[~~**R652-121-800. Fund Disbursement Priority.**~~

~~1. The first priority for disbursements from the Wildland Fire Suppression Fund will be private contractor and vendors. Reimbursement shall be made for 100% of the costs of services provided for suppression action.~~

~~2. The second priority for disbursement will be local government agencies and state agencies. Reimbursement shall be made for 100% of the costs of services provided for suppression action whenever possible. If payments from the Wildland Fire Suppression Fund must be prorated due to insufficient funds to meet all obligations, reimbursement will be done at 75% or less. The remainder of the payment due will be paid the following year when adequate funds are available.~~

~~3. The third priority for disbursements will be federal agencies. Reimbursement shall be made for 100% of the costs of services provided for suppression action, whenever possible. If payments from the Wildland Fire Suppression Fund must be prorated reimbursement will be done at 50% or less. The remainder of the payment due will be paid the following year when adequate funds are available.~~

]

R652-121-900. Clarification of The State's Financial Obligation For Suppression Costs.

If[~~ funds in~~] the Wildland Fire Suppression Fund [~~are~~]is not adequate to pay all eligible fire suppression costs,[~~ and the decision is made not to~~] prorated expenditure payments [~~or if prorating payments still results in inadequate funds,~~]will be made to affected counties. [~~t~~]The remaining [~~costs~~]county liability will be [~~divided equally between the~~]shared between the county and state as provided by the current agreement.

R652-121-1000. Agreement For County Participation in Fund.

Pursuant to [~~s~~]Section 65A-8-6.2 a county legislative body may[~~ annually~~] enter into a written agreement with the [~~S~~]state [~~F~~]forester[~~ if a county chooses~~] to participate in the Wildland Fire Suppression Fund. The written agreement to authorize a county's participation in the fund may be an addendum to the current cooperative wildland fire agreement between a county and the [~~S~~]state [~~F~~]forester.

R652-121-1100. Revocation of Participation in Fund.

1. A county's eligibility to participate in the Wildland Fire Suppression Fund may be revoked for failure to:

(a) pay the required assessment or equity fees when due after being notified by the state forester as specified in Subsection R652-121-1100(2).

(b) provide documented unincorporated acreage figures for [~~the~~]assessment determination[~~.~~]; or

(c) provide total taxable value of unincorporated property as provided annually to the Utah State Tax Commission, Property Tax Division for the assessment determination.

2. The [~~S~~]state [~~F~~]forester will apprise a county in writing of any deficiency in [~~s~~]Subsection R652-121-1100(1) within 30 days following the due date. Deficiencies not remedied within 60 days shall result in revocation of a county's participation in the Wildland Fire Suppression Fund.

R652-121-1200. Definition of [~~Fire Management~~] Presuppression Activities.

[~~Fire management~~]Presuppression activities are those activities related to wildfire prevention, preparedness and [~~prevention undertaken~~]mitigation to reduce[~~ the potential~~] hazard or risk on eligible lands. [~~Fire management~~]Presuppression activities include [~~ordinances, codes, preattack plans for interface areas, hazard assessments, education, wildfire training, establishing new or additional fire suppression resources, enhancing initial attack and sustained attack capabilities, and setting up additional shared resource capabilities~~]fuel treatment, fuel breaks, defensible space, codes and ordinances, presuppression plans, wildland fire protection capability, wildland fire suppression training and other practices which reduce hazards or risks in the eligible areas.

R652-121-1300. [~~Approval~~]Application Process For Presuppression [~~And Fire Management Activities~~]Projects.

1. [~~All~~]Presuppression project proposals[~~ proposed projects for presuppression and fire management activities~~] must be submitted to the state forester in writing prior to implementation[~~ to the State Forester or a representative for review and approval~~]. The written proposal shall detail:

(a) the location of the project,

(b) the purpose of the project,

(c) the methods of accomplishing the project,

(d) the time line for completion of[~~ doing~~] the project,

(e) the resources needed and their availability,

(f) itemized estimated cost for the project, and

(g) other data required by the [~~S~~]state [~~F~~]forester.

[~~2. Approval of presuppression and fire management projects will be provided to the county through the appropriate Area Manager. The county shall be notified within 15 working days of receipt of the written proposal.~~]2. Presuppression project proposals

may be submitted by the counties to the state forester from March 1 through April 1 and August 1 through September 1 of each year. The counties will be notified by May 1 or October 1 of the state forester's decision on the proposed projects.

R652-121-1400. Limitation on Presuppression And Fire Management [~~Activities~~]Incentives.

1. The cost of a county's approved presuppression [~~and fire management activities~~]projects shall not exceed 75% of that county's annual assessment fee for the Wildland Fire Suppression Fund.[~~The costs that may be reimbursed or credited may also be limited by legislative appropriation. The Division shall not authorize credit or payments for more than 75% of all the participating counties' assessment fees.~~]

2. Presuppression projects may be cost shared at a rate between 25% and 75% of the total cost of the project. The cost share rate will be determined by the state forester for each project category on an annual basis. These cost share rates will be communicated to the counties by January 30 of each year

3. Presuppression projects may be proposed for multi-year funded projects. These multi-year funded projects may not exceed three years. Annual cost share payments to a county for a multi-year project may not exceed 75% of that county's annual assessment fee. Project proposals will be developed to reflect annual work plans and payments to complete the project over a specified number of years.

4. The costs that may be reimbursed for presuppression projects may be limited by legislative appropriation. The Division shall not authorize payments for presuppression projects that exceed 75% of the total annual assessment fees paid into the fund by participating counties.

R652-121-1450. Payment for Presuppression Projects.

1. Cost share payment for presuppression projects will be made to the counties when:

(a) the project is completed, inspected and certified by the area manager; and

(b) the county makes a written request for reimbursement with documented costs.

[~~**R652-121-1500. Waiver of a Portion of a County's Financial Fire Suppression Obligation.**~~

~~A county whose portion of wildland fire suppression financial obligation exceeds an amount equal to a one-year 5% increase in property tax collections may petition the State Forester in writing to waive all or a portion of a county's financial obligation for the excess over 5%. The petition for a waiver of fire suppression costs must be made by December 15 of the year in which the costs were incurred.~~

]

• • • • • • • • • • •

KEY: administrative procedure, wildland fire fund
[~~November 25, 1997~~]2001 **65A-8-6.4**

◆ ◆

Professional Practices Advisory Commission, Administration

R686-100

Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23427
FILED: 01/16/2001, 12:06
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendments is to update terminology from "certification" to "licensing," to provide time periods for educator discipline actions to be kept in files, to provide a longer time period for discovery prior to a hearing, and to provide clarity about admissibility of hearsay evidence in hearings.

SUMMARY OF THE RULE OR CHANGE: The amendments make wording changes, add definitions, and make changes in timelines for exchanging information between parties prior to a hearing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no cost or savings. Changes simply provide more clarity and change time periods in the administrative process.

❖LOCAL GOVERNMENTS: There are no cost or savings. Hearings and record keeping are state level functions.

❖OTHER PERSONS: There are no cost or savings. There is only greater clarity as to maintaining disciplinary records and more fairness in exchanging information prior to a hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes provide greater clarity about maintaining disciplinary records and more fairness in exchanging information prior to a hearing.

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

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

Professional Practices Advisory Commission
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or by Internet E-mail at clear@usoe.k12.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Carol B. Lear, Coordinator School Law and Legislation

---

R686. Professional Practices Advisory Commission, Administration.
R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.
R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost [~~certification~~]his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

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

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

[~~D~~]E. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

[~~E~~]F. "Commission" means the Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

[~~F~~]G. "Chair" means the Chair of the Commission.

[~~G~~]H. "Complaint" means a written allegation or charge against an educator.

[~~H~~]I. "Complainant" means the Utah State Office of Education.

[~~I~~]J. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

[~~J~~]K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

[~~K~~]L. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

[~~L~~]M. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

[~~M~~]N. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

[~~N~~]O. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The hearing officer may not be an acting member of the Commission. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

[~~O~~]P. "Hearing Panel" means a hearing officer and three or more members of the Commission agreed upon by the Commission to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

[~~P~~]Q. "Hearing report" means a report prepared by the hearing officer with the assistance of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

[~~Q~~]R. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

[~~R~~]S. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

[~~S~~]T. "Jurisdiction" means the legal authority to hear and rule on a complaint.

U. "Licensing file" means a file that is opened and maintained on an educator following a written complaint to the Commission.

[~~T~~]V. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

[~~U~~]W. "Office" means the Utah State Office of Education.

[~~V~~]X. "Party" means the complainant or the respondent.

[~~W~~]Y. "Recommended disposition" means a recommendation for resolution of a complaint.

[~~X~~]Z. "Request for agency action" means a document prepared by the Executive Secretary containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

[~~Y~~]AA. "Respondent" means the party against whom a complaint is filed.

