

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

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

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SPECIAL NOTICES

GOVERNOR'S EXECUTIVE ORDER: DECLARING A STATE OF EMERGENCY BECAUSE OF FIRE DANGER

Whereas, the danger from wildland fires is extremely high throughout the State of Utah; and

Whereas, numerous wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment; and

Whereas, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended; and

Whereas, immediate action is required to suppress the fires and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment; and

Whereas, these conditions do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981; and

Now, Therefore, I, Michael O. Leavitt, Governor of the State of Utah, by virtue of the power vested in me by the constitution and the laws of the State of Utah;

Do Hereby Order That: It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of September 10, 2003, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

In Testimony, Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah, this 10th day of September, 2003.

(State Seal)

Michael O. Leavitt
Governor

Attest:

Olene S. Walker
Lieutenant Governor

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 September 3, 2003, 12:00 a.m., and September 15, 2003, 11:59 p.m. are included in this, the October 1, 2003, 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 each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least October 31, 2003. 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 January 29, 2004, 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 (2001); 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.

**Commerce, Occupational and
Professional Licensing
R156-1-109
Presiding Officers**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26604

FILED: 09/08/2003, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to clarify the identity of presiding officers for boards of appeal under Subsection 58-56-8(3).

SUMMARY OF THE RULE OR CHANGE: This filing is a companion filing to a simultaneous filing making changes to Rule R156-46b, Division Utah Administrative Procedures Act Rules. The changes proposed in this filing clarify that the Uniform Building Code Commission is the presiding officer for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. Proposed changes further clarify that an administrative law judge is the presiding officer for the roles specified in Subsection 58-1-109(2) associated with a board of appeal. Proposed changes provide that the bureau manager is the presiding officer for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4). Proposed changes also make renumbering changes required by changes being made to R156-46b. (DOPL NOTE: This Section R156-1-109 is also being amended under DAR No. 26549. The proposed amendment in that filing, which was a deletion of Subsection R156-1-109(p) in Subsection (3)(b)(ii), now (iii) in this filing, has been taken out in this filing.) (DAR NOTES: The amendment under DAR No. 26549 was to Rule R156-1 and was published in the September 1, 2003, issue of the Bulletin. The amendment to R156-46b is under DAR No. 26605 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The Division will incur minimal costs, approximately \$150, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ **LOCAL GOVERNMENTS:** The Division anticipates no costs or savings to local governments as the proposed amendments merely clarify the identity of presiding officers for boards of appeal to comport to existing practice.
- ❖ **OTHER PERSONS:** The Division anticipates no costs or savings to other persons as the proposed amendments merely clarify the identity of presiding officers for boards of appeal to comport to existing practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates no costs or savings to affected persons as the proposed amendments merely clarify the identity of presiding officers for boards of appeal to comport to existing practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments are for clarification purposes, and do not add any additional obligation to licensees or the regulated industry. There appears to be no negative fiscal impact to businesses. Klarice A. Bachman, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-109. Presiding Officers.**

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively,

determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (j), (l), (o), (p), ~~[(q)-(r) and (s), and (t)]~~ and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;~~and~~

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

~~(iii)~~ informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (k), (m), and (r).

~~(iv)~~ At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-~~202(1)(o)]201(1)(h) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).~~

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(i) that exceed

the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (o), (p), ~~[(q)-(r) and (s), and (t)]~~ and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding

shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (f), (h), (k), and (r).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary

hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

KEY: diversion programs, licensing, occupational licensing 2003

**Notice of Continuation May 2, 2002
58-1-106(1)(a)**



Commerce, Occupational and Professional Licensing

R156-46b

Division Utah Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 26605
FILED: 09/08/2003, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to correct a conflict between two rules, Subsection R156-56-105(9) which classifies boards of appeal under Subsection 58-56-8(3) as formal adjudicative proceedings, and Subsection R156-46b-202(1)(o) which classifies boards of appeal as informal adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: The filing adds Subsection R156-46b-201(1)(h) which classifies boards of appeal as formal adjudicative proceedings consistent with Subsection R156-56-105(9). This filing deletes Subsections R156-46b-202(1)(o) which classifies boards of appeal under Subsection 58-56-8(3) as informal adjudicative proceedings, and renumbers the remaining subsections.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63-46b-1(6) and 58-1-106(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur minimal costs, less than \$25, to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's budget. The Division anticipates no further costs or savings to the state budget as a result of these proposed amendments as the amendments merely correct a conflict between two sections of rule.

❖ **LOCAL GOVERNMENTS:** The Division anticipates no costs or savings to local governments as a result of these proposed amendments as the amendments merely correct a conflict between two sections of rule.

❖ **OTHER PERSONS:** The Division anticipates no costs or savings to other persons as a result of these proposed amendments as the amendments merely correct a conflict between two sections of rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates no costs or savings to affected persons as a result of these proposed amendments as the amendments merely correct a conflict between two sections of rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments are for clarification purposes, and do not add any additional obligation to licensees or the regulated industry. There appears to be no negative fiscal impact to businesses. Klarice A. Bachman, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rules.
R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b);
- (d) special appeals board held in accordance with Section 58-1-402;
- (e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);~~and~~
- (g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (h) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings which result in the following sanctions:
 - (i) revocation of licensure;
 - (ii) suspension of licensure;
 - (iii) restricted licensure;
 - (iv) probationary licensure;
 - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
 - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
 - (vii) issuance of a public reprimand; and
- (b) unilateral modification of a disciplinary order.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval or denial of application to take a licensure examination;
- (b) disqualification of examination results for cheating on examination;
- (c) request for rescoring of examination;
- (d) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (e) denial of application for initial licensure or relicensure;
- (f) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);
- (g) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;
- (h) approval or denial of application for inactive or emeritus licensure status;
- (i) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;
- (j) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (i);
- (k) approval or denial of request to surrender licensure;
- (l) approval or denial of request for entry into diversion program under Section 58-1-404;
- (m) matters relating to diversion program;
- (n) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);
- (o) ~~board of appeal held in accordance with Subsection 58-56-8(3);~~
- ~~(p)~~ approval or denial of request for modification of disciplinary order;
- ~~(q)~~ declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;
- ~~(r)~~ approval or denial of request for correction of procedural or clerical mistakes;
- ~~(s)~~ approval or denial of request for correction of other than procedural or clerical mistakes; and

([§]) all other requests for agency action not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

- (a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;
- (b) nondisciplinary proceeding which results in cancellation of licensure;
- (c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and
- (d) termination of diversion agreements.

KEY: administrative procedures, government hearings, occupational licensing
~~December 3, 2002~~ **2003**
Notice of Continuation June 11, 2001
63-46b-1(6)
58-1-106(1)(a)



Education, Administration **R277-487** Charter School Revolving Loan Fund

NOTICE OF PROPOSED RULE

(New Rule)
 DAR FILE No.: 26654
 FILED: 09/15/2003, 17:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures and standards for eligible charter schools to apply for and receive loans to pay for the costs of constructing, renovating, and purchasing charter school facilities.

SUMMARY OF THE RULE OR CHANGE: The rule provides for program eligibility, application process, funding criteria, review criteria for a loan, loan approval, property reversion of disposal in the event of charter school revocation or loan default, and repayment provisions. (DAR NOTE: A corresponding 120-day (emergency) rule that was effective September 15, 2003, is under DAR No. 26652 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-21-104

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no anticipated cost/savings to state budget in addition to the 2003 legislative appropriation (from the Minimum School Program which reduces the total amount available to other public schools) of \$1,500,000 in S.B. 57 and \$500,000 in S.B. 3, item 85.

❖ **LOCAL GOVERNMENTS:** Costs to local government entities (charter schools) that may benefit from the loan fund are speculative. It is expected that most loans will be the \$300,000 maximum. The interest rate is tied to what the State

Treasurer would receive on a general obligation bond, which is expected to fluctuate between 2 and 5% of the loan amount.

The repayment—including interest—will be withheld from the monthly state disbursement to the charter schools with outstanding loans. As long as the charter school is in compliance with the law, is in business, the State will receive repayments.

❖ **OTHER PERSONS:** The rule provides for repayment of charter school loans through the monthly disbursements to charter schools by the State. There will be careful scrutiny of a charter school's stability and ability to repay a loan before it is awarded. In the event of default, the charter school's assets will be used to repay the loan, as provided for in the rule. There should be no costs to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule provides for repayment of charter school loans through the monthly disbursements to charter schools by the State. There will be careful scrutiny of a charter school's stability and ability to repay a loan before it is awarded. In the event of default, the charter school's assets will be used to repay the loan, as provided for in the rule. There should be no costs to affected persons.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol 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 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.
R277-487. Charter School Revolving Loan Fund.
R277-487-1. Definitions.

A. "Application" means the application provided by the Loan Committee available from the USOE or online at www.usoe.k12.ut.us.

B. "Board" means Utah State Board of Education.

C. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

D. "Charter school assurances" means written agreements available from the USOE and signed by charter schools that include such written documentation as adequate insurance, civil rights compliance, and compliance with health and safety requirements.

E. "Charter School Revolving Loan Committee (Loan Committee)" is a committee appointed by the Superintendent and comprised of members of the Finance Committee of the Board representing expertise in finance and real-estate, a charter school representative, and a member nominated by the Governor. The Loan Committee shall review applications and recommend approval of loans to the Superintendent.

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

G. "USOE" means Utah State Office of Education.

R277-487-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-21-104 which requires the Board to make rules regarding the school building revolving account that includes charter school building Subaccount; Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities; and, Section 53A-21-104 which creates the Charter School Building Subaccount.

B. The purpose of this rule is to provide procedures and standards for eligible charter schools to apply for and receive loans to pay for the costs of constructing, renovating, and purchasing charter school facilities.

R277-487-3. Program Eligibility.

A. Applicant Eligibility:

(1) Schools shall have received final and official approval of their charters by either a local board of education or the Board and, if chartered by the Board, signed a contract under Section 53A-1a-505(3)(b) prior to making application for a loan.

(a) Schools chartered by a local board of education shall provide a signed copy of the Utah Charter School Assurances contained in the Charter School Application for Board-chartered schools.

(b) Existing schools chartered by the Board shall provide written affirmation that the schools are in compliance with the Utah Charter School Assurances.

(2) Charter schools operating in facilities owned by a school district or other governmental entity (e.g. state, city, county, public institution of higher education) are not eligible for this program unless they are paying reasonable rent for the facility to the governmental owner.

B. Project Eligibility:

(1) Section 53A-21-102 authorizes a loan and application procedure to pay the costs of constructing, renovating, and purchasing charter school facilities.

(2) All applicants shall demonstrate that the construction, renovation or purchase of facilities shall meet all applicable requirements of law, administrative rule, and building codes prior to submitting a loan application.

(3) Compliance includes administrative approval of safety and health requirements and accommodations mandated by the

Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA).

R277-487-4. Application Process.

A. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

B. To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation. The information requested is necessary to evaluate the loan request based on the review criteria.

C. The evaluation/review shall not begin until all information is provided to the satisfaction of the Loan Committee.

D. The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(1) agrees to enter into the loan as provided in the application materials;

(2) agrees to the interest established in R277-487-5E and repayment schedule of the loan designated by the Superintendent;

(3) agrees that loan funds shall only be used for facilities consistent with the purposes of the approved charter;

(4) agrees to any and all audits or financial reviews ordered by the Loan Committee;

(5) agrees to any and all inspections or reviews ordered by the Loan Committee;

(6) specifies the proposed loan repayment period; and

(7) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. If the Loan Committee recommends approval of a loan application, the Loan Committee's recommendation shall include:

(1) the amount of the loan;

(2) the repayment schedule; and

(3) the interest rate to be charged.

R277-487-5. Funding Criteria.

A. The maximum amount per loan is \$300,000.

B. No charter school shall have more than one outstanding loan from the Charter School Revolving Loan Fund at a single time.

C. The loan may not exceed 75% of total project costs.

D. Priority shall be given to projects necessary to address student health and safety issues.

E. Interest shall be charged on the loan at the rate which the State Treasurer would receive for a five (5) year AAA rated general obligation bond at the date of loan recommendation by the Loan Committee.

R277-487-6. Review Criteria for a Loan.

A. The Loan Committee and Superintendent may consider the following and any additional criteria deemed relevant when recommending or approving a charter school's loan application:

(1) Soundness of the financial business plan of the applicant charter school;

(a) Soundness shall be determined by such factors as:

(i) debt to income ratios performed and available with application;

(ii) adequately performed cash flow analysis;

(iii) available and current financial statement analysis; and

(iv) adequate estimate of non-real estate assets.

(b) The Loan Committee may request additional documentation of this criterion, as needed.

(2) Availability of other sources of funding for the charter school;

(3) Geographic distribution of loans made from the Charter School Revolving Loan Fund;

(4) The impact that receipt of funds received pursuant to this section shall have on the charter school's receipt of other private and public financing;

(5) Plans for creative uses of the funds received pursuant to this section, such as loan guarantees or other types of credit enhancements; and

(6) The overall facility needs of the charter school.

B. Priority for loans from the Charter School Revolving Loan Fund shall be given to charter schools in the first year of operation for startup facility and renovation costs.

C. Because charter schools are frequently start-up programs and do not have any financial history, the loan approval process shall rely heavily on acceptable budgets and cash flow statements that demonstrate the school's ability to repay the loans. The proposed budgets cannot show deficits.

D. The loan approval shall rely heavily on the relevant experience and expertise of the management and governing board of the school.