[~~Z~~]BB. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

[~~AA~~]CC. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

[~~BB~~]DD. "Stipulated agreement" means an agreement between a respondent and the Board or a respondent and the Commission under which disciplinary action against an educator's [~~certification~~]license status has been taken, in lieu of a hearing.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and [~~certification~~]licensing hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission reserves the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct and Disposition by Commission.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The allegations and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Allegations received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: Upon reviewing the request, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action which the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request. The informant shall be served with notice of the action. If the informant believes that the dismissal has been made in error, the informant may request review by the State Superintendent of Public Instruction within 10 days of the mailing date of the Notice of Dismissal. The Superintendent's decision relative to the dismissal is final.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall ask the Investigations Unit to appoint an investigator to gather evidence relating to the allegations. The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations, including to the extent reasonably practicable all persons specifically named in the request for agency action, and prepare a written report of the findings of the investigation. Should the investigator discover evidence of any additional allegation which should have been included in the original request, it may be included in the investigation report. The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission. The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated and a copy of the letter to the employing school district or to the district of most recent employment, with information that an investigation has been initiated.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, the Executive Committee shall recommend to the Commission to dismiss the request for agency action as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend to the Commission to direct the Executive Secretary to prepare and serve a complaint and a copy of these rules upon the respondent. The complaint shall have a heading similar to that used for the request for agency action, and shall include in the body:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Commission believes to be necessary to enable the respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true;

(e) A statement that, if the respondent wishes to respond to the complaint or request a hearing, or discuss a stipulated agreement, a written response shall be filed with the Executive Secretary of the Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111 within 30 days of the date when the complaint was mailed to the respondent, and the potential consequences should the respondent default by failing to respond to the complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's response and hearing request by the Executive Secretary, unless a different date is approved by the Commission for good cause shown or is agreed upon by both parties in writing.

(3) Provide the Commission with notice of the action taken.

F. RESPONSE to the complaint: If the respondent wishes to respond to the complaint, the respondent shall submit a written response signed by the respondent or his representative to the Executive Secretary within 30 days of the mailing date of the complaint. The response may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the complaint;

(2) The names of the parties;

(3) A statement of the relief that the respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the response, or following the passage of the 30 day response period if no response is received, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall then recommend one of the following to the Commission:

(a) Enter a Default: If the respondent fails to file a response, fails to request a hearing, fails to request a stipulated agreement within 30 days after service of the complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend to the Commission to enter the respondent's default and direct the Executive Secretary to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the informant and respondent shall each be served with notice of the dismissal. If the informant believes that the dismissal has been made in error the informant may request review by the State Superintendent of Public Instruction within 10 days of service of notice of the dismissal. The Superintendent's decision concerning the dismissal is final.

(c) Schedule a Hearing: If the respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a stipulated agreement: If the respondent requests to enter into a stipulated agreement, the Executive Secretary shall inform the Commission that the Commission may reject the request or authorize the Executive Secretary to meet with the respondent to prepare recommendations for a stipulated agreement.

(i) A stipulated agreement shall, at minimum, include the following:

(A) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the respondent's response;

(B) A statement that the respondent has chosen to surrender his license rather than contest the charges in a hearing;

(C) A commitment that the respondent shall not provide professional services in a public school in any state or otherwise seek to obtain or use a license in any state unless or until the respondent first obtains a valid Utah license or clearance from the Board to obtain such a license;

(D) Provision for surrender of respondent's license;

(E) Acknowledgment that the surrender and the stipulated agreement will be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(F) Other relevant provisions applicable to the case, such as remediation, counseling, and conditions--if any--under which the respondent could seek restoration of [~~certification~~]license.

(ii) The stipulated agreement shall be forwarded to the Commission for consideration.

(iii) If the Commission rejects the request or the stipulated agreement, the respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(iv) If the Commission accepts the stipulated agreement, the agreement shall be forwarded to the Board for consideration.

(v) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, [~~or~~]a written reprimand[~~.~~], or an agreement not to teach.

(i) Documentation of this disciplinary action shall be sent to the respondent's employing school district or to a district where the respondent finds employment, if so directed.[~~This disciplinary~~

~~action may be appealed to the Superintendent of Public Instruction, consistent with R686-100-18.~~]

(ii) Additional conditions of retention and documentation of disciplinary actions taken by the Commission are provided in R686-100-15.

G. Agreement not to teach:

(1) If compelling circumstances exist, as determined by the Commission, an educator may be offered an agreement not to be employed in the schools of any state without thorough and exhaustive review of all allegations of misconduct.

(2) Compelling circumstances may include a single serious allegation with mitigating circumstances that did not involve students within a long-term otherwise exemplary career.

(3) Other provisions:

(a) The educator shall surrender his educator license to the Commission;

(b) The NASDTEC Clearinghouse shall receive notification of the invalidation of the educator's license;

(c) The educator shall provide annually to the Commission employment and current address information;

(d) Acknowledgment may be made of the existence of the agreement not to teach, otherwise the agreement and its provisions shall remain confidential between the Commission and the educator.

(e) Should the educator breach the agreement not to teach, the agreement shall be voidable at the sole discretion of the Commission and the educator shall be subject to further disciplinary action by the Commission or the Board.

[~~G~~]H. Surrender:

(1) Should an educator surrender his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's [~~certification~~]licensing file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final disposition. Surrender shall include a stipulated agreement or findings of fact to complete the educator's misconduct file. The Board shall also take action to suspend or revoke a license following a surrender.

• • • • • • • • • • •

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 20 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the Commission members on the hearing panel, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 15 days before the date of the hearing, [~~the hearing officer may direct~~]the respondent and the complainant [~~to~~]shall serve the following upon the other party and submit a copy and proof of service to the hearing officer:

(1) A brief [~~setting forth~~]containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall[~~, including~~] include relevant laws, rules, and precedent;

(2) The name of the person who will represent the party at the hearing, a list of witnesses who will be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which will be submitted. If either party fails to comply with identification of witnesses or documentary evidence in a fair and timely manner and consistent with the provisions of this rule, the hearing officer may limit either party's presentation of witnesses and documentary evidence at the hearing.

C. [~~If the hearing officer requests and receives any of the above documents, he~~]Upon receipt of any of the above documents, the hearing officer shall provide a copy of the documents to each of the Commission panel members for review at least one hour prior to the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer under Section R686-100-7A, including time requirements for service, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party.

E. Parties shall provide materials to the hearing officer, panel members and Commission as directed under this rule. Materials shall not be provided directly to panel members until and unless parties are so directed by the hearing officer.

• • • • • • • • • • •

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for [~~certification~~]licensing, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for [~~certification~~]licensing shall bear the burden of proving that [~~certification~~]licensing is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to Commission proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to the Commission in reaching a decision.

E. The applicability and admissibility of evidence consistent with this rule shall be in the sole discretion of the hearing officer.

• • • • • • • • • • •

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. The hearing officer shall afford each party the opportunity to produce witnesses, present evidence, argue, respond, cross-

examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. If a party intends to submit documentary evidence, the party intending to present such evidence shall provide one copy to each member of the hearing panel at least one hour prior to the hearing, and one copy to the opposing party.

D. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

E. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the hearing officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the respondent's presence. If the hearing officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The respondent may not be present during the child's testimony;

(c) The hearing officer shall ensure that the child cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the hearing officer determines that the testimony of a child will be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

F. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

G. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has:

(a) Been convicted of a felony;

(b) Been charged with a felony and subsequently convicted of a lesser related charge pursuant to a plea bargain or plea in abeyance; or

(c) Lost [~~certification~~]of licensing in another state through revocation or suspension, or through surrender of [~~certification~~]a license or allowing a license to lapse in the face of an allegation of misconduct, if the person would not currently be eligible to regain [~~certification~~]licensed in that state.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall prepare, sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: The hearing report shall indicate that respondent's conduct is deemed unprofessional and that the hearing report [~~should~~]shall constitute an official warning. The hearing report [~~shall~~]may indicate if the letter of warning shall be sent to the employing school district, if the letter and notation of warning shall be retained in the respondent's licensing and CACTUS files and for how long the letter and notation of warning shall be retained. If the hearing report has no specified time period for retention of the letter of warning, the letter and notation shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken[~~, but~~] and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(c) Reprimand: The hearing report shall indicate that the respondent's conduct is deemed unprofessional and that the hearing report [~~should~~]shall constitute an official reprimand. The hearing report shall indicate that the employing school board shall [~~be notified~~]receive a copy of the reprimand and that record of the reprimand shall be made on all Utah State Board of Education [~~Certification~~]licensing records maintained in the [~~certification~~]licensing file, to include a notation of the letter of reprimand in the respondent's licensing files[~~ on the respondent~~]. The hearing report [~~should~~]may also include a recommendation for how long the reprimand and the notation of the reprimand shall be maintained in the respondent's file and conditions under which it could be removed. If the hearing report has no specified time period for retention of the letter and notation of reprimand, they shall be retained permanently. The report shall also state that no further action concerning the complaint should be taken and that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(d) It is the respondent's responsibility to petition the Commission for removal of letters of warning and reprimand from his licensing and CACTUS files.

([~~d~~]e) Probation: The hearing report shall determine that the respondent's conduct was unprofessional, that the respondent shall not lose his [~~certification~~]license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the respondent may work in any capacity in education during the probationary period.

A probation may be stated as a plea in abeyance: The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be completed.

([~~e~~]f) Suspension: The hearing report shall recommend to the State Board of Education that the license of the respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of [~~certification~~]his license. The hearing report shall indicate that, should the Board confirm the recommended decision, the respondent shall return the printed suspended license to the State Office of Education and that the [~~Certification~~]Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national [~~certification~~]licensing offices or clearing houses of the suspension in accordance with R277-514.

([~~f~~]g) Revocation: The hearing report shall recommend to the State Board of Education that the license of the respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the respondent shall return the revoked license to the State Office of Education and that the [~~Certification~~]Educator Licensing Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national [~~certification~~]licensing offices or clearing houses of the revocation in accordance with R277-514.

(5) The hearing report may recommend that the warning letter or that the reprimand remain permanently in the [~~certification~~]licensing file. The hearing report shall also provide that the substance of the warning letter or reprimand or terms of probation may be communicated by designated USOE employees to prospective employers upon request.

(6) Notice of the right to appeal; and

(7) Time limits applicable to appeal.

B. Processing the Hearing Report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission as a whole may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(5) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the hearing officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the State Board of Education for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(6) If the Commission determines that procedural errors or that the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

D. Deadlines within this section may be waived by the Commission for good cause shown.

• • • • • • • • • • •

R686-100-17. Appeal.

A. Either party may appeal a final action or recommendation of the Commission by requesting review following the procedures of R277-514-3 or R277-514-4.

B. If a party elects to appeal a Commission recommendation for a suspension of two years or more, or to appeal a Commission determination regarding a licens[~~ur~~]e revocation, the appellant shall follow the procedures of R277-514-3.

C. If a party elects to appeal a Commission recommendation for a suspension of less than two years or for any other issue, dismissal, or failure to discipline, the appeal shall be made directly to the Board under R277-514-4B.

D. The request for appeal shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

• • • • • • • • • • •

R686-100-19. Application for [~~Certification~~]Licensing Following Denial or Loss of [~~Certification~~]License.

A. An individual who has been denied [~~certification~~]licensing or lost his [~~certification~~]license through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider the possibility of a grant or reinstatement of a license.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111, and shall have the following heading:

TABLE 1

Jane Doe, Petitioner vs Utah State Office of Education Respondent.	) Request for Agency Action) Following Denial or Loss of) License) File no.: .....)

B. The body of the request shall contain the following information:

(1) Name and address of the individual requesting review;

(2) Action being requested;

(3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;

(4) Reasons for reconsideration of past disciplinary action;

(5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of [~~certification~~]a license shall fall on the individual seeking the license.

(1) Individuals requesting reinstatement of a suspended license must show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting [~~certification~~]licensing following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for [~~certification~~]licensing as if the individual had never been licensed in Utah or any other state.

(3) Individuals requesting [~~certification~~]licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

• • • • • • • • • • •

R686-100-21. Temporary Suspension of [~~Certification~~]License Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain [~~certification~~]his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the respondent's license pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher certification, conduct*, hearings*
[~~April 3, 2000~~]2001 53A-6-306(1)(a)

Public Safety, Driver License
R708-3
Driver License Point System Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23402
FILED: 01/10/2001, 09:31
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to define provisional license, and to clarify point reductions, and the number of points assigned to drivers for moving traffic violations involving mandatory sanctions.

SUMMARY OF THE RULE OR CHANGE: The following language was needed in the rule to clarify existing procedures as per statute. "The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35. The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 points". Other changes are: Moving violations which require a mandatory sanction by law or rule will be assigned 0 points; and a provisional license is defined as a driving privilege issued by the division to a person younger than 21 years of age and is subject to a separate point system.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53-3-221 and 53-3-209

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no savings or cost impact on the budget because the changes in the rule are procedural and will not require the division to have activities that will create savings or additional costs.
❖LOCAL GOVERNMENTS: There will be no cost impact because local government is not affected by this rule.
❖OTHER PERSONS: There will be no significant cost impact to other individuals because the changes in the rule are procedural.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no significant cost impact to other individuals because the changes in the rule are procedural.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes in this rule will not have any fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Public Safety
Driver License
Calvin Rampton Building
4501 South 2700 West
PO Box 30560
Salt Lake City, UT 84130-0560, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at (801) 965-4456, by FAX at (801) 965-4496, or by Internet E-mail at vroos@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: David A. Beach, Director

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.

. . . . . .

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the Utah Safety Council or the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents,

the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) This rule incorporates by reference the current edition of: "The Code Violation Table", published by the Driver License Division, Utah Department of Public Safety, which is available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560. This document lists the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing [~~the~~]a [~~"D~~]defensive [~~D~~]driving [~~C~~]course[~~"~~] [~~in accordance with~~]as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation[~~; except for alcohol/drug violations;~~] will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) [~~The assigned points for alcohol/drug violations will remain on the driver's driving record for six years. If there are violations by a commercial driver in a commercial vehicle, the alcohol/drug related violations will remain on the driver's driving record for ten years pursuant to 49 CFR 383.51.~~]The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

. . . . . .

R708-3-7. Separate Point System for [~~Drivers Age 20 and Younger~~]Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a [~~series of~~]separate point [~~thresholds are~~]system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for [~~Drivers Age 20 and Younger~~]Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months; and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

. . . . . .

KEY: traffic violations, point-system
[~~October 6, 1997~~]2001 **53-3-209(2)**
Notice of Continuation August 5, 1997 **53-3-221(4)**

◆ ◆

Tax Commission, Administration

R861-1A-36

Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, and 59-12-107

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23403
FILED: 01/10/2001, 12:05
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-107 gives the Tax Commission rulemaking authority to prescribe the form of sales tax returns. Section 59-10-512 requires that all income tax and withholding returns be signed

in accordance with the Tax Commission rules. Section 59-13-206 and 59-13-307 require motor and special fuel returns to be signed.

SUMMARY OF THE RULE OR CHANGE: Proposed amendment indicates that a personal identification number (PIN) by the Tax Commission will be the signature for tax information filed over the Tax Commission authorized Internet web site.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--Internet filings are voluntary.
❖LOCAL GOVERNMENTS: None--Internet filings are voluntary.
❖OTHER PERSONS: None--Internet filings are voluntary.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None--May save time for individual who choose to file tax returns over the Internet.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business as a result of this amendment to provide a PIN for Internet filing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Tax Commission
Administration
Tax Commission Building
210 North 1950 West
Salt Lake City, UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Pam Hendrickson at the above address, by phone at (801) 297-3900, by FAX at (801) 297-3919, or by Internet E-mail at phendric@tax.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, [~~and~~]59-12-107, 59-13-206, and 59-13-307.

A. "Telefile" means the filing of tax returns and tax payment information by telephone.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's telefile system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

[~~December 19, 2000~~]2001	**41-1a-209**
Notice of Continuation May 20, 1997	**59-10-512**
	50-13-206
	59-13-307

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (• • • • • •) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends March 5, 2001. At its option, the agency may hold public hearings.

From the end of the waiting period through June 1, 2001, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Commerce, Occupational and Professional Licensing

R156-11a

Cosmetologist/Barber Licensing Act Rules

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 23260
FILED: 01/11/2001, 10:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of a public hearing and further review by the Division and Cosmetology/Barbering Board, changes are being made with respect to the on-the-job training internship.

SUMMARY OF THE RULE OR CHANGE: In Section R156-11a-702 regarding on-the-job training internship, amendments were made to lower the number of hours of class room study required before a student can intern to 1,000 hours of training, 400 of which must be clinical hours. Also added that an on-the-job training intern while working under the direct supervision of a licensed cosmetologist/barber may apply color.

(**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, 2000, issue of the *Utah State Bulletin*, on page 5. 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 rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-11a-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division will not incur any additional costs as a result of this change in proposed rule beyond that which was identified in the original rule filing.

❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.

❖OTHER PERSONS: The Division anticipates savings to licensed cosmetologist/barbers in that they can utilize on the job training interns to perform basic tasks that are currently being performed by the licensee. Utilizing an on the job training intern may allow the licensee to service more clients, thus increasing their profitability.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division estimates that any costs to persons affected by the adoption of these proposed amendments will be minimal and if anything, will actually result in a savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed amendment will make a larger number of cosmetologist interns available to perform less skilled tasks at a lesser expense, thus freeing fully licensed cosmetologists/barbers to serve more clients in more complex and lucrative procedures. The adoption of this amendment will have a positive fiscal impact upon those engaged in the cosmetology business. Klarice A. Bachman, Interim Executive Director

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

Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Clyde Ormond at the above address, by phone at (801) 530-6254, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.cormond@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: A. Gary Bowen, Director

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetologist/Barber Licensing Act Rules.
R156-11a-702. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least [~~1200~~]1000 hours of the training contracted for with a cosmetology/barber school, of which [~~600~~]400 hours shall be clinical hours.

(2) The on the job training intern must comply with all the rules of conduct, attendance, and provisions for make up work requirements as established in R156-11a-608.

(3) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(4) A licensed cosmetology/barber supervisor shall supervise only one on the job training intern at a time.

(5) An on the job training intern while working under the direct supervision of a licensed cosmetologist/barber may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;

(e) applying color;
([~~e~~]f) remove color by rinsing and shampooing;
([~~f~~]g) remove permanent chemicals;
([~~g~~]h) remove permanent rods;
([~~h~~]i) remove rollers;
([~~i~~]j) apply temporary rinses, reconditioners, and rebuilders;
([~~j~~]k) act as receptionists;
([~~k~~]l) do retail sales;
([~~l~~]m) sanitize the salon;
([~~m~~]o) do inventory and order supplies; and
([~~n~~]p) hand equipment to the cosmetologist/barber supervisor.

(6) The cosmetologist/barber supervisor must have in their possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(7) Credit toward graduation for work as an on the job training intern will not be allowed.

KEY: licensing, barbers, cosmetologists*
[~~2000~~]2001 **58-11a-101**
58-1-106(1)
58-1-202(1)

Commerce, Occupational and Professional Licensing
R156-28
Veterinary Practice Act Rules

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 23309
FILED: 01/11/2001, 10:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: After further Division and Board review, it was determined that one of the definitions being deleted in the original rule filing actually needed to be in the rule.