E. The loan approval process disfavors making fundraising too large a portion of the revenues of a charter school. The Loan Committee may question the school's ability to repay the loan if the projected fundraising goal appears unrealistic or accounts for too high a percentage of the charter school's annual operating budget (more than 15 percent). A school may be asked to back up an ambitious fundraising goal with a detailed plan and designated manpower toward this effort.

R277-487-7. Loan Approval.

A. The Superintendent shall have the final authority to approve loans following recommendation by the Loan Committee.

B. The Superintendent's decision is final and is not subject to additional administrative appeals.

C. If an application is refused, a school may reapply only with material changes to the original application and may be considered following other applicants.

R277-487-8. Property Reversion or Disposal in the Event of Charter School Revocation or Loan Default.

A. If the school creates, incurs, or assumes any indebtedness in addition to a loan pursuant to this rule, the charter school shall ensure that the instrument documenting indebtedness attests that repayment rights of any and all creditors are subordinate to repayment rights of the Board.

B. Property purchased by the charter school remains the property of the charter school until such a time as its charter is revoked or the school closes.

C. In the event that a charter school closes, it is the responsibility of the charter school governing body to properly dispose of all school assets. Any assets remaining after satisfying all indebtedness associated with a loan from the Board and the claims of creditors have been satisfied shall revert to the Board and deposited in the revolving loan account.

D. The reversion of such equipment, property, and furnishings shall focus on recoverable assets, but not on intangible or

irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations.

E. The reversion of all property secured with public funds is subject to the complete satisfaction of all lawful liens or encumbrances.

F. Property purchased or leased with state funds by a charter school may be used only for a purpose for which a school district may use school district property.

G. The charter school shall maintain the property and improvements to such a degree that market value is preserved.

R277-487-9. Repayment Provisions.

A. Loans shall be repaid within five years, beginning one year from the date the loan is approved by the Superintendent.

B. Repayments, including interest payments, shall be made in equal monthly installments over the repayment period.

C. Each installment shall be deducted from the monthly funds transfer to the charter school.

D. The amount being repaid (both principal and interest) shall be deposited into the Charter School Building Subaccount in the State Treasury for subsequent loans to future borrowers.

KEY: charter schools, loans, facilities

2003

Art X Sec 3

53A-21-104

53A-1-401(3)



Environmental Quality, Air Quality
R307-101-2
Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26651

FILED: 09/15/2003, 17:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment, along with an amendment to Section R307-415-9, see separate filing in this issue, moves the definition of "Chargeable Pollutant" from Section R307-415-9 to Section R307-101-2.

SUMMARY OF THE RULE OR CHANGE: The definition of "Chargeable Pollutant" is being moved from Section R307-415-9, where it applied only to sources subject to the Title V Operating Permit program, to Section R307-101-2, where it will apply to sources subject to a new version of Rule R307-150, see separate filing in this issue. Rule R307-150 uses this term to replace the term "Regulated Pollutant," which has a broader definition, including explosives and other materials. No additional sources will be affected by moving the definition.

(DAR NOTE: The proposed repeal and reenact of Rule R307-150 is under DAR No. 26648, and the proposed amendment to Section R307-415-9 is under DAR No. 26653 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Division costs for processing information required under Rule R307-415 are not changed by moving the definition of "Chargeable Pollutant" to Section R307-101-2, because no additional sources are affected by moving the definition.

❖ LOCAL GOVERNMENTS: Local government costs for submitting information required under Rule R307-415 are not changed by moving the definition of "Chargeable Pollutant" to Section R307-101-2, because no additional sources are affected by moving the definition.

❖ OTHER PERSONS: Costs for sources regulated by Rule R307-415 are not changed by moving the definition of "Chargeable Pollutant" to Section R307-101-2, because no additional sources are affected by moving the definition.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs for sources regulated by Rule R307-415 are not changed by moving the definition of "Chargeable Pollutant" to Section R307-101-2, because no additional sources are affected by moving the definition.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs for sources regulated by Rule R307-415 are not changed by moving the definition of "Chargeable Pollutant" to Section R307-101-2, because no additional sources are affected by moving the definition.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/22/2003 at 10:00 AM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-101. General Requirements.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the executive secretary, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the executive secretary if the executive secretary determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-401-4(1), Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-6.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Baseline Date":

(1) Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or R307-405 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or R307-405. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during

start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

(1) Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and Escalante Valleys and valleys of the Sevier River Drainage.

(2) Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

(3) Area 3 includes all valleys and areas above 6500 feet above sea level.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description

of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) use of an alternative fuel or raw material by a source:
 - (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
 - (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;
- (7) any change in ownership at a source
- (8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:
 - (a) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and
 - (b) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.
- (9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
 - (a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA

to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to

emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a

subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The executive secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the executive secretary determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the executive secretary shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are

described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10 Particulate matter: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

(2) For purposes of R307-405 it shall also additionally mean for:

(a) A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy;

Beryllium: 0.0004 tpy;

Mercury: 0.1 tpy;

Vinyl Chloride: 1 tpy;

Fluorides: 3 tpy;

Sulfuric acid mist: 7 tpy;

Hydrogen Sulfide: 10 tpy;

Total reduced sulfur (including H₂S): 10 tpy;

Reduced sulfur compounds (including H₂S): 10 tpy;

Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 grams per year (3.5 x 10⁻⁶ tons per year);

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year);

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year);

Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year);

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in (1) and (2) above, any emission rate.

(c) Notwithstanding the rates listed in (1) and (2) above, any emissions rate or any net emissions increase associated with a major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as solvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV-C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), as published on July 1, 1998, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

KEY: air pollution, definitions

[~~July 12, 2001~~2003]

Notice of Continuation June 5, 2003

19-2-104

▼ ————— ▼

Environmental Quality, Air Quality
R307-110-28
Reserved

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE No.: 26616
FILED: 09/10/2003, 17:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new section of Rule R307-110 incorporates by reference a new state implementation plan for regional haze.

SUMMARY OF THE RULE OR CHANGE: The new State Implementation Plan (SIP) for Regional Haze is required under 40 CFR Part 51, Subpart P, Visibility Protection. The Plan includes the strategies recommended in 1996 by the Grand Canyon Visibility Transport Commission to protect visibility in the 16 national parks and wilderness areas on the Colorado Plateau. These strategies include setting a declining regional cap to reduce emissions of sulfur dioxide from sources that emit 100 tons per year or more and backstop market trading program to be triggered only if the cap is exceeded; adding an enhanced smoke management program to reduce emissions from prescribed fire; continued study of the effects of dust from paved and unpaved roads

within and near the parks and wilderness areas; and tracking emissions from point, area, and mobile sources of all pollutants that contribute to visibility impairment. Additionally, the Board is seeking comment on an alternative version of Part F of the SIP, which the Board may choose to substitute if EPA makes final a change in the federal regional haze rule that was published at 68 FR 39842, July 3, 2003. Also available are documents that may be helpful to commenters, including further information about the enhanced smoke management plan and the annual emission goal, as well as a report to EPA and the public on implementation of other recommendations made by the Grand Canyon Visibility Transport Commission that are not required under the federal regional haze rule. All of the above documents are available at the Division of Air Quality and at: <http://www.airquality.utah.gov/SIP/Regionalhazesip/regionalhaze.htm>.

Also see other changes filed under Rule R307-250, a new rule specifying the operation of the backstop trading program if it is ever triggered; amendments to R307-204 to add the new smoke management requirements; and emission reporting requirements that are found in the reenacted Rule R307-150 for large sources of sulfur dioxide. (DAR NOTE: The proposed new rule of R307-250 is under DAR No. 26615, the amendment to Rule R307-204 is under DAR No. 26617, and the repeal and reenact of Rule R307-150 is under DAR No. 26648 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(q)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: State Implementation Plan Section XX, Regional Haze

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All sources in the sulfur dioxide reduction program already are required to hold Operating Permits under Title V of the Clean Air Act, and any costs to implement the Regional Haze SIP will be covered by the fees that the sources pay. Costs to implement the enhanced smoke management program will be minimal, as it will be a small add-on to the existing program.

❖ LOCAL GOVERNMENTS: Only local governments that operate sources of 100 tons per year or more of sulfur dioxide will be affected by this SIP. It is not anticipated that they will incur any additional costs.

❖ OTHER PERSONS: Sources affected by this SIP are those that emit 100 tons per year or more of sulfur dioxide and land managers that use prescribed fire for resource benefits. Sources emitting 100 tons per year or more of sulfur dioxide have several options for reducing their emissions, such as adding pollution control equipment, retiring the source, or buying emission credits from other sources that reduce their emissions. The SIP does not specify any particular control measure for any source. The biggest decline in the regional cap on sulfur dioxide emissions comes after 2013, giving sources ample time to plan how to make reductions. Costs for each Utah source are not known, as sources in Oregon, Wyoming, Arizona and New Mexico will be part of the regional program. For sources subject to federal reporting under the

Acid Rain program, the same inventory information will be used by DAQ to satisfy the inventory requirement. For land managers, there will be some cost for implementing alternatives to the use of prescribed fire and for taking actions to reduce emissions where fire is used. It is impossible to estimate those costs as they will vary from one land parcel to another and from one year to another. The benefit resulting from this SIP will be perceptibly improved visibility at the Class I areas, thus protecting and improving the vistas that attract businesses, employees and tourists to Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Sources affected by this SIP are those that emit 100 tons per year or more of sulfur dioxide, and land managers that use prescribed fire for resource benefits. Sources emitting 100 tons per year or more of sulfur dioxide have several options for reducing their emissions, such as adding pollution control equipment, retiring the source, or buying emission credits from other sources that reduce their emissions. The SIP does not specify any particular control measure for any source. The biggest decline in the regional cap on sulfur dioxide emissions comes after 2013, giving sources ample time to plan how to make reductions. Costs for each Utah source are not known, as sources in Oregon, Wyoming, Arizona and New Mexico will be part of the regional program. For sources subject to federal reporting under the Acid Rain program, the same inventory information will be used by DAQ to satisfy the inventory requirement. For land managers, there will be some cost for implementing alternatives to the use of prescribed fire and for taking actions to reduce emissions where fire is used. It is impossible to estimate those costs as they will vary from one land parcel to another and from one year to another. The benefit resulting from this SIP will be perceptibly improved visibility at the Class I areas, thus protecting and improving the vistas that attract businesses, employees and tourists to Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Setting a declining regional cap on sulfur dioxide emissions and putting in place a backstop market trading program in case the cap is exceeded is the most cost-effective way to get reductions in those emissions, as demonstrated by analysis conducted by the Grand Canyon Visibility Transport Commission in the mid-1990s and by the Western Regional Air Partnership more recently. Beneficiaries of this SIP are those businesses that depend on tourists who come to Utah to enjoy the magnificent visibility we have.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/23/2003 at 7:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT; 10/28/2003 at 7:00 PM, St George City Council Chamber, 175 E 200 N, St George, UT; and 10/30/2003 at 7:00 PM, Grand County Council Chamber, 125 E Center St, Moab, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-28. ~~[Reserved]~~Regional Haze.
~~[Reserved.]The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 3, 2003, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.~~

KEY: air pollution~~[, small-business assistance program], particulate matter, ozone~~
~~[September 5, 2002]~~**2003**
Notice of Continuation March 27, 2002
19-2-104(3)(e)

Environmental Quality, Air Quality

R307-150

Emission Inventories

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 26648
FILED: 09/15/2003, 17:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reenacted Rule R307-150 replaces the old Rules R307-150, R307-155, and R307-158, and meets the requirements of the federal Consolidated Emissions Reporting Rule (67 FR 39602) (see separate filings in this issue.)

SUMMARY OF THE RULE OR CHANGE: The inventory requirements previously found in Rules R307-150, R307-155, and R307-158 are found in the reenacted Rule R307-150 and are organized so that any single source of air pollution is subject to no more than two sections of the rule. This makes it easier for sources to determine their requirements. Section R307-150-4 includes the inventory requirements for large sources of sulfur dioxide that are subject to the State Implementation Plan (SIP) for Regional Haze that is expected to be incorporated by reference at R307-110-28 (see separate filing in this issue). The biggest change affects sources that are

subject to the provisions of Title V of the Clean Air Act and are located outside Weber, Davis, Salt Lake, and Utah Counties; these sources may now provide summaries of information about each species of emissions instead of detailed information. Another difference is that the new federal rule (67 FR 39602) requires that emissions of ammonia and particulate matter of 2.5 microns or smaller (PM2.5) must be included in inventories. Since emissions of ammonia and PM2.5 in calendar 2002 must be reported to EPA, the Division of Air Quality (DAQ) will request that information from relevant sources. The federal rule creates a new category called "large major sources" that must report their emissions annually. Finally, the old rule required sources to report annually instead of reporting every third year if their emissions increased or decreased by five percent or more; the new rule requires reporting annually only when emissions change by 40 tons or more in one year. (DAR NOTE: The proposed repeal of Rule R307-155 is under DAR No. 26649, the proposed repeal of Rule R307-158 is under DAR No. 26650, and the proposed amendment to R307-110-28 is under DAR No. 26616 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Cost information is uncertain at this time. On the one hand, it will take DAQ staff less time to process the inventory because approximately 270 sources that are subject to Title V and are located outside Weber, Davis, Salt Lake, and Utah Counties will submit less detailed information. On the other hand, staff will have to process ammonia and PM2.5 information from approximately 260 sources.
- ❖ LOCAL GOVERNMENTS: The only local governments affected by the changes will be those who operate non-major facilities that are subject to Title V requirements and are located outside Weber, Davis, Salt Lake, and Utah Counties; they will be able to submit less detailed information and thus will achieve some savings.
- ❖ OTHER PERSONS: Non-major sources subject to Title V requirements that are located outside Weber, Davis, Salt Lake, and Utah Counties will be able to reduce the costs of collecting and reporting information about their emissions of hazardous air pollutants, because they will be able to report summary information about each hazardous pollutant rather than detailed information about individual emission points within their installations. It is not known how great that savings will be. On the other hand, major sources located outside Weber, Davis, Salt Lake, and Utah Counties and inventoried sources within those counties will now have to collect and report information about their emissions of ammonia and PM2.5, and the cost to do that is not known.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Non-major sources subject to Title V requirements that are located outside Weber, Davis, Salt Lake and Utah Counties will be able to reduce the costs of collecting and reporting information about their emissions of hazardous air pollutants, because they will be able to report summary information about each hazardous pollutant rather than detailed information about individual emission points within their installations. It is not

known how great that savings will be. On the other hand, major sources located outside Weber, Davis, Salt Lake and Utah Counties and inventoried sources within those counties will now have to collect and report information about their emissions of ammonia and PM2.5, and the cost to do that is not known.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be some costs and some savings from this rule change, and the magnitude of those changes is not expected to be significant for any business.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/22/2003 at 10:00 AM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.

~~[R307-150. Emission Inventories.~~

~~R307-150-1. General Applicability.~~

~~— (1) The following sources shall submit an emission inventory report:~~

- ~~— (a) any Part 70 source;~~
- ~~— (b) any source that emits or is allowed under R307 to emit 100 ton per year or more of any regulated air pollutant;~~
- ~~— (c) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 25 tons per year or more of a combination of PM10, sulfur oxides, or oxides of nitrogen;~~
- ~~— (d) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;~~
- ~~— (e) any source that emits or is allowed under R307 to emit 5 tons per year or more of lead;~~
- ~~— (f) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant;~~
- ~~— (g) any source that the executive secretary requires to submit an inventory for any full or partial year on reasonable notice.~~

R307-150-2. Definitions.

—The following additional definitions apply to R307-150:

—"Acute Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15-72 (2000)."

—"Carcinogenic Contaminant" means any air contaminant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15-72 (2000)."

—"Chronic Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value time weighted average (TLV-TWA) having no threshold limit value ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15-72 (2000)."

—"Dioxins" and "Furans" mean total tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

R307-150-3. What to Report.

—(1) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders issued prior to April 1, 1998.

—(2) The emission inventory report shall include the information the Board deems necessary to determine whether the source is in compliance with R307 and federal regulations and standards. The data shall include all regulated air pollutants not exempted in (3) below that are not hazardous air pollutants that are emitted at a source. Data shall include the rate and period of emission, excess or breakdown emissions, startup and shut down emissions, specific installation which is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment and other information necessary to quantify operation and emissions, and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

—(3) Regulated air pollutants that are not PM10, sulfur oxides, oxides of nitrogen, carbon monoxide, PM2.5, ozone, volatile organic compounds, dioxins, furans, or hazardous air pollutants are exempt from being reported if they are emitted in an amount less than the smaller of the following:

—(a) 500 pounds per year; or

—(b) an annual emission level calculated to be the applicable threshold limit value time weighted average (TLV-TWA) or the threshold limit value ceiling (TLV-C) multiplied by the appropriate emission threshold factor in cubic meter pounds per milligram year. For an acute contaminant, the factor is 15.81; for a chronic contaminant, the factor is 21.22; for a carcinogenic contaminant, the factor is 7.07.

—(4) In addition, any owner or operator of a source that is required by R307-150-1 to submit an inventory shall use appropriate emission factors and estimating techniques to estimate all emissions from each activity not required by R307-401 or R307-415 to be included in a notice of intent or operating permit application. The estimates shall be included in the inventory.

R307-150-4. Timing of Submittals.

—(1) Report Every Third Year. The owner or operator of each of the following sources is required to submit a report of emissions every third year. The first report shall be due in 2000 for calendar year 1999 for:

—(a) any Part 70 source located in Davis, Salt Lake, Utah or Weber Counties;

—(b) any Part 70 temporary source;

—(c) any Part 70 source located outside Davis, Salt Lake, Utah or Weber Counties with 25 tons per year or more of combined allowable emissions of PM10, sulfur oxides, oxides of nitrogen, volatile organic compounds or carbon monoxide; or

—(d) any stationary source:

—(i) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit a combination of PM10, sulfur oxides, or oxides of nitrogen of 25 tons per year or more;

—(ii) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;

—(iii) located in Davis, Salt Lake, Weber, or Utah County that emits or is allowed under R307 to emit 100 tons per year or more of carbon monoxide;

—(iv) that emits 100 tons per year or more of any regulated air pollutant; or

—(v) that emits or is allowed to emit 5 tons per year or more of lead;

—(e) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant.

—(2) Report Every Sixth Year. Any Part 70 source not included in R307-150-3(2) shall submit an emissions inventory every sixth year. The inventory for calendar year 1996 suffices as the first inventory.

—(3) Additional Reports of Emissions Required Under Specified Circumstances. This subsection is applicable to all sources identified in R307-150-1.

—(a) A source that initially achieves compliance at any time with any requirement of an applicable state implementation plan shall submit an inventory for the calendar year in which compliance is achieved.

—(b) A source that emits or is allowed under R307 to emit 100 or more tons per year of any regulated air pollutant and whose emissions of any of these pollutants increase or decrease by five percent or more from the most recently submitted inventory shall submit an inventory for the calendar year in which the increase or decrease occurred.

—(c) A source operating temporarily shall submit an inventory for the calendar year in which the source operated.

—(d) A source that is not a temporary source, is required to submit an inventory, and ceases operations shall submit a report of emissions for the partial year and a report for the previous calendar year, if not already submitted.

—(e) A new or modified source that is not a temporary source, is required to submit an inventory, and receives approval to construct or begins operating shall submit a report for the initial partial year of operation and a report for the subsequent calendar year.

—(4) In addition to the required inventories, any source may choose to submit an inventory for any calendar year. The executive secretary may require at any time a full or partial-year inventory on reasonable notice to affected sources.

~~—(5) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which an inventory is required.~~

R307-150-5. Recordkeeping Requirements.

~~—(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement or until the next inventory is due, whichever is longer.~~

~~—(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.~~

KEY: air pollution, reports, inventories

October 5, 2000

19-2-104(1)(e)

R307-150. Emission Inventories.

R307-150-1. Purpose and General Requirements.

~~—(1) The purpose of R307-150 is:~~

~~—(a) to establish by rule the time frame, pollutants, and information that sources must include in inventory submittals; and~~

~~—(b) to establish consistent reporting requirements for stationary sources in Utah to determine whether sulfur dioxide emissions remain below the sulfur dioxide milestones established in the State Implementation Plan for Regional Haze, section XX.E.1.a, incorporated by reference in R307-110-28.~~

~~—(2) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders or operating permits issued prior to December 4, 2003.~~

~~—(3) Emission inventories shall be submitted on or before April 15 of each year following the calendar year for which an inventory is required. The inventory shall be submitted in the format specified by the Division of Air Quality.~~

~~—(4) The executive secretary may require at any time a full or partial year inventory upon reasonable notice to affected sources when it is determined that the inventory is necessary to develop a state implementation plan, to assess whether there is a threat to public health or safety or the environment, or to determine whether the source is in compliance with R307.~~

~~—(5) Recordkeeping Requirements.~~

~~—(a) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records under R307-150-4 shall be kept for ten years. Other records shall be kept for a period of at least five years from the due date of each inventory.~~

~~—(b) The owner or operator of the stationary source shall make these records available for inspection by any representative of the Division of Air Quality during normal business hours.~~

R307-150-2. Definitions.

~~The following additional definitions apply to R307-150.~~

~~"Acute Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - ceiling (TLV-C) has~~

~~been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.~~

~~"Carcinogenic Contaminant" means any air contaminant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.~~

~~"Chronic Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices," 2003 edition.~~

~~"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.~~

~~"Emissions unit" means emissions unit as defined in R307-415-3.~~

~~"Large Major Source" means a major source that emits or has the potential to emit 2500 tons or more per year of oxides of sulfur, oxides of nitrogen, or carbon monoxide, or that emits or has the potential to emit 250 tons or more per year of PM10, PM2.5, volatile organic compounds, or ammonia.~~

~~"Lead" means elemental lead and the portion of its compounds measured as elemental lead.~~

~~"Major Source" means major source as defined in R307-415-3.~~

R307-150-3. Applicability.

~~(1) R307-150-4 applies to all stationary sources with actual emissions of 100 tons or more per year of sulfur dioxide in calendar year 2000 or any subsequent year unless exempted in (a) below. Sources subject to R307-150-4 may be subject to other sections of R307-150.~~

~~(a) A stationary source that meets the requirements of R307-150-3(1) that has permanently ceased operation is exempt from the requirements of R307-150-4 for all years during which the source did not operate.~~

~~(b) Except as provided in (a) above, any source that meets the criteria of R307-150-3(1) and that emits less than 100 tons per year of sulfur dioxide in any subsequent year shall remain subject to the requirements of R307-150-4 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in R307-250-12(1)(a), whichever is earlier.~~

~~(2) R307-150-5 applies to large major sources.~~

~~(3) R307-150-6 applies to:~~

~~(a) each major source that is not a large major source;~~

~~(b) each source with the potential to emit 5 tons or more per year of lead; and~~

~~(c) each source not included in (2) or (3)(a) or (3)(b) above that is located in Davis, Salt Lake, Utah, or Weber Counties and that has the potential to emit 25 tons or more per year of any combination of oxides of nitrogen, oxides of sulfur and PM10, or the potential to emit 10 tons or more per year of volatile organic compounds.~~

~~(4) R307-150-7 applies to Part 70 sources not included in (2) or (3) above.~~

R307-150-4. Sulfur Dioxide Milestone Inventory Requirements.

~~(1) Annual Sulfur Dioxide Emission Report.~~

(a) Sources identified in R307-150-3(1) shall submit an annual inventory of sulfur dioxide emissions beginning with calendar year 2003 for all emissions units including fugitive emissions and emissions listed in R307-415-5e(2).

(b) The inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Each source subject to R307-150-4 that is also subject to 40 CFR Part 75 reporting requirements shall submit a summary report of annual sulfur dioxide emissions that were reported to the Environmental Protection Agency under 40 CFR Part 75 in lieu of the reporting requirements in (1) above.

(3) Changes in Emission Measurement Techniques.

(a) Each source subject to R307-150-4 that is also subject to 40 CFR Part 75 and that uses 40 CFR Part 60, Appendix A, Test Methods 2F, 2G, or 2H to measure stack flow rate shall adjust reported sulfur dioxide emissions to ensure that the reported sulfur dioxide emissions are comparable to 1999 emissions. The calculations that are used to make this adjustment shall be included with the annual emission report. The adjustment shall be calculated using one of the methods in (i) through (iii) below:

(i) Directly determine the difference in flow rate through a side-by-side comparison of data collected with the new and old flow reference methods required during a relative accuracy test audit (RATA) test under 40 CFR Part 75.

(ii) Compare the annual average heat rate using heat input data from the federal acid rain program (million Btu) and total generation (megawatt (MW) Hrs) as reported to the federal Energy Information Administration. The flow adjustment will be calculated by using the following ratio: (Heat input/MW for first full year of data using new flow rate method) divided by (Heat input/MW for last full year of data using old flow rate method).

(iii) Compare the cubic feet per minute per MW before and after the new flow reference method based on continuous emission monitoring data submitted in the federal acid rain program, using the following equation: (Standard cubic feet (SCF)/Unit of generation for first full year of data using new flow rate method) divided by (SCF/unit of generation for last full year of data using old flow rate method).

(b) Each source subject to R307-150-4 that uses a different emission monitoring or calculation method than was used to report their sulfur dioxide emissions in 1998 under R307-150 or 1999 under 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 1998 or 1999, as applicable. The calculations that are used to make this adjustment shall be included with the annual emission report.

R307-150-5. Sources Identified in R307-150-3(2).

(1) Each large major source shall submit an emission inventory annually beginning with calendar year 2002. The inventory shall include PM10, PM2.5, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, and ammonia for all emissions units including fugitive emissions and emissions listed in R307-415-5e(2).

(2) For every third year beginning with 2005, the inventory shall also include other chargeable pollutants and hazardous air pollutants not exempted in R307-150-8.

(3) For each pollutant specified in (1) or (2) above, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit that is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

R307-150-6. Sources Identified in R307-150-3(3).

(1) Each source identified in R307-150-3(3) shall submit an inventory every third year beginning with calendar year 2002 for all emissions units including fugitive emissions and emissions listed in R307-415-5e(2).

(a) The inventory shall include PM10, PM2.5, oxides of sulfur, oxides of nitrogen, carbon monoxide, volatile organic compounds, ammonia, other chargeable pollutants, and hazardous air pollutants not exempted in R307-150-8.

(b) For each pollutant, the inventory shall include the rate and period of emissions, excess or breakdown emissions, startup and shut down emissions, the specific emissions unit which is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment, and other information necessary to quantify operation and emissions and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(2) Sources identified in R307-150-3(3) shall submit an inventory for each year after 2002 in which the total amount of PM10, oxides of sulfur, oxides of nitrogen, carbon monoxide, and volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory. For each pollutant, the inventory shall include the requirements of R307-150-6(1)(a) and (b).

R307-150-7. Sources Identified in R307-150-3(4).

(1) Sources identified in R307-150-3(4) shall submit the following emissions inventory every third year beginning with calendar year 2002 for all emission units including fugitive emissions and emissions listed in R307-415-5e(2).