SUMMARY OF THE RULE OR CHANGE: In Section R156-28-102, Definitions: Added back in the definition "In association with licensed veterinarians."
(**DAR Note:** This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2000, issue of the *Utah State Bulletin*, on page 15. 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 rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-28-1, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will not incur any additional costs as a result of this change in proposed rule beyond that which were identified in the original rule filing.
❖LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments.
❖OTHER PERSONS: No additional costs or savings will be incurred by veterinarians or the general public as a result of the definition being added back in the rule beyond those previously identified in the original rule filing. The definition is needed to clarify the provisions of Subsection 58-28-8(6).
COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs or savings will be incurred by veterinarians or the general public as a result of the definition being added back in the rule beyond those previously identified in the original rule filing. The definition is needed to clarify the provisions of Subsection 58-28-8(6).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will have no fiscal impact upon business. Klarice A. Bachman, Interim Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Daniel T. Jones at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dtjones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: A. Gary Bowen, Director

R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rules.
R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or these rules:

(1) "Direct supervision" means the supervising licensed veterinarian shall be present at the point and time at which professional services are being provided by the student or unlicensed person being supervised.

(2) "In association with licensed veterinarians" as used in Subsection 58-28-8(6) means providing consultation, performing a special procedure, or providing special expertise for a specialized case in the same facility as the Utah licensed veterinarian who requested the professional services.

(3) "Indirect supervision" means the supervising licensed veterinarian shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face-to-face consultation and review of cases at the veterinary facility for the veterinary intern or unlicensed person being supervised.

([~~3~~]4) "NAVLE", as used in these rules, means the North American Veterinary Licensing Examination.

([~~4~~]5) "NBEC", as used in these rules, means the National Board Examination Committee of the American Veterinary Medical Association.

([~~5~~]6) "Practice of veterinary medicine, surgery, and dentistry" means those acts and practices defined in Subsection 58-28-2(4) and includes the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

([~~6~~]7) "Qualified continuing education" means continuing education that meets the standards set forth in Section R156-28-304.

([~~7~~]8) "RACE", as used in these rules, means the Registry of Approved Continuing Education.

([~~8~~]9) "Supervision" as used in Subsection 58-28-8(2) means direct supervision.

([~~9~~]10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(5) in Section R156-28-502.

([~~10~~]11) "Veterinarian-client-patient relationship" means that the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and the need for medical treatment, and the client who is the owner or other caretaker has agreed to follow the instruction of the veterinarian. In addition, there is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically appropriate and timely visits to the premises where the animal is kept. In addition, the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

KEY: veterinary medicine, licensing
[~~2000~~]2001 **58-1-106(1)**
Notice of Continuation May 12, 1997 **58-1-202(1)**
58-28-1

◆ ◆

Environmental Quality, Air Quality
R307-204
Emission Standards: Smoke Management

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 23139
FILED: 01/11/2001, 12:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To respond to public comments.

SUMMARY OF THE RULE OR CHANGE: Section R307-204-2 is clarified to specify that Rule R307-204 does not apply to activities regulated under Rule R307-202, or to activities permitted under other R307 rules. Subsection R307-204-6(1) is deleted so that land managers do not have to notify the executive secretary on the day of prescribed fires of less than 20 acres and generating less than 0.5 tons of particulate matter. These are very small fires and are allowed only when weather conditions ensure that smoke will not affect human health. Other changes are made to clarify the provisions. (**DAR Note:** This change in proposed rule has been filed to make additional amendments to a proposed new rule that was published in the October 1, 2000, issue of the *Utah State Bulletin*, on page 14. 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 rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a) and (c)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Some small savings in not processing notices of small fires.
❖LOCAL GOVERNMENTS: Local governments will not be affected by the rule unless they manage wildlands or use prescribed fire. If they do, they will have some small savings in not having to notify the executive secretary on the day of small prescribed fires.
❖OTHER PERSONS: Some small savings in not having to notify the executive secretary on the day of small prescribed fires.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Some small savings in not having to notify the executive secretary on the day of small prescribed fires.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For the few businesses that are affected by the rule at all, there will be some small savings in not reporting very small fires. Dianne R. Nielson

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Rick Sprott, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-204. Emission Standards: Smoke Management.
R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health[~~, public safety~~] and visibility of prescribed fire and wildland fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

• • • • • • • • • • •

R307-204-4. General Requirements.

(1) Management of On-Going Fires. If, after consultation with the land manager, the executive secretary determines that a prescribed fire, wildland fire used for resource benefits, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting[~~ignition actions on existing prescribed fires, curtail the ignition of~~] additional prescribed fires[~~ and suppress wildland fires~~].

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire[~~ and wildland fire~~] burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all fires including those smaller than 50 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, and ignition method;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires.

[~~(1) For a prescribed fire that covers less than 20 acres per burn and results in air emissions less than 0.5 tons of particulate matter per day, the land manager shall notify the executive secretary by fax, electronic mail or phone on the morning of the prescribed burn.~~

~~(2)~~]A prescribed fire that covers less than 20 acres per burn and results in air emissions less than 0.5 tons of particulate matter per day shall be ignited only when the clearing index is 500 or greater.

R307-204-7. Large Prescribed Fires.

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit to the executive secretary a burn plan, including a fire prescription, two weeks before the beginning of the burn window.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn or results in air emissions of 0.5 tons or more of particulate matter per day, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives;

(c) Any Class I or Non-attainment Area within 15 miles;

(d) Any sensitive receptor and distance and direction in degrees from the project site;

(e) Planned mitigation methods;

(f) The smoke dispersion model used and results;

(g) The estimated amount of total particulate matter anticipated;

(h) A description of how the public will be notified;

(i) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(j) Safety and contingency plans for addressing any smoke intrusions; and

(k) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and[~~, including the provision of 42 U.S.C. 7506(c), indicating that the fire~~] conforms with the applicable State Implementation Plan.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 10:00 a.m. at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves or conditionally approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 8:00 a.m. the following business day.

(4) Daily Emissions Report. By 8:00 a.m. on the day following the prescribed burn, for each day of prescribed fire activity covering 50 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of whether the fire has met the criteria of the fire prescription; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

R307-204-8. Requirements for Wildland Fire with Potential for Use for Resource Benefits.

(1) Burn Approval Required.

(a) The land manager shall notify the executive secretary by the close of business of the first day of any wildland fire that covers 20 acres or more. The notification shall include the following information:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day; and

(vi) Wilderness or Resource Natural Area designation, if applicable.

(b) The following information shall be submitted to the executive secretary 48 hours after submittal of the information required by (1)(a) above:

(i) Burn plan and anticipated emissions;

(ii) A map, preferably with a scale of 1:62,500, depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke management element of the burn plan shall be obtained before managing the fire as a wildland fire used for resource benefits.

(2) Daily Emission Report for Wildland Fire Used for Resource Benefits. By 8:00 a.m. on the business day following fire activity covering 50 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;

(b) UTM coordinate;

(c) Dates and times of the start and end of the burn;

(d) Black acres by wildland fuel type;

(e) Estimated proportion of wildland fuel consumed by wildland fuel type;

(f) Proportion of moisture in the wildland fuel by size class;

(g) Emission estimates;

(h) Level of public interest or concern regarding smoke; and

(i) Conformance to the burn plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the burn plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

KEY: air quality, fire*, smoke*, land manager*
200[θ]1 19-2-104(1)(a)

Insurance, Administration
R590-200
Diabetes Treatment and Management

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 22923
FILED: 01/16/2001, 17:22
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to assimilate input received during the third comment period and hearing.

SUMMARY OF THE RULE OR CHANGE: Section R590-200-3 removed Subsection R590-200-3(3) eliminating allowance of insurers to ask for preauthorizations and formularies. Subsection R590-200-4(b) changes term to fit that used in the insurance code. Subsection R590-200-4(m) eliminates long-term care insurance from "health care insurance" definition. Subsection R590-220-5(2)(c) replaces specific hourly self-management training requirements for the minimum requirement by any of the three organizations listed in Subsection R590-200-5(2)(b). Subsection R590-200-5(3)(i) eliminates the $5,000 limit on insulin pumps which leaves it up to the insurer to determine the value to be covered. Subsection R590-200-5(3) was moved to the beginning of the new Subsection R590-200-5(3). All of the other changes were grammatical in nature.
(**DAR Note:** This is the third change in proposed (CPR) for R590-200. The original proposed new rule upon which the first CPR was based was published in the July 1, 2000, issue of the *Utah State Bulletin* on page 51. The first CPR upon which the second CPR was based was published in the October 1, 2000, *Utah State Bulletin* on page 159. The second CPR upon which this third CPR is based was published in the December 1, 2000, *Utah State Bulletin* on page 60. Underlining in the rule below indicates text that has been added since the publication of the second change in proposed rule mentioned above; strike-out indicates text that has been deleted. You must view all the changes in changes in proposed rules and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-22-626

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The changes in this rule will not require insurers to change their policy rates or forms which would have increased the amount of fees coming into the department, nor will the changes require additional or reduced work on the part of the Department.
❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.
❖OTHER PERSONS: The above changes will not require insurers to change policy forms or increase or decrease policy premiums. It will give insurers more flexibility in the amount they pay in claim costs for the coverage of insulin pumps.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The above changes will not require insurers to change policy forms or increase or decrease policy premiums. It will give insurers more flexibility in the amount they pay in claim costs for the coverage of insulin pumps.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will give insurers greater flexibility over the previous rule wording in the program to be used and hours required for self-management training. It will also provide insurers with greater flexibility in the cost benefit they provide for insulin pumps.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 03/05/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 03/06/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-200. Diabetes Treatment and Management.

• • • • • • • • • • •

R590-200-3. Applicability and Scope.

(1) This rule applies to all [~~Health~~]health care insurance policies sold in Utah.