(2) Sources identified in R307-150-3(4) shall submit an inventory for each year after 2002 in which the total amount of PM10, oxides of sulfur, oxides of nitrogen, carbon monoxide, and volatile organic compounds increases or decreases by 40 tons or more per year from the most recently submitted inventory.

(3) The emission inventory shall include individual pollutant totals of all chargeable pollutants and all hazardous air pollutants not exempted in R307-150-8.

R307-150-8. Exempted Hazardous Air Pollutants.

(1) The following air pollutants are exempt from this rule if they are emitted in an amount less than that listed in Table 1.

TABLE 1

CONTAMINANT	Pounds/year
Arsenic	.21
Benzene	33.90
Beryllium	.04
Ethylene oxide	38.23
Formaldehyde	5.83

(2) Other chargeable air pollutants that are not PM10, oxides of sulfur, oxides of nitrogen, carbon monoxide, PM2.5, ozone, volatile organic compounds, dioxins, or furans are exempt from being reported if they are emitted in an amount less than the smaller of the following:

- (a) 500 pounds per year; or
- (b) for acute contaminants, the applicable TLV-C expressed in milligrams per cubic meter and multiplied by 15.81 to obtain the pounds-per-year threshold; or
- (c) for chronic contaminants, the applicable TLV-TWA expressed in milligrams per cubic meter and multiplied by 21.22 to obtain the pounds-per-year threshold; or
- (d) for carcinogenic contaminants, the applicable TLV-C or TLV-TWA expressed in milligrams per cubic meter and multiplied by 7.07 to obtain the pounds-per-year threshold.

KEY: air pollution, reports, inventories
2003
19-2-104(1)(c)

▼ ————— ▼

Environmental Quality, Air Quality **R307-155** Hazardous Air Pollutant Inventory

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE No.: 26649
 FILED: 09/15/2003, 17:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: All inventory collection requirements are being consolidated into a new version of Rule R307-150, see separate filing in this issue.

SUMMARY OF THE RULE OR CHANGE: R307-155 is being repealed. Requirements for inventories for hazardous air pollutants are found in a new version of Rule R307-150, see separate filing in this issue. (DAR NOTE: The proposed repeal and reenact of Rule R307-150 is under DAR No. 26648 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c); 40 CFR Part 51; and 67 FR 39602

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The new requirements in Rule R307-150 for hazardous air pollutant inventories require less detailed information from a few sources, and there will be some small

savings in processing time for division staff when the inventories are submitted every third year.

❖ LOCAL GOVERNMENTS: The only local governments affected by the changes will be those who operate non-major facilities that are subject to Title V requirements and are located outside Weber, Davis, Salt Lake, and Utah Counties; they will be able to submit less detailed information every third year and thus will achieve some savings.

❖ OTHER PERSONS: Non-major sources subject to Title V requirements that are located outside Weber, Davis, Salt Lake, and Utah Counties will be able to reduce the costs of collecting and reporting information about their emissions of hazardous air pollutants, because they will be able to report summary information about each hazardous pollutant rather than detailed information about individual emission points within their installations. It is not known how great that savings will be.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Non-major sources subject to Title V requirements that are located outside Weber, Davis, Salt Lake, and Utah Counties will be able to reduce the costs of collecting and reporting information about their emissions of hazardous air pollutants, because they will be able to report summary information about each hazardous pollutant rather than detailed information about individual emission points within their installations. It is not known how great that savings will be.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be some costs and some savings from this rule change, and the magnitude of those changes is not expected to be significant for any business.

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

ENVIRONMENTAL QUALITY
 AIR QUALITY
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/22/2003 at 10:00 AM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
~~**R307-155. Hazardous Air Pollutant Inventory.**~~
~~**R307-155-1. General Applicability.**~~

~~—(1) The owner or operator of a Part 70 stationary source, either "major source" or "area source" as defined in the Clean Air Act Section 112 (42 U.S.C. 7412), that emits one or more hazardous air pollutants shall submit a hazardous air pollutant inventory.~~

~~—(2) The owner or operator of a source which is not a Part 70 stationary source or a "major source" as defined in the Clean Air Act Section 112 (42 U.S.C. 7412) that emits one or more hazardous air pollutants shall submit a hazardous air pollutant inventory at the request of the executive secretary but not more often than once per year.~~

~~—(3) Inventory data is not required for each hazardous air pollutant that has a threshold limit value and is emitted in an amount less than the smaller of the following:~~

- ~~—(a) 500 pounds per year; or~~
- ~~—(b) an annual emission level calculated to be the applicable threshold limit value — time weighted average (TLV-TWA) expressed in milligrams per cubic meter, or the threshold limit value — ceiling (TLV-C) expressed in milligrams per cubic meter multiplied by the appropriate emission threshold factor in cubic meter pounds per milligram year in Table 1 below.~~

TABLE 1

CONTAMINANT	FACTOR
	(in cubic meter pounds per milligram year)
Arsenic	21.22
Benzene	21.22
Beryllium	21.22
Ethylene oxide	21.22
Formaldehyde	15.81
All other acute hazardous air pollutants	15.81
All other chronic hazardous air pollutants	21.22
All other carcinogenic hazardous air pollutants	7.07

~~**R307-155-2. Timing of Submittals.**~~

~~—(1) A source's hazardous air pollutant inventory shall be submitted at the same time as the inventory required by R307-150.~~

~~—(2) The inventory shall be submitted no later than April 15 of each year following any calendar year for which the hazardous air pollutant inventory is required.~~

~~**R307-155-3. What to Report.**~~

~~—The inventory shall include information for each hazardous air pollutant not excluded by R307-155-1(2). The inventory shall report the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the executive secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology.~~

~~**R307-155-4. Recordkeeping Requirements.**~~

~~—(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the hazardous air pollutant emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five~~

~~years from the due date of each emission statement or until the next inventory is due, whichever is longer.~~

~~—(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.~~

~~**KEY: air pollution, hazardous air pollutant, inventories**
March 4, 1999
19-2-104(1)(e)~~

▼ ————— ▼

Environmental Quality, Air Quality

R307-158

Emission Statement Inventory

NOTICE OF PROPOSED RULE
(Repeal)

DAR FILE NO.: 26650
 FILED: 09/15/2003, 17:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was required for all areas that were not in attainment of the federal health standards for ozone. Utah was declared in attainment of the standard in 1997, and has remained in attainment ever since. The rule is no longer federally required.

SUMMARY OF THE RULE OR CHANGE: Sources of volatile organic compounds and nitrogen oxides that are located in Davis, Salt Lake, Utah, and Weber Counties will no longer be required to submit special inventories every third year. Therefore, this rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(c)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Division staff will no longer collect and process these special inventories, saving approximately 1,800 staff-hours every third year.
- ❖ **LOCAL GOVERNMENTS:** No local governments are affected by this rule.
- ❖ **OTHER PERSONS:** Sources will no longer have to submit detailed inventories of summertime emissions of volatile organic compounds and nitrogen oxides every third year. Savings estimates are not available.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Sources will no longer have to submit detailed inventories of summertime emissions of volatile organic compounds and nitrogen oxides every third year. Savings estimates are not available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This inventory provided data that is no longer needed or required; savings for businesses will be small.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/22/2003 at 10:00 AM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.

~~R307-158. Emission Statement Inventory.~~

~~R307-158-1. Applicability.~~

~~The owner or operator of a stationary source emitting either volatile organic compounds or oxides of nitrogen that is located in Salt Lake, Davis, Weber, or Utah Counties or a nonattainment area for ozone and that emits or has the potential to emit 10 tons or more per year of volatile organic compounds or 25 tons or more per year of oxides of nitrogen is required to submit an emission statement for the emissions released directly or indirectly into the outdoor atmosphere in the calendar years specified in R307-158-2.~~

~~R307-158-2. Timing of Submittals.~~

~~(1) An emission statement shall be submitted for calendar year 1999 and every third year thereafter.~~

~~(2) A report shall be submitted for any additional calendar year for which the executive secretary requests submittal.~~

~~(3) A source that is not a temporary source that ceases operations shall submit a report for the partial year of operations and a report for the previous calendar year.~~

~~(4) A new or modified source that is not a temporary source that receives approval to construct or begins operating during the reporting period shall submit a report for the initial partial year of operation and the subsequent calendar year.~~

~~(5) A temporary source shall submit an inventory for the calendar year in which the source operated in Salt Lake, Davis, Weber, or Utah Counties or a nonattainment area for ozone.~~

~~(6) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.~~

~~(7) Each source required under R307-158-1 to file an emission statement inventory, and that emits or is allowed under R307 to emit 100 or more tons per year of volatile organic compounds or oxides of nitrogen, and whose emissions of any of these pollutants increase~~

~~or decrease by five percent or more from the most recent inventory submitted under R307-150 shall submit an emission statement inventory for the calendar year in which the increase or decrease occurred.~~

~~R307-158-3. What to Report.~~

~~(1) The emission statement shall include information concerning both volatile organic compounds and oxides of nitrogen even if the source's emissions or its potential to emit equaled or exceeded the reporting level in R307-158-1 for only one of the pollutants. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.~~

~~(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.~~

~~(3) Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:~~

~~(a) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.~~

~~(b) The date of the signature of certification and the telephone number of the certifying individual shall be included.~~

~~(4) The following source identification information shall be included:~~

~~(a) full name of the source;~~

~~(b) parent company name, if applicable;~~

~~(c) physical location of the source (i.e., the street address);~~

~~(d) mailing address of the source;~~

~~(e) SIC code(s) of the source;~~

~~(f) UTM coordinates or latitude and longitude of the source; and~~

~~(g) the calendar year of the emissions.~~

~~(5) The following operating data for each source operation which has the potential to emit volatile organic compounds or oxides of nitrogen shall be included:~~

~~(a) annual and peak ozone season throughput;~~

~~(b) average days of operation per week;~~

~~(c) average hours of operation per day; and~~

~~(d) total hours of operation for the year.~~

~~(6) The following information at the process level for oxides of nitrogen (expressed as molecular weight of nitrogen dioxide) and volatile organic compounds shall be included:~~

~~(a) Emissions information, including:~~

~~(i) the actual emissions of volatile organic compounds and oxides of nitrogen in tons per year;~~

~~(ii) the average emissions of volatile organic compounds and oxides of nitrogen in pounds per day of operation during the peak ozone season;~~

~~(iii) the estimated emissions method code for the method used to quantify the emissions as required by 42 U.S.C. 7512a(a)(1) (as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1)); and~~

~~(iv) any emission factor used to determine emissions.~~

~~(b) Control apparatus information, including current primary and secondary control apparatus identification codes as required by~~

~~42 U.S.C. 7512a(a)(1)(as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.~~

~~—(e) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.~~

~~—(7) In place of the information required in R307-158-3(4) and R307-158-3(5), any source which has the potential to emit less than one ton per year of either volatile organic compounds or nitrogen oxides but that is subject to this rule shall include:~~

~~—(a) a description of each source operation and emissions of each air contaminant emitted from each source operation shall be estimated at one ton per year, or~~

~~—(b) a description of each source operation; estimated emission in tons per year; the estimated emissions method code for the method used to quantify the emissions as required by 42 U.S.C. 7512a(a)(1) (as included in the instructions provided by the executive secretary for filing the report required by R307-158-2(1)); and any emission factor used to determine emissions.~~

~~—(8) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive emissions that cannot be reported in the information pursuant to R307-158-3(4) through R307-158-3(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.~~

~~—(9) The method used for quantifying emissions for a source operation for use in preparing emission information required in R307-158-3(5)(a) or 158-3(6)(b) above shall be the method which is reasonably available and that best estimates the emissions from the source operation.~~

R307-158-4. Recordkeeping Requirements.

~~—(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement.~~

~~—(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.~~

KEY: air pollution, ozone, inventories

March 4, 1999

19-2-104(1)(e)]



Environmental Quality, Air Quality **R307-204** Emission Standards: Smoke Management

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 26617

FILED: 09/10/2003, 17:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments add components required under 40 CFR 51.309(d)(6).

SUMMARY OF THE RULE OR CHANGE: The amendments require that land managers report to the Division of Air Quality (DAQ) annually a list of acres treated with nonburning alternatives to fire during the previous year, and shall provide DAQ with long-term projections of expected future prescribed fire. The report and projections are for the purpose of estimating visibility impairment at federally-protected Class I areas, including Utah's five national parks (Zion, Bryce, Capitol Reef, Canyonlands, and Arches). Land managers will be invited to meet with DAQ staff annually to determine the annual emission goal for reductions in emissions from prescribed fire. More explanation of the federal visibility protection requirements and how Utah is meeting them is available at <http://www.airquality.utah.gov/SIP/Regionalhazesip/regionalhaze.htm>. Also see other changes filed under Section R307-110-28, the Regional Haze SIP; Rule R307-250, a new rule specifying the operation of the backstop trading program if it is ever triggered; and emission reporting requirements that are found in the reenacted Rule R307-150 for large sources of sulfur dioxide. (DAR NOTE: The amendment to Section R307-110-28 is under DAR No. 26616, the proposed new rule of R307-250 is under DAR No. 26615, and the repeal and reenact of Rule R307-150 is under DAR No. 26648 all in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(q)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Costs to implement the enhanced smoke management program will be minimal, as it will be a small add-on to the existing program.

❖ **LOCAL GOVERNMENTS:** Local governments will not be affected by this rule. Therefore, there is no cost to local governments.