(2) This rule does not prohibit an insurer from requesting additional information required to determine eligibility of a claim under the terms of the policy, certificate or both, as issued to the claimant.[

~~(3) This rule does not prohibit or require an insurer;~~

~~(a) to request a pre-authorization for comprehensive education benefits if the requirement is stated in the policy.~~

~~(b) the use of formularies and the use of a tiered approach to formularies if the requirement is stated in the policy.~~]

R590-200-4. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:

(1) "Health care insurance" means insurance providing health care benefits or payment of health care expenses incurred, including prescription insurance. Health care insurance does not include accident and health insurance providing benefits for:

(a) dental and vision;

(b) [~~income~~]replacement of income;

(c) short term accident;

(d) fixed indemnity;

(e) credit accident and health;

(f) supplements to liability;

(g) workers compensation;

(h) automobile medical payments;

(i) no fault automobile;

(j) Medicare supplement insurance plans;

(k) equivalent self-insurance;[~~ and~~]

(l) any type of accident and health insurance that is a part of or attached to another type of policy; or

(m) long term care insurance.

(2) "Diabetes" means diabetes mellitus, which is a common chronic, serious systemic disorder of energy metabolism that includes a [~~heterogenous~~]heterogeneous group of metabolic disorders that can be characterized by an elevated blood glucose level. The terms diabetes and diabetes mellitus are considered synonymous and defined to include persons using insulin, persons not using insulin, individuals with elevated blood glucose levels induced by pregnancy, or persons with other medical conditions or medical therapies which wholly or partially consist of elevated blood glucose levels.

(3) "Diabetes self-management training" means a program designed to help individuals to learn to manage their diabetes in an outpatient setting. They learn self-management skills that include making lifestyle changes to effectively manage their diabetes and to avoid or delay the complication, hospitalizations and emergency room visits associated with this illness. This training includes medical nutrition therapy.

(4) "Medical equipment" means non-disposable/durable equipment used to treat diabetes and will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

(5) "Medical nutrition therapy" means the assessment of patient nutritional status followed by therapy including diet modification, planning and counseling services which are furnished by a registered licensed dietitian.

(6) "Medical supplies" means the generally accepted single-use items used to manage, monitor, and treat diabetes, and to administer diabetes specific medications. Medical supplies will be treated per the standard deductibles, copayments, out of pocket maximums and coinsurance of the policy.

R590-200-5. Minimum Standards and General Provisions.

(1) Coverage for the treatment of diabetes is subject to the deductibles, copayments, out-of-[~~pockets~~]pocket maximums and coinsurance of the plan.

[~~(1)(a)~~](2)(a) All health care insurance policies will cover diabetes self-management training and patient management, including medical nutrition therapy, when deemed medically necessary[~~ by~~] and prescribed by an attending physician covered by the plan.

(b) The diabetes self-management [~~Training~~]training services must be provided by a diabetes self-management training program that is accepted by the plan and is:

(i) recognized by the federal Health Care Financing Administration; or

(ii) certified by the Department of Health; or

(iii) approved or accredited by a national organization certifying standards of quality in the provision of diabetes self-management education.

[~~(b)~~](c) Diabetes self-management training programs shall be [~~provide~~]provided upon a health care insurance [~~policy-holder's~~]policyholder's/dependent's diagnosis with diabetes, upon a significant change in a health care insurance [~~policy-holder's~~]policyholder's/dependent's diabetes related condition, upon a change in a health care insurance [~~policy-holder's~~]policyholder's/dependent's diagnostic levels, or upon a change in treatment regimen when deemed medically necessary[~~ by~~] and prescribed by an attending physician covered by the plan. [~~Upon a health care insurance policy-holder's/dependent's diagnosis with diabetes~~]The plan must provide no less than the minimum standards required by the selected self-management training [~~program must provide up to 14-hours of initial training that includes an individualized assessment lasting a minimum of one-hour, training on up to ten diabetes related topics, and a follow-up session lasting a minimum of one hour to assess the health policy-holder's/dependent's progress in managing their diabetes.~~]services provider program.

[~~(2)~~](3) All health care policies will cover the following when deemed medically necessary:

(a) blood glucose monitors, including commercially available blood glucose monitors designed for patients use and for persons who have been diagnosed with diabetes;

(b) blood glucose monitors to the legally blind which includes commercially available blood glucose monitors designed for patient use with adaptive devices and for persons who are legally blind and have been diagnosed with diabetes;

(c) test strips for glucose monitors, which [~~includes~~]include test strips whose performance achieved clearance by the FDA for marketing;

(d) visual reading and urine testing strips, which includes visual reading strips for glucose, urine testing strips for ketones, or urine test strips for both glucose and ketones. Using urine test strips for glucose only is not acceptable as the sole method of monitoring blood sugar levels;

(e) lancet devices and lancets for monitoring glycemic control;

(f) insulin, which includes commercially available insulin preparations including insulin analog preparations available in either vial or cartridge;

(g) injection [~~aides~~]aids, including those adaptable to meet the needs of the legally blind, to assist with insulin injection;

(h) syringes, which includes insulin syringes, pen-like insulin injection devices, pen needles for pen-like insulin injection devices and other disposable parts required for insulin injection aids;

(i) insulin pumps, which includes insulin infusion pumps.[~~ Insulin pumps will be covered under the plan, and the plan must have a minimum of $5000 coverage for these devices;~~]

(j) "medical supplies" for use with insulin pumps and insulin infusion pumps to include infusion sets, cartridges, syringes, skin preparation, batteries and other disposable [~~"medical~~]supplies[~~"~~] needed to maintain insulin pump therapy;

(k) "medical supplies" for use with or without insulin pumps and insulin infusion pumps to include durable and disposable devices to assist with the injection of insulin and infusion sets;

(l) prescription oral agents of each class approved by the FDA for treatment of diabetes, and a variety of drugs, when available, within each class; and

(m) glucagon kits.[

~~(3) When deemed medically necessary.~~]

. . . . . .

KEY: insurance law
2001 **31A-2-201**
31A-22-626

End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (• • • • •) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-303
Coverage Groups

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23396
FILED: 01/03/2001, 12:37
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement a section of Title XIX of the Social Security Act that requires states to provide Transitional Medicaid assistance to certain families who have lost eligibility for various reasons.

SUMMARY OF THE RULE OR CHANGE: This rule implements a Social Security Administration directive that describes how a Medicaid client may qualify for Transitional Medicaid assistance after having lost eligibility for regular Medicaid coverage. The rule change allows some leeway in the evaluation of resources and assets.
(**DAR Note:** A corresponding proposed amendment is under DAR No. 23420 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this Social Security Administration (SSA) directive could create a cost of $396,000 in general state funds, for a total cost of $1,400,000. This can be covered within existing appropriations.
❖LOCAL GOVERNMENTS: This rule does not apply to local governments, so there would be no fiscal impact.
❖OTHER PERSONS: Clients who have lost eligibility for Medicaid coverage could continue to receive assistance under Transitional Medicaid coverage. The total dollar amount is almost impossible to estimate.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than that described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the workforce meets important public needs. Few, if any, will have affordable health insurance available in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The Social Security Administration requires that Transitional Medicaid coverage be allowed for certain clients

who have lost eligibility. Failure to address this directive would be a violation of federal law.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 01/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.

. . . . . .

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.115, 435.211, 435.217, 435.223, 435.233.9, 435.233.90, and 435.300 through 435.310, 1997 ed., and 45 CFR 211, 1997 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Sections 1931(a), (b), and (g), which are incorporated by reference.

(2) [~~"AFDC", as used in this rule, means the eligibility requirements described in Title XIX of the Social Security Act, Sections 1931(a) and (b).~~]The following definitions apply to this rule:

(a) "1931 Family Medicaid (1931 FM)" means a medical assistance program that meets the criteria found in Section 1931 (a) and (b) of the Social Security Act in effect January 1, 1999, that requires the State to use the eligibility criteria of the pre-welfare reform Aid to Families with Dependent Children cash assistance program along with any subsequent amendments made by the state as allowed under Section 1931 of the Act.

(b) "Family Employment Program (FEP)" means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families.

(c) "Diversion" means a one-time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are [~~AFDC~~]1931 FM qualified,[~~, including families meeting the requirements for a two-parent household,~~] as described in 45 CFR 233.39, [~~and~~]233.90, and 233.100, 1998 ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance'

(5) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months, beginning with the month of application for the diversion payment.

([~~4~~]6) The Department elects to include children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before age 19.

([~~5~~]7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently [~~a TANF recipient~~]included in a FEP household or a 1931 Family Medicaid household, the child [~~will~~]shall be included in the case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative [~~does~~]is not the parent of a dependent child in the home who meets deprivation of support criteria and elects to be included in the Medicaid coverage[~~-group~~], the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

([~~6~~]8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

([~~7~~]9) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

([~~8~~]10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

([~~9~~]11) The Department imposes no suitable home requirement.

([~~10~~]12) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

([~~11~~]13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) have an incapacity that is visually observable;

(d) provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

([~~12~~]14) To qualify for Medicaid for two-parent families with an unemployed parent, the family must meet the following criteria:

(a) The parent who has made the most money in the previous 24 months is the primary wage earner.

(b) The Department shall not require the primary wage earner to have an employment history.

(c) The primary wage earner must not have refused work in the past 30 days.

(d) The primary wage earner must have worked less than 100 hours in the last 30 days or must have worked less than 100 hours in the 30 day period immediately preceding a point of eligibility.

(e) A person who has worked 100 hours or more in one month shall be deemed to be working less than 100 hours if that person is expected to work less than 100 hours next month and that person worked less than 100 hours in the previous two months.

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department requires compliance with [~~Public Law 74-271(1925)~~]Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 1999, which are incorporated by reference.