❖ **OTHER PERSONS:** For land managers, costs may range from minimal to significant for implementing nonburning alternatives that replace prescribed fire and for reporting and implementing actions to reduce emissions where fire is used. It is impossible to estimate those costs, as they will vary from one land parcel to another and from one year to another.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For land managers, costs may range from minimal to significant for implementing alternatives to the use of prescribed fire and for taking actions to reduce emissions where fire is used. It is impossible to estimate those costs, as they will vary from one land parcel to another and from one year to another.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Not many businesses in Utah

use prescribed fire for resource benefit, and thus there will be little impact on businesses. For land managers, the costs are not yet well understood, but DAQ will work with the land managers to find economical ways to meet the requirements.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/23/2003 at 7:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT; 10/28/2003 at 7:00 PM, St George City Council Chambers, 175 E 200 N, St George, UT; and 10/30/2003 at 7:00 PM, Grand County Council Chambers, 125 E Center St, Moab, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, 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 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.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire used for resource benefit that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan required for each fire ignited by managers or allowed to burn.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means [~~Zion National Park, Bryce National Park, Capitol Reef National Park, Arches National Park, Canyonlands National Park~~]any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicate other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Maintenance Area" means an area that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least the next five years.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Used for Resource Benefits (WFURB)" means naturally ignited wildland fire that is managed to accomplish specific pre-stated resource management objectives in predefined geographic areas.

"Wildland Fire Implementation Plan" means the plan required for each fire that is allowed to burn.

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 additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

(3) Non-burning Alternatives to Fire. Beginning in 2004 and annually thereafter, each land manager shall submit to the executive secretary by March 15 a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(4) Annual Emissions Goal. The executive secretary shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions to the maximum feasible extent.

(5) Long-term Fire Projections. Each land manager shall provide to the executive secretary by March 15 annually long-term projections of future prescribed fire and wildland fire used for resource benefits activity for annual assessment of visibility impairment.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed 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, and planned use of emission reduction techniques to support establishment of the annual emissions goal;
 - (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.

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~~ upon request.

(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, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) ~~Any Class I or Non-attainment Area within 15 miles;~~
~~(d)~~ Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(~~e~~)d) Planned mitigation methods;

(~~f~~)e) The smoke dispersion or visibility model used and results;

(~~g~~)f) The estimated amount of total particulate matter anticipated;

(~~h~~)g) A description of how the public and land managers in neighboring states will be notified;

(~~i~~)h) 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~~)i) Safety and contingency plans for addressing any smoke intrusions; and

(~~k~~)j) 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 conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the executive secretary for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(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~~ the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; 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~~ Wildland fire implementation 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~~ wildland fire implementation 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~~ wildland fire implementation 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~~ wildland fire implementation 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[[±]]
~~March 6,~~ 2004 ³
 19-2-104(1)(a)**

Environmental Quality, Air Quality **R307-250** Western Backstop Sulfur Dioxide Trading Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 26615

FILED: 09/10/2003, 17:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is required to implement the provisions of the State Implementation Plan (SIP), Section XX, the Regional Haze Plan (see separate filing of Section R307-110-28 in this issue). The Plan is required under 40 CFR Part 51, Subpart P, Visibility. The Plan requires a backstop trading program for emissions of sulfur dioxide from large sources, and Rule R307-250 sets forth the requirements sources would have to meet if the program is ever triggered.

SUMMARY OF THE RULE OR CHANGE: This new rule specifies the requirements that large sources of sulfur dioxide emissions would have to meet if the regional emissions cap established in SIP, Section XX, Regional Haze (incorporated by reference under Section R307-110-28) is ever exceeded. (DAR NOTE: The proposed amendment to R307-110-28 is under DAR No. 26616 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 19-2-104(1)(a) and 19-2-104(3)(e)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: All sources in the sulfur dioxide reduction program already are required to hold Operating Permits under Title V of the Clean Air Act, and any costs to implement the trading program will be covered by the fees that the sources pay.
- ❖ LOCAL GOVERNMENTS: Only local governments that operate sources of 100 tons per year or more of sulfur dioxide will be affected by this SIP. It is not anticipated that they will incur any additional costs.
- ❖ OTHER PERSONS: Sources affected by this rule are those that emit 100 tons per year or more of sulfur dioxide. Costs for each source are not known, because the rule is unlikely to be triggered for many years and may never be implemented.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Sources affected by this rule are those that emit 100 tons per year or more of sulfur dioxide. Costs for each source are not known, because the rule is unlikely to be triggered for many years and may never be implemented.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs to implement the rule are unknown. However, the program is modeled on the federal Acid Rain trading program for sulfur dioxide, where the emission caps have never been exceeded in the 14 years the program has been in operation. Additionally, this rule may never be implemented.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/23/2003 at 7:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT; 10/28/2003 at 7:00 PM, St George City Council Chamber, 175 E 200 N, St George, UT; and 10/30/2003 at 7:00 PM, Grand County Council Chamber, 125 E Center St, Moab, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.**R307-250. Western Backstop Sulfur Dioxide Trading Program.****R307-250-1. Purpose.**

This rule implements the Western Backstop (WEB) Sulfur Dioxide Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309, and Section XX.E of the State Implementation Plan for Regional Haze, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under R307-110-28.

R307-250-2. Definitions.

The following additional definitions apply to R307-250:

"Account Certificate of Representation" or "Certificate" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account. "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

"Actual Emissions" means total annual sulfur dioxide emissions determined in accordance with R307-250-9 or determined in accordance with the Sulfur Dioxide Milestone Inventory requirements of R307-150 for sources that are not subject to R307-250-9.

"Allocate" means to assign allowances to a WEB source in accordance with SIP section XX.E.3.a.

"Allowance" means the limited authorization under the WEB Trading Program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by R307-250.

"Allowance Limitation" means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under R307-250-12 on the allowance transfer deadline for that control period.

"Allowance Tracking System" means the system where allowances under the WEB Trading Program are recorded, held, transferred and deducted.

"Allowance Tracking System account" means an account in the allowance tracking system established for purposes of recording, holding, transferring, and deducting allowances.

"Allowance Transfer Deadline" means the deadline established in R307-250-10(2) when allowances must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

"Compliance Account" means an account established in the allowance tracking system under R307-250-8(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

"Compliance Certification" means a submission to the executive secretary by the Account Representative as required under R307-250-12(2) to report a WEB source's compliance or noncompliance with R307-250.

"Control Period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

"Emissions Tracking Database" means the central database where sulfur dioxide emissions for WEB sources as recorded and

reported in accordance with R307-250 are tracked to determine compliance with allowance limitations.

"Existing Source" means a stationary source that commenced operation before the Program Trigger Date.

"General Account" means an account established in the allowance tracking system under R307-250-8 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

"Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in SIP Section XX.E.1.

"New WEB Source" means a WEB source that commenced operation on or after the program trigger date.

"New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of SIP Section XX.E.3.c.

"Program trigger date" means the date that the executive secretary determines that the WEB Trading Program has been triggered in accordance with the provisions of SIP Section XX.E.1.b.

"Program trigger years" means the years shown in SIP Section XX.E.1.a, Table 1, column 3 for the applicable milestone if the WEB Trading Program is triggered as described in SIP Section XX.E.1.

"Retired source" means a WEB source that has received a retired source exemption as provided in R307-250-4(4).

"Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with R307-250-7(2).

"SIP Section XX.E" means Section XX.E of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program." SIP Section XX, Regional Haze, is incorporated by reference under R307-110-28.

"SO₂ emitting unit" means any equipment that is located at a WEB source and that emits SO₂.

"Submit" means sent to the executive secretary or the tracking system administrator under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

"Ton" means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

"Tracking System Administrator" or "TSA" means the person designated by the executive secretary as the administrator of the allowance tracking system and the emission tracking database.

"WEB Source" means a stationary source that meets the applicability requirements of R307-250-4.

"WEB Trading Program" means R307-250, the Western Backstop Trading Program, triggered as a backstop in accordance with the provisions in SIP Section XX.E, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

R307-250-3. WEB Trading Program Trigger.

(1) Except as provided in (2), R307-250 shall become effective on the program trigger date that is established in accordance with the procedures in SIP Section XX.E.1.c.

(2) Special Penalty Provisions for Year 2018, R307-250-13, shall become effective on January 1, 2018, and shall remain effective until the requirements of R307-250-13 have been met.

R307-250-4. WEB Trading Program Applicability.

(1) General Applicability. R307-250 applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in paragraphs (a) through (c) of this subsection. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(b) All stationary sources not meeting the criteria of (a) that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is subject to R307-250 unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

(c) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.

(2) The executive secretary may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a stationary source defined in (b) above that has not previously met the applicability requirements of (1) is not subject to R307-250 if the stationary source had actual sulfur dioxide emissions of 100 tons or

more in a single year and in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year, and:

(a)(i) the emissions increase was due to a temporary emission increase that was caused by a sudden, infrequent failure of air pollution control equipment, or process equipment, or a failure to operate in a normal or usual manner, and

(ii) the stationary source took timely and reasonable action to minimize the failure of air pollution control equipment, process equipment, or process and temporary emissions increase; and

(iii) the stationary source has corrected the failure of air pollution equipment, process equipment, or process by the time of the executive secretary's determination; or

(b) the stationary source had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in (4) below, once a stationary source is subject to R307-250, it will remain subject to the rule every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all sulfur dioxide emitting units at the source are permanently retired. The application shall contain the following information:

(i) identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) name of account representative;

(iii) description of the status of the WEB source, including the date that the WEB source was permanently retired;

(iv) signed certification that the WEB source is permanently retired and will comply with the requirements of R307-250-4(4); and

(v) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the executive secretary notifies the WEB source that the retired source exemption has been granted.

(c) Responsibilities of Retired Sources.

(i) A retired source shall be exempt from R307-250-9 and R307-250-12, except as provided below.

(ii) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is issued.

(iii) A WEB source shall submit sulfur dioxide emissions reports, as required by R307-250-9, for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of R307-250-12, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(iv) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of this rule.

(d) Resumption of Operations.

(i) Before resuming operation, the retired source must submit registration materials as follows:

(A) If the source is required to obtain an approval order under R307-401 or an operating permit under R307-415 prior to resuming

operation, then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted with the notice of intent under R307-401 or the operating permit application required under R307-415;

(B) If the source does not meet the criteria of (A), then registration information as described in R307-250-6(1) and a copy of the retired source exemption must be submitted to the executive secretary at least ninety days prior to resumption of operation.

(ii) The retired source exemption shall automatically expire on the day the retired source resumes operation.

(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the executive secretary for a retired source exemption within ninety days of the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator.

R307-250-5. Account Representative for WEB Sources.

(1) Each WEB source must identify one account representative and may also identify an alternate Account Representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(2) Identification and Certification of an Account Representative.

(a) The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

(b) The account representative shall submit to the executive secretary and the TSA a signed and dated account certificate of representation that contains the following elements:

(i) identification of the WEB source by plant name and an appropriate identification code in a format specified by the executive secretary;

(ii) the name, address, e-mail (if available), telephone and facsimile number of the Account Representative and any alternate;

(iii) a list of owners and operators of the WEB source;

(iv) information to be part of the emission tracking system database in accordance with the State Implementation Plan. The specific data elements shall be as specified by the executive secretary to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(v) The following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source and that the owner and operator each shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the executive secretary regarding the WEB Trading Program."

(c) Upon receipt by the executive secretary of the complete account certificate of representation, the account representative and any alternate account representative represents and, by his or her

representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Each owner and operator shall be bound by any decision or order issued by the executive secretary regarding the WEB Trading Program.

(d) No WEB allowance tracking system account shall be established for the WEB source until the TSA has received a complete Certificate. Once the account is established, all submissions concerning the account, including the deduction or transfer of allowances, shall be made by the account representative.

(3) Requirements and Responsibilities.

(a) The responsibilities of the account representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by R307-250, and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the alternate Account Representative. The Account Representative or alternate account representative may be changed at any time by sending a complete superseding account certificate of representation to the executive secretary and the TSA under R307-250-5(2)(c). The change will be effective upon receipt of such account certificate of representation by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

(b) Changes in Owner and Operator.

(i) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised Certificate amending the list of owners and operators to include such change.

(ii) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the executive secretary as if the new owner or operator were included in the list.

R307-250-6. Registration.

(1) Deadlines.

(a) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(c) Any new WEB source shall register by submitting the initial certificate required in R307-250-5(2) to the executive secretary prior to commencing operation.

(2)(a) Any allocation, transfer or deduction of allowances to or from the source's compliance account shall not require a revision of the WEB source's operating permit under R307-415.

(b) Whether or not a WEB source is required to have an approval order or permit under R307-401 or R307-415 at any time after this Rule becomes effective, it must at all times possess an approval order or permit that includes the requirements of R307-250. If it does not possess a Title V permit under R307-415, it may satisfy this paragraph's requirements by obtaining or modifying an approval order under R307-401 to incorporate the requirements of R307-250. The source must at all times possess a permit that includes the requirements of R307-250.

R307-250-7. Allowance Allocations.

(1) The TSA will record the allowances for each WEB source in the source's compliance account once the allowances are allocated by the executive secretary under SIP Section XX.E.3.a. If applicable, the TSA will record a portion of the SO₂ allowances for a WEB source in a special reserve account to account for any allowances to be held by the source in accordance with R307-250-9.

(2) The TSA will assign a serial number to each allowance in accordance with SIP Section XX.E.3.f.