(2) [~~The following definition applies to this section:~~

~~"Good cause" means an acceptable reason or reasons, as allowed by the Department, for not complying with one or more factors of eligibility.~~]The Department shall determine eligibility for Medicaid coverage under 12 Month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months because they received a FEP Diversion payment.[

~~(3) Individuals receiving 12 month continued medical assistance are required to report quarterly gross earnings and child care expenses paid by the household.~~

~~(4) The parent must have earnings in each month of the first, second and third quarters of the 12 month continued medical assistance period or the parent must have good cause for no earnings.~~

~~(5) The household's gross income, less employment related child care paid by the household, must average 185% or less of the federal poverty level in the second and third quarters.~~

~~(6) New household members may be added to the transitional medical assistance program if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn in the month the household became ineligible for Family Medicaid under Section 1931 of Title XIX of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for members who leave the household.~~

~~(7) Income from new household members must be reported at the time the household files its quarterly report. Income from new household members will be counted, regardless of program participation, if a new household member has legal responsibility for any household member receiving 12 month continued medical assistance.~~]

. . . . . .

KEY: income, coverage groups*
January 3, 2001 **26-18**
Notice of Continuation February 6, 1998

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304

Income and Budgeting

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 23397
FILED: 01/03/2001, 12:37
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement a section of Title XIX of the Social Security Act that requires states to provide Transitional Medicaid assistance to certain families who have lost eligibility for various reasons

SUMMARY OF THE RULE OR CHANGE: This rule implements a Social Security Administration directive that describes how a

Medicaid client may qualify for Transitional Medicaid assistance after having lost eligibility for regular Medicaid coverage. This rule change allows some leeway in the evaluation of resources and assets.
(**DAR Note:** A corresponding proposed amendment is under DAR No. 23421 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this Social Security Administration (SSA) policy could create a cost of $396,000 in general state funds, for a total cost of $1,400,000. This can be covered within existing appropriations.
❖LOCAL GOVERNMENTS: This rule does not apply to local governments, so there would be no fiscal impact.
❖OTHER PERSONS: Clients who have lost eligibility for Medicaid coverage could continue to receive assistance under Transitional Medicaid coverage. The total dollar amount is almost impossible to estimate.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than that described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the workforce meets important public needs. Few, if any, will have affordable health insurance available in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The Social Security Administration requires that Transitional Medicaid coverage be allowed for certain clients who have lost eligibility. Failure to address this directive would be a violation of federal law.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 01/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.

. . . . . .

R414-304-4. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 199[~~8~~]9 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment. The cost of doing business shall be deducted from the gross income to determine the countable net income from self-employment. However, no deductions shall be allowed for the following business expenses:

(a) transportation to and from work;
(b) payments on the principal for business resources;
(c) net losses from previous [~~periods~~]tax years;
(d) taxes;
(e) money set aside for retirement;
(f) work-related personal expenses;
(g) depreciation.

(8) Net losses of self-employment from the current tax year may be deducted from other earned income.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-5. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv),

233.20(a)(6)(v)(BA), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 199[8]9 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.[

~~(e) "Ratable reduction" means a 25% deduction of net income allowed in the AFDC program as in effect on June 16, 1996.~~]

([~~f~~]e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

([~~g~~]f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

([~~h~~]g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.[~~The AFDC rateable reduction is not allowed for Medicaid.~~]

(5) For Family Institutional Medicaid, the Department shall not allow the AFDC rateable reduction as a deduction.

(6) For Family Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per child under age 2 and $175.00 per child age 2 and older may be deducted. A maximum of up to $160.00 per child under age 2 and $140.00 per child age 2 and older, [~~a month~~]may be deducted per month from the earned income of clients working less than 100 hours in a calendar month.

(7) For Family Institutional Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(9) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(10) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility for FEP cash assistance because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months after the FEP assistance ends to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the family will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as they meet all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income and the family has a dependent child living in the home, the family will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as they meet all other criteria.

. . . . . .

KEY: financial disclosure, income, budgeting
January 3, 2001 **26-18-1**
Notice of Continuation February 6, 1998

◆ ◆

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-305

Resources

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 23398
FILED: 01/03/2001, 12:37
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to implement a section of Title XIX of the Social Security Act that requires states to provide Transitional

Medicaid assistance to certain families who have lost eligibility for various reasons.

SUMMARY OF THE RULE OR CHANGE: This rule implements a Social Security Administration directive that describes how a Medicaid client may qualify for Transitional Medicaid assistance after having lost eligibility for regular Medicaid coverage. The rule change allows some leeway in the evaluation of resources and assets.
(**DAR Note:** A corresponding proposed amendment is under DAR No. 23422 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this Social Security Administration (SSA) policy could create a cost of $396,000 in general state funds, for a total cost of $1,400,000. This can be covered within existing appropriations.
❖LOCAL GOVERNMENTS: This rule does not apply to local governments, so there would be no fiscal impact.
❖OTHER PERSONS: Clients who have lost eligibility for Medicaid coverage could continue to receive assistance under Transitional Medicaid coverage, made possible by the leeway granted in the evaluation of resources and assets.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than that described in Aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Medicaid coverage for cash assistance recipients after they return to the workforce meets important public needs. Few, if any, will have affordable health insurance available in the first year after finding employment. Without Medicaid coverage, many would be forced to quit their job and return to welfare assistance. The Medicaid program believes that no additional state funds will be needed to continue this back to work initiative. Rod L. Betit

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The Social security Administration requires that Transitional Medicaid coverage be allowed for certain clients who have lost eligibility. Failure to address this directive would be a violation of federal law.

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84414-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Gayle Six at the above address, by phone at (801) 538-6895, by FAX at (801) 538-6952, or by Internet E-mail at gsix@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 01/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.

. . . . . .

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

1. The Department adopts 45 CFR 206.10(a)(vii), 233.20(a)(3), and 233.51(b)(2), 1997 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e) of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts Pub. L. No. 105-33(4735) and Pub. L. No. 105-306(7)(b) and (c) which are incorporated by reference.

(2) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the clients own benefit.

(3) The resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(4) Except for the exclusion for a vehicle, [~~T~~]the methodology for treatment of resources is the same for all medically needy and categorically needy individuals.

(5) Medicaid eligibility is based on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

(6) The resources of a sanctioned household member are counted.

(7) The resources of a ward which are controlled by a legal guardian are counted as the ward's resources.

(8) If a resource is potentially available, but a legal impediment to making it available exists, it is not countable until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(9) Except for determining countable resources for 1931 Family Medicaid, [~~T~~]the maximum exemption for the equity of one car is $1,500.

(10) Maintenance items essential for day-to-day living are not countable resources.

(11) Life estates are not countable resources if the life estate is the principal residence of the applicant or recipient. If the life estate is not the principle residence see Subsection R414-305-1(18).

(12) The resources of an ineligible child are not counted.

(13) The value of the lot on which the home stands is not counted if the lot does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is a countable resource.

(14) Water rights attached to a home and lot are not counted.

(15) Any resource, or interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from a resource which is given to the child as unearned income is countable.

(16) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, the director may grant one extension. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(17) Retroactive benefits received from the Social Security Administration are not counted for the first 6 months after receipt.

(18) A $1,500 burial and funeral fund exemption is allowed for each eligible household member. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial.

(19) The resources of an alien's sponsor are not considered available to the alien.

(20) Business resources required for employment or self employment are not counted.

(21) For 1931 Family Medicaid households, the state shall disregard the equity value of one vehicle that is used to provide transportation for the household and meets the definition of a "passenger vehicle" as defined in 26-18-2(6). If the vehicle does not meet the definition of a "passenger vehicle" as defined in 26-18-2(6), the state shall disregard $1500 of the equity of one vehicle used to provide transportation for the household.

. . . . . .

KEY: medicaid
January 3, 2001 **26-18**
Notice of Continuation February 6, 1998

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Agriculture and Food, Chemistry Laboratory
R63-1
Fee Schedule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23404
FILED: 01/10/2001, 12:35
RECEIVED BY: NL

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 4-2-10 states that "the state chemist shall serve as the chief administrative officer of the Division of Laboratories and shall be responsible for the supervision and administration of all analytical tests required to be performed under this code or under any regulations promulgated pursuant to it."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the fees to be charged for analytical services performed by the Utah Department of Agriculture and Food Laboratory.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Chemistry Laboratory
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dr. David Clark at the above address, by phone at (801) 538-7128, by FAX at (801) 538-7126, or Internet E-mail at dclark@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/10/2001

Agriculture and Food, Plant Industry
R68-1
Utah Bee Inspection Act Governing Inspection of Bees

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23434
FILED: 01/16/2001, 16:03
RECEIVED BY: NL

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 4-11-3 authorizes the Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH

COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the standards for the registration of bee colonies.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Plant Industry
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dick Wilson at the above address, by phone at (801) 538-7114, by FAX at (801) 538-7189, or Internet E-mail at dwilson@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Plant Industry
R68-2
Utah Commercial Feed Act Governing Feed

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23435
FILED: 01/16/2001, 16:03
RECEIVED BY: NL

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 4-12-3 authorizes the Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the standards for the registration of commercial feeds being manufactured or sold in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Plant Industry
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dick Wilson at the above address, by phone at (801) 538-7114, by FAX at (801) 538-7189, or Internet E-mail at dwilson@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Plant Industry
R68-6
Utah Nursery Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23436
FILED: 01/16/2001, 16:03
RECEIVED BY: NL