(3) All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of R307-250. No provision of the WEB Trading Program or other law should be construed to limit the authority of the executive secretary to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any WEB source that reduces its permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in SIP Section XX.E.3.a or any utility that reduces its permitted annual sulfur dioxide emissions to a level that is below best available control technology (BACT) may apply to the executive secretary for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2003 and the program trigger year. The application must be submitted no later than ninety days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced in this section for a minimum of five years after the early reduction bonus allowance is certified in accordance with

SIP Section XX.E.3.a(c). The application for an early reduction bonus allocation must contain the following information:

(a) Copies of all approval orders, operating permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source was generating the early reductions. Approval orders, permits, or enforceable documents must contain monitoring requirements for sulfur dioxide emissions that meet the specifications in R307-250-9.

(b) Demonstration that the floor level established for the source in SIP Section XX.E.3.a(b) for non-utilities or best available control technology for utilities was calculated using data that are consistent with monitoring methods specified in R307-250-9. If needed, the demonstration shall include a new floor level calculation that is consistent with the monitoring methodology in R307-250-9.

(6) Request for Allowances for New WEB Sources or Modified WEB Sources.

(a) A new WEB source may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP section XX.E.3.c. A new WEB source is eligible for an annual allocation equal to the permitted annual sulfur dioxide emission limit for that source after the source has commenced operation.

(b) An existing WEB source that has increased production capacity through a new approval order issued under R307-401 may apply to the executive secretary for an allocation from the new source set-aside, as outlined in SIP section XX.E.3.c. An existing WEB source is eligible for an annual allocation equal to:

(i) the permitted annual sulfur dioxide emission limit for a new unit; or

(ii) the permitted annual sulfur dioxide emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(c) A source that has received a retired source exemption under R307-250-4(4) is not eligible for an allocation from the new source set-aside.

(d) The application for an allocation from the new source set-aside must contain the following:

(i) for an existing WEB source, documentation of the production capacity of the source before and after the new permit;

(ii) for a new WEB source, documentation of the actual date of the commencement of operation and a copy of the permit.

R307-250-8. Establishment of Accounts.

(1) Allowance Tracking System Accounts. All WEB sources are required to open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under R307-250-9(1)(b), the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. Allowances may not be transferred out of the special reserve account by the WEB source or account representative, but may be used for compliance at those units, and any unused allowances will be cancelled and may not be traded or used in a future control period. To open any type of account, an application that contains the following information must be submitted to the TSA:

(a) the name, mailing address, e-mail address, telephone number, and facsimile number of the Account Representative. For a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in R307-250-5(2)(b). For a general account, include the

account certificate of representation of the account representative and any alternate as required in (3)(b).

(b) the WEB source or organization name;

(c) the type of account to be opened; and

(d) a signed certification of truth and accuracy by the account representative according to R307-250-5(3)(b) for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to (4) below.

(2) Account Representative for General Accounts. For a general account, one account representative must be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The account representative shall submit to the TSA a signed and dated account certificate of representation that contains the following elements:

(i) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(ii) the organization name;

(iii) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the executive secretary regarding the general account."

(c) Upon receipt by the TSA of the complete account certificate of representation, the Account Representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the executive secretary.

(d) A WEB Allowance Tracking System general account shall not be established until the TSA has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those

individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.

(5) Changing the Account Representative for General Accounts. The account representative or alternate account representative may be changed at any time by sending a complete superseding account certificate of representation to the executive secretary and the TSA under (3)(b) above. The change will take effect upon the receipt of the account certificate of representation by the TSA. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the TSA receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under (1) above shall require a revision of the application.

R307-250-9. Monitoring, Recordkeeping and Reporting.

(1) General Requirements on Monitoring Methods.

(a) For each SO₂ emitting unit at a WEB source the WEB source shall comply with the following, as applicable, to monitor and record SO₂ mass emissions.

(i) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting SO₂ mass emissions.

(ii) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB Trading Program, a unit shall use one of the following monitoring methods, as applicable:

(A) a continuous emission monitoring system (CEMS) for SO₂ and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(B) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to SO₂ mass emissions only) of 40 CFR 75.19;

(C) one of the optional WEB protocols, if applicable, in Appendix E of State Implementation Plan Section XX, Regional Haze; or

(D) a petition for site-specific monitoring that the source submits for approval by the executive secretary, and approval by the U.S. Environmental Protection Agency in accordance with R307-250-9.

(iii) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements the paragraph (iii) and the account representative certifies in accordance with R307-250-12(2) that these conditions were met.

(b) Notwithstanding (a) above, a WEB source with a unit that meets one of the conditions of (i) below may elect to have the provisions of this subsection (b) below apply to that unit.

(i) Any of the following units may implement this subsection (b):

(A) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(B) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(C) any other type of unit without add-on SO₂ control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in State Implementation Plan Subsection XX.E.3.a.

(ii) For each unit covered by this subsection (b), the account representative shall submit a notice to request that this subsection (b) apply to one or more SO₂ emitting units at a WEB source. The notice shall be submitted in accordance with the deadlines specified in R307-250-9, and shall include the following information (in a format specified by the executive secretary with such additional, related information as may be requested):

(A) a notice of all units at the applicable source, specifying which of the units are to be covered by this subsection (b);

(B) consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with State Implementation Plan Subsection XX.E.3.a, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by this paragraph; and

(C) an identification of any such units that are permanently retired.

(iii) For each new unit at an existing WEB source for which the WEB source seeks to comply with this paragraph (b) and for which the account representative applies for an allocation under the new source set-aside provisions of R307-250-7(6), the account representative shall submit a modified notice under (ii) above that includes such new SO₂ emitting units. The modified notice shall be submitted in accordance with the deadlines in R307-250-9, but no later than the date on which a request is submitted under R307-250-7(6) for allocations from the set-aside.

(iv) The executive secretary shall evaluate the information submitted by the WEB source in (ii) and (iii) above, and may issue a notice to the source to exclude any units that do not qualify under this subsection (b) or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level and reducible allocation for the source.

(v) Allowances equal to the adjusted portion of the WEB source's allowances under (ii) - (iv) above shall be held by the source in a special reserve account as established above.

(vi) The account representative for a WEB source shall submit an annual emissions statement for each unit under this subsection (b) pursuant to R307-250-9(8). The WEB source shall maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve account under (v) above for the WEB source, the account representative will report the extra amount as part of the annual report for the WEB source under R307-250-12 and be required to obtain and transfer allowances into the special reserve account to account for such emissions.

(vii) The remaining provisions of R307-250-9(2) - (10) shall not apply to units covered by this paragraph except where otherwise noted.

(viii) A WEB source may opt to modify the monitoring for an SO₂ emitting unit to use monitoring under (a) above, but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the account representative must

submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with (2) below. The account representative shall also submit a revised notice under (2) below at the same time that the initial monitoring plan is submitted.

(c) For any monitoring method that the WEB source uses under R307-250-9 including (b) above, the WEB source shall install, certify, and operate the method in accordance with this section, and record and report the data from the method as required in this section. In addition, the WEB source may not:

(i) except for an alternative approved by the EPA Administrator for a WEB source that implements monitoring under (a) above, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with (8)(e) below.

(ii) operate an SO₂ emitting unit so as to discharge, or allow to be discharged, SO₂ emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(iii) Disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording SO₂ mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this Section; or

(iv) Retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(A) During a period when the unit is exempt from the requirements of this Section, including retirement of a unit as addressed in (a)(iii) above;

(B) The WEB source is monitoring emissions from the unit with another certified monitoring method approved under this section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(C) The account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this section.

(2) Monitoring Plan.

(a) General Provisions. The WEB source with an SO₂ emitting unit that uses a monitoring method under (1)(a)(2) above shall meet the following requirements.

(i) Prepare and submit to the executive secretary an initial monitoring plan for each monitoring method that the WEB source uses to comply with this section. In accordance with (c) below, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit SO₂ emissions are monitored and reported. The plan shall be submitted in accordance with the deadlines specified in (6) below.

(ii) Prepare, maintain and submit to the executive secretary a detailed monitoring plan at least 45 days prior to the first day of certification testing. The plan will contain the applicable information required by (iv) below. The executive secretary may require that the monitoring plan or portions of it be submitted electronically. The executive secretary may also require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under (8)(a) below or resubmitted

separately within 30 days after any change is made to the plan in accordance with (iii) below.

(iii) Whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in (1)(a)(ii) above, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan, such as a change to serial number for a component of a monitoring system, then the WEB source shall update the monitoring plan.

(b) The WEB source with an SO₂ emitting unit that uses a method under (1)(a)(i) above shall meet the requirements of (a) - (f) by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the executive secretary upon request.

(c) Initial Monitoring Plan. The account representative shall submit an initial monitoring plan for each SO₂ emitting unit or group of units sharing a common methodology that, except as otherwise specified in an applicable provision in Appendix E of State Implementation Plan Section XX, contains the following information:

(i) For all SO₂ emitting units involved in the monitoring plan:

(A) plant name and location;

(B) plant and unit identification numbers assigned by the executive secretary;

(C) type of unit, or units for a group of units using a common monitoring methodology;

(D) identification of all stacks or pipes associated with the monitoring plan;

(E) types of fuels fired or sulfur containing process materials used in the SO₂ emitting unit, and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(F) types of emissions controls for SO₂ installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(G) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(H) identification of all units using a common stack; and

(I) indicator of whether any stack identified in the plan is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a specific methodology submitted pursuant to (1)(a)(2)(D) above, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(iii) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this section, such petition may be submitted as part of the initial monitoring plan.

(iv) The executive secretary may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this section.

(d) Detailed Monitoring Plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified

in an applicable provision in Appendix E of State Implementation Plan Section XX, the Regional Haze SIP, shall contain the following information:

(i) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a continuous emissions monitoring system (e.g., SO₂ pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in the Appendix, including:

(A) manufacturer, model number and serial number;
 (B) component and system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer and/or probe;
 (C) designation of the component type and method of sample acquisition or operation such as in situ pollutant concentration monitor or thermal flow monitor;
 (D) designation of the system as a primary or backup system;
 (E) first and last dates the system reported data;
 (F) status of the monitoring component; and
 (G) parameter monitored.

(ii) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) hardware components that perform emission calculations or store data for quarterly reporting purposes including the manufacturer and model number; and

(B) identification of the provider and model or version number of the software components.

(iii) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in 40 CFR Part 75.19(c) is not required to report such formulas.

(iv) for units with flow monitors, only, include the inside cross-sectional area in square feet at the flow monitoring location.

(v) If using CEMS for SO₂ and flow, for each parameter monitored, include the scale, maximum potential concentration and method of calculation, maximum expected concentration if applicable and method of calculation, maximum potential flow rate and method of calculations, span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using SO₂ or flow component monitors.

(vi) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(A) identification of the parameter;
 (B) default, maximum, minimum, or constant value, and units of measure for the value;
 (C) purpose of the value;
 (D) indicator of use during controlled and uncontrolled hours;

(E) types of fuel;

(F) source of the value;

(G) value effective date and hour;

(H) date and hour value is no longer effective, if applicable; and

(I) for units using the excepted methodology under 40 CFR 75.19, the applicable SO₂ emission factor.

(vii) Unless otherwise specified in section 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which continuous emissions monitoring system hardware are installed:

(A) the upper and lower boundaries of the range of operation as defined in section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousand of pounds per hour (lb/hr) of steam, or feet per second (ft/sec), as applicable;

(B) the load or operating level(s) designated as normal in section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec, as applicable;

(C) the two load or operating levels (i.e., low, mid, or high) identified in section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(D) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load or operating levels; and

(E) activation and deactivation dates when the normal load or operating levels change and are updated.

(8) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in section 2.1.7 of appendix D to 40 CFR Part 75 is used:

(A) the upper and lower boundaries of the range of operation as defined in section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousand of lb/hr of steam;

(B) the load level designated as normal, pursuant to section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(C) the date of the load analysis used to determine the normal load level.

(ix) Information related to quality assurance testing, including, as applicable: identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels expressed as percent of span for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration if applicable, maximum potential flow rate, and span;

(x) If applicable, apportionment strategies under sections 75.10 through 75.18 of 40 CFR Part 75.

(xi) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

(A) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and (i) and (iii) above. The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(B) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters,

monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(xii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in (c) and (d) above, the WEB source with an SO₂ emitting unit using either of the methodologies in (1)(a)(ii)(B) above shall include the following information in its monitoring plan for the specific situations described:

(i) For each gas-fired or oil-fired SO₂ emitting unit for which the WEB source uses the optional protocol in appendix D to 40 CFR Part 75 for SO₂ mass emissions, the Account Representative shall include the following information in the monitoring plan:

(A) parameter monitored;

(B) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate expressed as the upper range value or unit maximum for each fuel flowmeter;

(C) test method used to check the accuracy of each fuel flowmeter;

(D) submission status of the data;

(E) monitoring system identification code;

(F) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(G) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeters, and the stacks. The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling locations. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(H) for units using the optional default SO₂ emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either section 2.3.1.4 or 2.3.2.4 of appendix D to 40 CFR Part 75;

(I) for units using the 720 hour test under section 2.3.6 of appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(J) for units using the 720 hour test under section 2.3.5 of appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(ii) For each SO₂ emitting unit for which the WEB source uses the low mass emission excepted methodology of section 75.19 to 40 CFR Part 75, WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(A) the results of the analysis performed to qualify as a low mass emissions unit under section 75.19(c) to 40 CFR Part 75. This report will include either the previous three years actual or projected emissions. The report will include the current calendar year of application; the type of qualification; years one, two, and three; annual measured, estimated or projected SO₂ mass emissions for years one, two, and three; and annual operating hours for years one, two, and three.

(B) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeters, and the

stacks. Comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(C) for units which use the long term fuel flow methodology under section 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(D) a statement that the unit burns only gaseous fuels or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuels or fuel oil and a list of the fuels that are projected to be burned;

(E) a statement that the unit meets the applicability requirements in sections 75.19(a) and (b) to 40 CFR Part 75 with respect to SO₂ emissions; and

(F) any unit historical actual, estimated and projected SO₂ emissions data and calculated SO₂ emissions data demonstrating that the unit qualifies as a low mass emissions unit under sections 75.19(a) and (b) to 40 CFR Part 75.

(3) For each gas-fired unit the Account Representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under this section shall not be part of a WEB source's operating permit issued under R307-415, and modifications to the elements of the plan shall not require a permit modification.

(3) Certification and Recertification.

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 or Appendix E of State Implementation Plan Section XX, as applicable. Certification or recertification of a monitoring system by the U.S. EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this Rule shall constitute certification under the WEB Trading Program.

(b) The WEB source with an SO₂ emitting unit not otherwise subject to 40 CFR Part 75 that monitors SO₂ mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following:

(i) A test notice, not later than 21 days before the certification testing of the monitoring system, provided that the executive secretary may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under (2)(c) above; and

(ii) an initial certification application within 45 days after testing is complete.

(c) A monitoring system will be considered provisionally certified while the application is pending.

(d) Upon receipt of a disapproval of the certification of a monitoring system or component, the certification is revoked. The data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of revocation until the WEB source completes a subsequently-approved certification or re-certification test in accordance with the procedures in this rule. The WEB source shall apply the substitute data procedures in this rule to replace all of the invalid data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality. The WEB source shall satisfy the applicable quality assurance and quality control requirements of Part 75 or, if the WEB source is subject to a WEB

protocol in Appendix E of State Implementation Plan Section XX, the applicable quality assurance and quality control requirements in Appendix E of State Implementation Plan Section XX on and after the date that certification testing commences.

(5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with R307-250, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in Appendix E of State Implementation Plan Section XX, with substitute data in accordance with that Appendix.

(b) For an SO₂ emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the WEB source shall use one of the following procedures.

(i) If the WEB source will use a continuous emissions monitoring system to comply with this Section, substitute the maximum potential concentration of SO₂ for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75. The procedures for conditional data validation under section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable.

(ii) If the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75.

(iii) If the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the SO₂ emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2.

(iv) If using a protocol in Appendix E of State Implementation Plan Section XX, follow the procedures in the applicable protocol.

(6) Deadlines.

(a) The initial monitoring plan shall be submitted by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(ii) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

(iii) for any new WEB source, the monitoring plan shall be included with the notice of intent required by R307-401.

(b) A detailed monitoring plan shall be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below.

(c) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of this section, including any referenced in Appendix E of State Implementation Plan Section XX, by the following dates:

(i) for each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in R307-250-12.

(ii) for any existing source that becomes a WEB source after the program trigger date e. one year after the due date for the monitoring plan under (1)(c)(ii) above.

(iii) for any new WEB source or any new unit at a WEB source, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in this rule.

(e) For each control period, the WEB source shall submit each quarterly report no later than 30 days after the end of each calendar quarter, and shall submit each annual report no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) Except as provided in (b) below, the WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under this Rule for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation. Unless otherwise requested by the WEB source and approved by the executive secretary, the copies shall be kept on site.

(b) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for SO₂, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section or in Appendix E of State Implementation Plan Section XX. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any SO₂ emitting unit that uses a Part 75 monitoring method to meet the requirements of this Section.

(8) Reporting.

(a) Quarterly Reports. For each SO₂ emitting unit, the Account Representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the executive secretary, including hourly and quality assurance activity information, and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB Trading Program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this paragraph (a) shall be required, provided, however, that the executive secretary may require that a copy of that report or a separate statement of quarterly and cumulative annual SO₂ mass emissions be submitted separately.

(b) Annual Report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual SO₂ emissions for all SO₂ emitting units at the source. The annual report shall identify total emissions for all units monitored in accordance with (1)(a) above and the total emissions for all units with emissions estimated in accordance with (1)(b) above. The annual report shall be submitted within 60 days after the end of a control period.

(c) If the executive secretary directs that any monitoring plan, report, certification or recertification, or emissions data required to be submitted under this section shall be submitted to the TSA.

(d) If the executive secretary rejects any report submitted under this subsection that contains errors or fails to satisfy the requirements of this section, the account representative shall resubmit the report to correct any deficiencies.

(9) Petitions. A WEB source may petition for an alternative to any requirement specified in (1)(a)(ii) above. The petition shall require approval of the executive secretary and the Administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable SO₂ emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable; and

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of R307-250 and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the executive secretary may require.

(10) For any monitoring plans, reports, or other information submitted under this Rule, the Account Representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under R307-250-5.

R307-250-10. Allowance Transfers.

(1) Procedure. To transfer allowances, the account representative shall submit the following information to the TSA:

(a) the number or numbers identifying the transferor account;

(b) the number or numbers identifying the transferee account;

(c) the serial number of each allowance to be transferred; and

(d) the transferor's account representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year, or, if this date is not a business day, midnight of the first business day thereafter, following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the TSA in order to demonstrate compliance under R307-250-12 for that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative shall submit the following information to the TSA:

(a) the transfer account number identifying the transferor account;

(b) the serial number of each allowance to be retired; and

(c) the transferor's account representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

R307-250-11. Use of Allowances from a Previous Year.

(1) Any allowance that is held in a compliance account or general account will remain in the account until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

(2) In order to demonstrate compliance under R307-250-12(1) for a control period, WEB sources shall only use allowances allocated for that control period or any previous year.

(3) If flow control procedures for the current control period have been triggered as outlined in SIP Section XX.E.3.h(2), then the use of allowances that were allocated for any previous year will be limited in the following ways.

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined.

(b) The number determined in (a) above will be multiplied by the flow control ratio established in accordance with SIP Section XX.E.3.h to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in (b) above may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under R307-250-12.

(4) Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with R307-250-12(1), allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

R307-250-12. Compliance.

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with (b) below and R307-250-11, as of the allowance transfer deadline in the WEB source's compliance account, except as provided in (d) below for units monitored according to R307-250-9(1)(b), in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of R307-250-9.

(i) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone as determined in accordance with SIP Section XX.E.1.

(ii) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source became a WEB source.

(iii) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(iv) If the WEB Trading Program is triggered in accordance with the 2013 review procedures in SIP Section XX.E.1.d, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(b) An allowance may only be deducted from the WEB source's compliance account if:

(i) the allowance was allocated for the current control period or meets the requirements in R307-250-11 for use of allowances from a previous control period, and

(ii) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations shall be determined by comparing the following numbers:

(i) the monitored sulfur dioxide emissions data reported by the source to the executive secretary, in accordance with R307-250-9, and recorded in the emissions tracking database either in a compliance account or a special reserve account, and

(ii) the allowance allocations and transfers recorded in the allowance tracking system, adjusted in accordance with R307-250-11.

(d) Deduction of Allowances.

(i) WEB sources monitoring according to R307-250-9(1)(a). To the extent consistent with R307-250-11, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account.

(ii) WEB sources monitoring according to R307-250-9(1)(b). The total emissions recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline of the current control period. If the emissions are less than or equal to the number of allowances, the allowances shall be retired.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the executive secretary a compliance certification report for the source.

(b) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(i) identification of each WEB source;

(ii) at the Account Representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(iii) the compliance certification report according to (c) below.

(c) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

(i) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(ii) whether sulfur dioxide emissions data was submitted to the executive secretary in accordance with R307-250-9(8) and other applicable requirements for review, revision as necessary, and finalization;

(iii) whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with R307-250-9(1);

(iv) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(v) if applicable, whether any SO₂ emitting unit for which the WEB source is not required to monitor in accordance with R307-250-9(1)(a)(iii) of this rule remained permanently retired and had no emissions for the entire applicable period; and

(vi) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance

status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

(3) Penalties for Any WEB Source Exceeding Its Allowance Limitations.

(a) Allowance Deduction Penalties.

(i) An allowance deduction penalty will be assessed equal to two times the number of the WEB source's tons of sulfur dioxide emissions in excess of its allowance limitation for a control period, determined in accordance with R307-250-12(1). Allowances allocated for that control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(ii) Any allowance deduction required under R307-250-12(1)(c) shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or Utah Code 19-2. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation, or for each other violation of R307-250.

(b) Financial penalties. The penalty sought for emissions of SO₂ by a source in excess of its emission limitation for a control period shall be \$5,000 per ton.

(4) Liability.

(a) WEB Source liability for non-compliance. Separate and regardless of any automatic penalties assessed for allowance deduction penalty and financial penalty, a WEB source that violates any requirement of this Rule is subject to civil and criminal penalties under Utah Code 19-2 and the Clean Air Act. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(b) General Liability.

(i) Any provision of the WEB Trading Program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(ii) Any person who violates any requirement or prohibition of the WEB Trading Program will be subject to enforcement pursuant to Utah Code 19-2.

(iii) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program shall be subject to criminal enforcement pursuant to Utah Code 19-2.

R307-250-13. Special Penalty Provisions for Year 2018.

(1) If the WEB Trading Program is triggered as outlined in SIP Section XX.E.1, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(a) All WEB sources shall register, and shall open a compliance account within 180 days after the program trigger date, in accordance with R307-250-6(1) and R307-250-8.

(b) The TSA will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the executive secretary allocates the 2018 allowances under SIP Section XX.E.3.a.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 30, 2021. WEB sources may transfer allowances as provided in R307-250-10(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018, including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO₂ emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in SIP Section XX.E.2, and R307-150

(e) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with R307-250-11(4), R307-250-12(1)(d) and R307-250-12(3), except that sulfur dioxide emissions shall be determined under R307-250-13(1)(d).

(2) The provisions in R307-250-13 shall continue to apply for each year after the 2018 emission year until:

(a) the first control period under the WEB trading program; or

(b) the executive secretary determined, in accordance with section SIP Section XX.E.1.c(10), that the 2018 sulfur dioxide milestone has been met.

R307-250-14 Integration into Permits.

Any WEB source that is not subject to R307-415 at any time after R307-250e becomes effective must obtain a permit under R307-401 or modify an existing permit issued under R307-401 that incorporates the requirements of R307-250.

KEY: air pollution, sulfur dioxide, market trading program 2003

19-2-104(1)(a)

19-2-104(3)(e)

Environmental Quality, Air Quality **R307-415-9** Fees for Operating Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26653

FILED: 09/15/2003, 17:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment, along with an amendment to Section R307-101-2, see separate filing in this issue, moves the definition of "Chargeable Pollutant" from Section R307-415-9 to Section R307-101-2.

SUMMARY OF THE RULE OR CHANGE: Sources subject to Rule R307-415 are not affected by moving the definition to Section R307-101-2 because Rule R307-101 applies to all sources subject to any R307 rule. (DAR NOTE: The proposed amendment to Section R307-101-2 is under DAR No. 26651 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-109.1 and 19-2-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Division costs for processing information required under Rule R307-415 are not changed by moving the definition to Section R307-101-2.

❖ LOCAL GOVERNMENTS: Costs for local government sources regulated by Rule R307-415 are not changed by moving the definition to Section R307-101-2.

❖ OTHER PERSONS: Costs for sources regulated by Rule R307-415 are not changed by moving the definition to Section R307-101-2.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs for sources regulated by Rule R307-415 are not changed by moving the definition to Section R307-101-2.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Costs for sources regulated by Rule R307-415 are not changed by moving the definition to Section R307-101-2.

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

ENVIRONMENTAL QUALITY

AIR QUALITY

150 N 1950 W

SALT LAKE CITY UT 84116-3085, 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 janmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/22/2003 at 10:00 AM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 12/03/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.

R307-415. Permits: Operating Permit Requirements.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition[s] appl[ies] only to R307-415-9[-]:

—(a)—]"Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

—(b)—]"Chargeable pollutant" means any "regulated air pollutant" except the following:

—(i)— carbon monoxide;

—(ii)— any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

~~— (iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.]~~

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation

for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fee

[August 1, 2002]2003

Notice of Continuation March 1, 1999

19-2-109.1

19-2-104



Insurance, Administration R590-102 Insurance Department Fee Payment Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26655

FILED: 09/15/2003, 18:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public. The changes listed here were approved by the 2003 Legislature in H.B. 1, Appropriations Act, H.B. 4, Viatical Settlements, H.B. 372, Captive Insurer, and S.B. 175, Revenue Procedures and Control Act Amendments, for use by the Insurance Department.

SUMMARY OF THE RULE OR CHANGE: H.B. 1 added an electronic commerce fee for continuing education providers which totals \$20 for initial and renewal license. H.B. 4 added five fees for viatical settlement providers as noted in Sections R590-102-8 and R590-102-13 of this rule. H.B. 372 added seven fees for

captive insurers as noted in Sections R590-102-7 and R590-102-13 of this rule. S.B. 175 increased almost all fees by \$2 for electronic processing. (DAR NOTES: H.B. 1 is found at UT L 2003 Ch 342, and was effective July 1, 2003; H.B. 4 is found at UT L 2003 Ch 81, and was effective May 5, 2003; H.B. 372 is found at UT L 2003 Ch 251, and was effective July 1, 2003; and S.B. 175 is found at UT L 2003 Ch 212, and was effective July 1, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 31A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs above that which is required through the normal process of business. Revenues will increase as a result of these changes. The exact amount is unknown at this time.

❖ LOCAL GOVERNMENTS: This rule will not affect local government since it deals only with the relationship between licensees and anyone else doing business with the department.