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 4-15-3 authorizes the Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the standards for labeling of nursery stock being manufactured or sold in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Plant Industry
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dick Wilson at the above address, by phone at (801) 538-7114, by FAX at (801) 538-7189, or Internet E-mail at dwilson@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Plant Industry
R68-10
Quarantine Pertaining to the European Corn Borer

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23437
FILED: 01/16/2001, 16:03
RECEIVED BY: NL

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 4-2-2 authorizes the Department of Agriculture and Food to establish and enforce quarantines.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This quarantine is established to prevent the spread of the European Corn Borer in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Plant Industry
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dick Wilson at the above address, by phone at (801) 538-7114, by FAX at (801) 538-7189, or Internet E-mail at dwilson@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Plant Industry
R68-12
Quarantine Pertaining to Mint Wilt

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23438
FILED: 01/16/2001, 16:03
RECEIVED BY: NL

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 4-2-2 authorizes the Department of Agriculture and Food to establish and enforce quarantines.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This quarantine is established to prevent the spread of the introduction and spread of the Verticillium wilt disease of mint into and within the State of Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Plant Industry
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dick Wilson at the above address, by phone at (801) 538-7114, by FAX at (801) 538-7189, or Internet E-mail at dwilson@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Regulatory Services
R70-610
Uniform Retail Wheat Standards of Identity

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23430
FILED: 01/16/2001, 15:03
RECEIVED BY: NL

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: Sections 4-5-6, 4-2-2, and 4-5-17 authorize the Department of Agriculture and Food to make and enforce regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the labeling standards of wheat being sold in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Becky Shreeve at the above address, by phone at (801) 538-7149, by FAX at (801) 538-4949, or Internet E-mail at bshreeve@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Agriculture and Food, Regulatory Services
R70-620
Enrichment of Flour and Cereal Products

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23432
FILED: 01/16/2001, 15:03
RECEIVED BY: NL

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 4-6-3 authorizes the Department of Agriculture and Food to adopt enrichment and fortification standards and labeling requirements governing the identity and quantity of vitamins and minerals to be added to flour and cereal manufactured or sold in Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the enrichment and fortification standards and labeling requirements for flour and cereal manufactured or sold in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Becky Shreeve at the above address, by phone at (801) 538-7149, by FAX at (801) 538-4949, or Internet E-mail at bshreeve@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 01/16/2001

Governor, Planning and Budget
R361-1
Rule for Implementation of the Resource Development Coordinating Committee Act, 1981

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23408
FILED: 01/11/2001, 15:26
RECEIVED BY: NL

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 63-28a-1 through 63-28a-6, Utah Code, pursuant to Sections 63-40-1 through 63-40-7, which anticipates the need for coordination of efforts regarding state and federal initiatives.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide guidelines for the implementation of Section 63-28a-1, which describes the purposes of the Resource Development Coordinating Committee (RDCC), by establishing procedures for the operation of the Committee, and defines its relationship to the State Planning Coordinator. The governor has determined that the function of the RDCC is important to the state, and shall be administered by the state's Office of Planning and Budget. A recent internal review is being conducted to consider improvements in procedure. If any changes are made, this rule will be amended within the coming months to reflect those changes.

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

Governor
Planning and Budget
Room 116, State Capitol Building
370 North State Street
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kent Bishop at the above address, by phone at (801) 538-1564, by FAX at (801) 538-1547, or Internet E-mail at kbishop@gov.state.ut.us.

AUTHORIZED BY: John Harja, Manager

EFFECTIVE: 01/11/2001

◆ ◆

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food
Animal Industry
No. 23306 (AMD): R58-10. Meat and Poultry Inspection.
Published: December 1, 2000
Effective: January 3, 2001

Commerce
Occupational and Professional Licensing
No. 23295 (AMD): R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal During Pendency of Adjudicative Proceedings, Audit or Investigation.
Published: December 1, 2000
Effective: January 4, 2001

No. 23296 (AMD): R156-26a. Certified Public Accountant Licensing Act Rules.
Published: December 1, 2000
Effective: January 4, 2001

Corrections
Administration
No. 23313 (AMD): R251-102. Release of Communicable Disease Information.
Published: December 1, 2000
Effective: January 4, 2001

Environmental Quality
Drinking Water
No. 23252 (AMD): R309-150. Water System Rating Criteria.
Published: November 15, 2000
Effective: January 4, 2001

Solid and Hazardous Waste
No. 22858 (Second CPR): R315-315-8. Petroleum Contaminated Soils.
Published: December 1, 2000
Effective: January 5, 2001

Human Services
Administration, Administrative Services, Licensing
No. 23121 (CPR): R501-7. Child Placing Agencies.
Published: December 1, 2000
Effective: January 16, 2001

No. 23322 (AMD): R501-8. VII. Section C: Categorical Standards.
Published: December 1, 2000
Effective: January 16, 2001

No. 23323 (AMD): R501-17. Adult Foster Care Standards.
Published: December 1, 2000
Effective: January 16, 2001

Insurance
Administration
No. 23247 (NEW): R590-205. Privacy of Consumer Information Compliance Deadline.
Published: November 15, 2000
Effective: January 11, 2001

Labor Commission
Safety
No. 23310 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.
Published: December 1, 2000
Effective: January 3, 2001

Natural Resources
Oil, Gas and Mining; Oil and Gas
No. 23304 (NEW): R649-4. Determination of Well Categories Under the Natural Gas Policy Act of 1978.
Published: December 1, 2000
Effective: January 3, 2001

Wildlife Resources
No. 23356 (AMD): R657-5. Taking Big Game.
Published: December 15, 2000
Effective: January 16, 2001

No. 23358 (AMD): R657-17. Lifetime Hunting and Fishing License.
Published: December 15, 2000
Effective: January 16, 2001

No. 23360 (AMD): R657-38. Dedicated Hunter Program.
Published: December 15, 2000
Effective: January 16, 2001

No. 23362 (AMD): R657-41. Conservation and Sportsman Permits.
Published: December 15, 2000
Effective: January 16, 2001

No. 23364 (AMD): R657-42. Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
Published: December 15, 2000
Effective: January 16, 2001

Public Safety

Fire Marshal

No. 23339 (AMD): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
Published: December 15, 2000
Effective: January 16, 2001

No. 23367 (AMD): R710-6. Liquefied Petroleum Gas Rules.
Published: December 15, 2000
Effective: January 16, 2001

No. 23340 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: December 15, 2000
Effective: January 16, 2001

Transportation

Program Development

No. 23311 (AMD): R926-6. Transportation Corridor Preservation Revolving Loan Fund.
Published: December 1, 2000
Effective: January 3, 2001

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, 2001, including notices of effective date received through January 16, 2001, the effective dates of which are no later than February 1, 2001. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.state.ut.us/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
AGRICULTURE AND FOOD					
Animal Industry					
R58-10	Meat and Poultry Inspection	23306	AMD	01/03/2001	2000-23/9
Chemistry Laboratory					
R63-1	Fee Schedule	23404	5YR	01/10/2001	2001-3/94
Plant Industry					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	23434	5YR	01/16/2001	2001-3/94
R68-2	Utah Commercial Feed Act Governing Feed	23435	5YR	01/16/2001	2001-3/95
R68-6	Utah Nursery Act	23436	5YR	01/16/2001	2001-3/95
R68-10	Quarantine Pertaining to the European Corn Borer	23437	5YR	01/16/2001	2001-3/96
R68-12	Quarantine Pertaining to Mint Wilt	23438	5YR	01/16/2001	2001-3/96

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Regulatory Service					
R70-610	Uniform Retail Wheat Standards of Identity	23430	5YR	01/16/2001	2001-3/96
R70-620	Enrichment of Flour and Cereal Products	23432	5YR	01/16/2001	2001-3/97
COMMERCE					
Occupational and Professional Licensing					
R156-1-308d	Denial of Renewal of Licensure-Classification of proceedings-Conditional Renewal During Pendency of Adjudicative Proceedings, Audit or Investigation	23295	AMD	01/04/2001	2000-23/9
R156-26a	Certified Public Accountant Licensing Act Rules	23296	AMD	01/04/2001	2000-23/11
CORRECTIONS					
Administration					
R251-102	Release of Communicable Disease Information	23313	AMD	01/04/2001	2000-23/18
ENVIRONMENTAL QUALITY					
Drinking Water					
R309-150	Water System Rating Criteria	23252	AMD	01/04/2001	2000-22/33
Solid and Hazardous Waste					
R315-315-8	Petroleum Contaminated Soils	22858	AMD	see CPR (First)	2000-11/18
R315-315-8	Petroleum Contaminated Soils	22858	CPR (First)	see CPR (Second)	2000-17/67
R315-315-8	Petroleum Contaminated Soils	22858	CPR (Second)	01/05/2001	2000-23/58
GOVERNOR					
Planning and Budget					
R361-1	Rule for Implementation of the Resource Development Co-ordinating Committee Act, 1981	23408	5YR	01/11/2001	2001-3/97
HEALTH					
Health Care Financing, Coverage and Reimbursement Policy					
R414-303	Coverage Groups	23396	EMR	01/03/2001	2001-3/87
R414-304	Income and Budgeting	23397	EMR	01/03/2001	2001-3/89
R414-305	Resources	23398	EMR	01/03/2001	2001-3/91
HUMAN SERVICES					
Administration, Administrative Services, Licensing					
R501-7	Child Placing Agencies	23121	AMD	see CPR	2000-18/65
R501-7	Child Placing Agencies	23121	CPR	01/16/2001	2000-23/59

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R501-8	VII. Section C: Categorical Standards	23322	AMD	01/16/2001	2000-23/33
R501-17	Adult Foster Care Standards	23323	AMD	01/16/2001	2000-23/39
INSURANCE					
Administration					
R590-205	Privacy of Consumer Information Compliance Deadline	23247	NEW	01/11/2001	2000-22/35
LABOR COMMISSION					
Safety					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	23310	AMD	01/03/2001	2000-23/42
NATURAL RESOURCES					
Oil, Gas and Mining; Oil and Gas					
R649-4	Determination of Well Categories Under the Natural Gas Policy Act of 1978	23304	NEW	01/03/2001	2000-23/43
Wildlife Resources					
R657-5	Taking Big Game	23356	AMD	01/16/2001	2000-24/40
R657-13	Taking Fish and Crayfish	23189	AMD	01/02/2001	2000-21/23
R657-17	Lifetime Hunting and Fishing License	23358	AMD	01/16/2001	2000-24/51
R657-38	Dedicated Hunter Program	23360	AMD	01/16/2001	2000-24/53
R657-41	Conservation and Sportsman Permits	23362	AMD	01/16/2001	2000-24/56
R657-42	Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits	23364	AMD	01/16/2001	2000-24/60
PUBLIC SAFETY					
Fire Marshal					
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	23339	AMD	01/16/2001	2000-24/61
R710-6	Liquefied Petroleum Gas Rules	23367	AMD	01/16/2001	2000-24/63
R710-9	Rules Pursuant to the Utah Fire Prevention Law	23340	AMD	01/16/2001	2000-24/64
TRANSPORTATION					
Program Development					
R926-6	Transportation Corridor Preservation Revolving Loan Fund	23311	AMD	01/03/2001	2000-23/55

The Rules Index - by Keyword (Subject) Begins on the Following Page

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ACCOUNTANTS					
Commerce, Occupational and Professional Licensing	23296	R156-26a	AMD	01/04/2001	2000-23/11
ADMINISTRATIVE PROCEDURE					
Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33
BEEKEEPING					
Agriculture and Food, Plant Industry	23434	R68-1	5YR	01/16/2001	2001-3/94
BIG GAME SEASONS					
Natural Resources, Wildlife Resources	23356	R657-5	AMD	01/16/2001	2000-24/40
BOILERS					
Labor Commission, Safety	23310	R616-2-3	AMD	01/03/2001	2000-23/42
BUDGETING					
Health, Health Care Financing, Coverage and Reimbursement Policy	23397	R414-304	EMR	01/03/2001	2001-3/89
CERTIFICATION					
Labor Commission, Safety	23310	R616-2-3	AMD	01/03/2001	2000-23/42
CHEMICAL TESTING					
Agriculture and Food, Chemical Laboratory	23404	R63-1	5YR	01/10/2001	2001-3/94
CHILD PLACING					
Human Services, Administration, Administrative Services, Licensing	23121	R501-7	AMD	see CPR	2000-18/65
	23121	R501-7	CPR	01/16/2001	2000-23/59
CLEARINGHOUSE					
Governor, Planning and Budget	23408	R361-1	5YR	01/11/2001	2001-3/97
COMMUNICABLE DISEASES					
Corrections, Administration	23313	R251-102	AMD	01/04/2001	2000-23/18
COVERAGE GROUPS					
Health, Health Care Financing, Coverage and Reimbursement Policy	23396	R414-303	EMR	01/03/2001	2001-3/87
DIVERSION PROGRAM					
Commerce, Occupational and Professional Licensing	23295	R156-1-308d	AMD	01/04/2001	2000-23/9
DRINKING WATER					
Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ENVIRONMENTAL PROTECTION					
Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33
ETHICS					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
FEED CONTAMINATION					
Agriculture and Food, Plant Industry	23435	R68-2	5YR	01/16/2001	2001-3/95
FINANCIAL DISCLOSURE					
Health, Health Care Financing, Coverage and Reimbursement Policy	23397	R414-304	EMR	01/03/2001	2001-3/89
FIRE PREVENTION					
Public Safety, Fire Marshal	23339	R710-4	AMD	01/16/2001	2000-24/61
FIRE PREVENTION LAW					
Public Safety, Fire Marshal	23340	R710-9	AMD	01/16/2001	2000-24/64
FISH					
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
FISHING					
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
FOOD INSPECTION					
Agriculture and Food, Animal Industry	23306	R58-10	AMD	01/03/2001	2000-23/9
Agriculture and Food, Regulatory Services	23430	R70-610	5YR	01/16/2001	2001-3/96
	23432	R70-620	5YR	01/16/2001	2001-3/97
GAME LAWS					
Natural Resources, Wildlife Resources	23356	R657-5	AMD	01/16/2001	2000-24/40
	23358	R657-17	AMD	01/16/2001	2000-24/51
HUMAN SERVICES					
Human Services, Administration, Administrative Services, Licensing	23121	R501-7	AMD	see CPR	2000-18/65
	23121	R501-7	CPR	01/16/2001	2000-23/59
	23322	R501-8	AMD	01/16/2001	2000-23/33
	23323	R501-17	AMD	01/16/2001	2000-23/39
HUNTING					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
HUNTING AND FISHING LICENSES					
Natural Resources, Wildlife Resources	23358	R657-17	AMD	01/16/2001	2000-24/51
INCOME					
Health, Health Care Financing, Coverage and Reimbursement Policy	23396	R414-303	EMR	01/03/2001	2001-3/87
	23397	R414-304	EMR	01/03/2001	2001-3/89
INSURANCE LAW PRIVACY					
Insurance, Administration	23247	R590-205	NEW	01/11/2001	2000-22/35
LAW					
Public Safety, Fire Marshal	23340	R710-9	AMD	01/16/2001	2000-24/64

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
LICENSING					
Commerce, Occupational and Professional Licensing	23295	R156-1-308d	AMD	01/04/2001	2000-23/9
	23296	R156-26a	AMD	01/04/2001	2000-23/11
Human Services, Administration, Administrative Services, Licensing	23121	R501-7	AMD	see CPR	2000-18/65
	23121	R501-7	CPR	01/16/2001	2000-23/59
	23322	R501-8	AMD	01/16/2001	2000-23/33
	23323	R501-17	AMD	01/16/2001	2000-23/39
LIQUEFIED PETROLEUM GAS					
Public Safety, Fire Marshal	23367	R710-6	AMD	01/16/2001	2000-24/63
MEDICAID					
Health, Health Care Financing, Coverage and Reimbursement Policy	23398	R414-305	EMR	01/03/2001	2001-3/91
MEDICAL RECORDS					
Corrections, Administration	23313	R251-102	AMD	01/04/2001	2000-23/18
NURSERIES (AGRICULTURAL)					
Agriculture and Food, Plant Industry	23436	R68-6	5YR	01/16/2001	2001-3/95
OCCUPATIONAL LICENSING					
Commerce, Occupational and Professional Licensing	23295	R156-1-308d	AMD	01/04/2001	2000-23/9
OIL AND GAS LAW					
Natural Resources; Oil, Gas and Mining; Oil and Gas	23304	R649-4	NEW	01/03/2001	2001-23/43
PEER REVIEW					
Commerce, Occupational and Professional Licensing	23296	R156-26a	AMD	01/04/2001	2000-23/11
PERMITS					
Natural Resources, Wildlife Resources	23364	R657-42	AMD	01/16/2001	2000-24/60
PLANNING					
Governor, Planning and Budget	23408	R361-1	5YR	01/11/2001	2001-3/97
PLANT DISEASES					
Agriculture and Food, Plant Industry	23437	R68-10	5YR	01/16/2001	2001-3/96
	23438	R68-12	5YR	01/16/2001	2001-3/96
PUBLIC BUILDINGS					
Public safety, Fire Marshal	23339	R710-4	AMD	01/16/2001	2000-24/61
RECREATION					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
RESOURCE COORDINATION					
Governor, Planning and Budget	23408	R361-1	5YR	01/11/2001	2001-3/97
RIGHT OF WAY					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
SOLID WASTE MANAGEMENT					
Environmental Quality, Solid and Hazardous Waste	22858	R315-315-8	AMD	see CPR (First)	2000-11/18
	22858	R315-315-8	CPR (First)	see CPR (Second)	2000-17/67
	22858	R315-315-8	CPR (Second)	01/05/2001	2000-23/58
SAFETY					
Labor Commission, Safety	23310	R616-2-3	AMD	01/03/2001	2000-23/42
TRANSPORTATION					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
TRANSPORTATION CORRIDOR PRESERVATION REVOLVING LOAN FUND					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
TRANSPORTATION PLANNING					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
WASTE DISPOSAL					
Environmental Quality, Solid and Hazardous Waste	22858	R315-315-8	AMD	see CPR (First)	2000-11/18
	22858	R315-315-8	CPR (First)	see CPR (Second)	2000-17/67
	22858	R315-315-8	CPR (Second)	01/05/2001	2000-23/58
WATER SYSTEM RATING					
Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33
WILDLIFE					
Natural Resources, Wildlife Resources	23356	R657-5	AMD	01/16/2001	2000-24/40
	23189	R657-13	AMD	01/02/2001	2000-21/23
	23358	R657-17	AMD	01/16/2001	2000-24/51
	23360	R657-38	AMD	01/16/2001	2000-24/53
	23362	R657-41	AMD	01/16/2001	2000-24/56
	23364	R657-42	AMD	01/16/2001	2000-24/60
WILDLIFE LAW					
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
WILDLIFE PERMITS					
Natural Resources, Wildlife Resources	23362	R657-41	AMD	01/16/2001	2000-24/56
YOUTH					
Human Services, Administration, Administrative Services, Licensing	23322	R501-8	AMD	01/16/2001	2000-23/33