❖ OTHER PERSONS: The following is an estimate of the increased revenues the department will take in as a result of the new and increased fees included in this rule change. They are: \$2 increase in new and renewal license fees for companies, agents and agencies to recoup costs related to payments made with credit cards and electronic fund transfers: 1,455 company license renewals = \$2,910, 10 new companies = \$20; 1875 agent renewals = \$37,500, 13,500 new agents = \$27,000; 2,200 agency renewals = \$4,400, 480 new agencies = \$960; 495 Other organizations = \$990; 500 continuing education providers = \$1,000 - for a total of \$74,980. Two new fees have been added to the fee schedule, fees for captive insurers and viatical settlement providers. Currently no licenses have been issued by the department for these new licenses. It is estimated that the department will issue 2 new applications the first year. Revenues from application, license and service fees would total \$1,408. It is estimated that the department will issue 5 new applications to viatical providers the first year. Revenues from the new licenses and service fees would total \$8,010. There is also a \$2 increase for the approximately 40 copies of annual statements for a year = \$80; \$2 increase for electronic lists = \$480. 300 title agency filings = \$600. The total revenues for the year are \$85,558 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The following is an estimate of the increased revenues the department will take in as a result of the new and increased fees included in this rule change. They are: \$2 increase in new and renewal license fees for companies, agents and agencies to recoup costs related to payments made with credit cards and electronic fund transfers: 1,455 company license renewals = \$2,910, 10 new companies = \$20; 1875 agent renewals = \$37,500, 13,500 new agents = \$27,000; 2,200 agency renewals = \$4,400, 480 new agencies = \$960; 495 Other organizations = \$990; 500 continuing education providers = \$1,000 - for a total of \$74,980. Two new fees have been added to the fee schedule, fees for captive insurers and viatical settlement providers. Currently no licenses have been issued by the department for these new licenses. It is estimated that the

department will issue 2 new applications the first year. Revenues from application, license and service fees would total \$1,408. It is estimated that the department will issue 5 new applications to viatical providers the first year. Revenues from the new licenses and service fees would total \$8,010. There is also a \$2 increase for the approximately 40 copies of annual statements for a year = \$80; \$2 increase for electronic lists = \$480.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Business seeking services from the department will notice an increase of \$2 in their fees.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/20/2003 at 9:00 AM, Room 3112, State Office Building, Salt Lake City, UT 84114.

THIS RULE MAY BECOME EFFECTIVE ON: 11/03/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-102. Insurance Department Fee Payment Rule.

R590-102-1. Authority.

This rule is adopted pursuant to Subsections 31A-3-103(2) and (4) which require the commissioner to publish the schedule of fees approved by the Legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public.

(2) The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses, registrations, certificates, or other similar filings and for services provided by the department for which a fee is required.

R590-102-3. Definitions.

For the purposes of this rule the following definitions will apply.

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, and title insurers.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsection 31A-23-212(3).

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, and sponsored captive.

~~(3)~~(4) "Deadline" means the date or time imposed by statute, order, or rule by which:

(a) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(b) a filing must be received by the department without incurring penalties for late receipt or non-receipt.

~~(4)~~(5) "Fee" means an amount set by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

~~(5)~~(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

~~(6)~~(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

~~(7)~~(8) "Limited-line agency" includes bail bond and limited-line producer.

~~(8)~~(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

~~(9)~~(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, ~~and any other entity considered not an admitted~~ surplus line insurer, accredited reinsurer, and trustee reinsurer.

~~(10)~~(11) "Paper filing" means each item of a filing that must be manually entered into the department's database because it was submitted by some method such as paper ~~or~~ facsimile, or email rather than submitted electronically when the department has mandated an electronic filing method ~~[available].~~

~~(11)~~(12) "Received by the department" means:

(a) except as provided in Subsection R590-102-3(11)(b), the date delivered to and stamped received by the department, whether delivered in person or electronically; or

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless a statute, rule, or order related to a specific filing or payment provides otherwise.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through ~~[43]~~14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was

issued and any action taken pursuant to the fee payment will be negated. Any late fees or penalties will apply until proper payment is made. Tender of a check to the department, that is subsequently dishonored, is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) Implementation date.

(a) All fees, except resident and non-resident individual and agency license renewal fees, are implemented November 1, 2003.

(b) Resident and non-resident individual and agency license renewal fees are implemented December 1, 2003.

R590-102-5. Admitted Insurer Annual License and Annual Service Fees.

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: ~~[\$1,000, effective July 1, 2002]~~ \$1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: ~~[\$300, effective with renewal invoices issued after November 30, 2002]~~ \$302;

(c) certificate of authority - reinstatement - due with application for reinstatement: ~~[\$1,000, effective July 1, 2002]~~ \$1,002;

(d) certificate of authority - amendments - due with request for amendment: ~~[\$250, effective July 1, 2002]~~ \$252;

(e) application for merger, acquisition, or change of control - Form A, due with filing: ~~[\$2,000, effective July 1, 2002]~~ \$2,002. Expenses incurred for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed ~~[by the consultant(s)].~~

(f) redomestication filing - due with filing: ~~[\$2,000, effective July 1, 2002]~~ \$2,002; and

(g) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: ~~[\$1,000, effective July 1, 2002]~~ \$1,002.

~~(h)~~2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is

required~~[-, effective with renewal invoices issued after November 30, 2002]~~:

(~~(i)~~~~(a)~~) filing annual statement and report of Utah business~~[-]~~ - due annually on March 1;

(~~(ii)~~~~(b)~~) filing holding company registration statement - Form B;

(~~(iii)~~~~(c)~~) filing application for material transactions between affiliated companies - Form D;

(~~(iv)~~~~(e)~~) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(~~(v)~~~~(f)~~) application for individual license to solicit in accordance with the stock solicitation permit.

(~~(2)~~~~(3)~~) Annual service fee:

(a) Due annually by the due date on the invoice~~[-, effective with renewal invoices issued after November 30, 2002]~~. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the ~~(2002)~~~~2003~~ annual service fee calculation will use the Utah premium shown in the December 31, ~~(2004)~~~~2002~~ annual statement~~[-]~~.

(i) \$0 premium volume: no service fee;

(ii) more than \$zero but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(b) The annual service fee includes the following services for which no additional fee is required~~[-, effective with renewal invoices issued after November 30, 2002]~~:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) ~~[agent]~~filing of producer/agency appointment with an insurer - initial;

(vii) ~~[agent]~~filing of producer/agency appointment with an insurer - termination;

(viii) ~~[agent]~~filing of producer/agency appointment with an insurer - biennial renewal;

(ix) report filing, all lines of insurance;

(x) rate filing, all lines of insurance;

(xi) form filing, all lines of insurance; and

(xii) workers' compensation loss cost schedule.

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

(d) ~~[The annual service fee EXCLUDES services related to paper filings when the department has an -]Paper filing processing fee for non-electronic [filing method available.]processing of producer/agency appointment filing - initial or termination - due with non-electronic filing: \$5 per appointment filing.~~

R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusted Reinsurer, Other Organizations Annual License and Annual Service Fees.

(1) Annual license fee.

(a) ~~[surplus lines insurer, accredited reinsurer, and trusted reinsurer]other organizations - initial - due with application: [\$1,000, effective July 1, 2002]\$252;~~

(b) ~~[surplus lines insurer, accredited reinsurer, and trusted reinsurer]other organizations - renewal - due annually by the due date on the invoice: [\$300, effective with renewal invoices issued after November 30, 2002]\$202;~~

(c) ~~[surplus lines insurer, accredited reinsurer, and trusted reinsurer]other organization - reinstatement - due with application for reinstatement: [\$1,000, effective July 1, 2002]\$252;~~

(d) ~~The annual other organizations [-] initial [-due with application: \$250;]or renewal fee includes the risk retention group annual statement filing - due annually on May 1.~~

(e) ~~[other organizations - renewal - due annually by the due date on the invoice: \$200, effective with renewal invoices issued after November 30, 2002; and]surplus line insurer, accredited reinsurer, and trusted reinsurer:~~

~~[(f) other organizations - reinstatement](i) surplus lines insurer, accredited reinsurer, and trusted reinsurer - initial - due with application [for reinstatement: \$250]\$1,002.~~

~~[(g)ii] surplus lines insurer, accredited reinsurer, and trusted reinsurer - renewal - due annually by the due date on the invoice: \$302;~~

~~_____ (iii) surplus lines insurer, accredited reinsurer, and trusted reinsurer - reinstatement - due with application for reinstatement: \$1,002;~~

~~_____ (iv) The annual [initial or renewal surplus]initial or renewal surplus line license fee includes the surplus lines annual statement filing [and filing fee due]for:~~

~~[(i)A] U.S. companies - due annually on May 1; and~~

~~[(ii)B] foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.~~

~~[(h) The annual initial or renewal risk retention group - other organizations - fee includes the annual statement filing and filing fee due annually on May 1.]~~

~~[(i)Y] The annual initial or renewal accredited reinsurer and trusted reinsurer license fee includes the annual statement filing [and filing fee] - due annually on March 1.~~

(2) Annual service fee:

(a) ~~[surplus lines insurer, accredited reinsurer, trusted reinsurer, and other]Other organizations - due annually by the due date on the invoice: \$200[-, effective with renewal invoices issued after November 30, 2002].~~

~~_____ (b) Surplus lines insurer, accredited reinsurer, and trusted reinsurer - due annually by the due date on the invoice: \$200~~

~~[(b)C] The annual service fee includes the following services for which no additional fee is required:~~

~~(i) filing of power of attorney;~~

~~(ii) filing of registered agent;~~

~~(iii) rate, form[-filing], report or service contract filing; and~~

~~(iv) any other services provided to the licensee.~~

~~[(e)D] The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.[~~

~~—(d) The annual service fee EXCLUDES services related to paper filings when the department has an electronic filing method available.]~~

R590-102-7. Captive Insurer Fees.

- ~~(1) Initial application - due with license application: \$202.
(2) Initial application review - due by the due date on the invoice: actual costs incurred by the department to review the application.
(3) Annual license fees:
(a) initial - due by the due date on the invoice: \$302;
(b) renewal - due by the due date on the invoice: \$302; and
(c) reinstatement - due with application for reinstatement: \$302.
(4) Annual service fee - due by the due date on the invoice: \$200.~~

R590-102-8. Viatical Settlement Provider Fees.

- ~~(1) Annual license fees:
(a) initial - due with application: \$1,002;
(b) renewal - due by the due date on the invoice: \$302; and
(c) reinstatement - due with reinstatement application: \$1,002.
(2) Annual service fee - due by the due date on the invoice: \$600.~~

R590-102-[7]9. Individual Resident and Non-Resident Biennial License Fees.

- (1) Resident and non-resident full-line individual initial license or renewal fee for two-year period:
(a) initial license fee - due with application: ~~[\$70, effective July 1, 2002]~~\$72;
(b) express initial license fee - due with application: ~~[\$70, effective July 1, 2002]~~\$72;
(c) renewal license fee if renewed prior to renewal deadline - due with renewal application: ~~[\$70, effective with renewal invoices beginning with the October 2002 renewals]~~\$72;
(d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: ~~[\$140, effective with renewal invoices beginning with the October 2002 renewals]~~\$142; and
(e) lapsed license reinstatement fee if reinstated 31 days through 365 days after renewal deadline - due with application for reinstatement: ~~[\$190, effective with renewal invoices beginning with the October 2002 renewals]~~\$192.
(2) Resident and non-resident limited-line individual initial or renewal license fee, for two-year period:
(a) initial license fee - due with application: ~~[\$45]~~\$47;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: ~~[\$45]~~\$47;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: ~~[\$90]~~\$92; and
(d) lapsed license reinstatement fee if reinstated 31 days through 365 days after renewal deadline - due with application for reinstatement: ~~[\$140]~~\$142.
(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: ~~[\$25]~~\$27.
(4) The initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) individual continuing education services; and
(e) other services provided to the licensee.

(5) The initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.]

~~—(6) The initial and renewal individual license fee EXCLUDES services related to paper filings when the department has an electronic filing method available.]~~

R590-102-[8]10. Biennial Agency License Fees.

- (1) Resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:
(a) initial license fee - due with application: ~~[\$75, effective July 1, 2002]~~\$77;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: ~~[\$75, effective with renewal invoices beginning with the October 2002 renewals]~~\$77;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: ~~[\$150, effective with renewal invoices beginning with the October 2002 renewals]~~\$152; and
(d) lapsed license reinstatement fee if reinstated 31 days ~~[through 365 days]~~ after renewal deadline - due with application for reinstatement: ~~[\$200, effective with renewal invoices beginning with the October 2002 renewals]~~\$202.
(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: ~~[\$25]~~\$27.
(3) Bail bond agency per annual license period:
(a) initial license fee - due with application: ~~[\$250, effective July 1, 2002]~~\$252;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: ~~[\$250, effective with renewal invoices issued for 2002 renewals]~~\$252;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: ~~[\$500, effective with renewal invoices issued for 2002 renewals]~~\$502; and
(d) lapsed license reinstatement fee if reinstated 31 days ~~[through 365 days]~~ after renewal deadline - due with application for reinstatement: ~~[\$600, effective with renewal invoices issued for 2002 renewals]~~\$602.
(4) Health insurance purchasing alliance annual license:
(a) initial license fee - due with application: ~~[\$500, effective July 1, 2002]~~\$502;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: ~~[\$500, effective with renewal invoices issued for 2002 renewals]~~\$502;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: ~~[\$750, effective with renewal invoices issued for 2002 renewals]~~\$752; and
(d) lapsed license reinstatement fee if reinstated 31 days ~~[through 365 days]~~ after renewal deadline - due with application for reinstatement: ~~[\$800, effective with renewal invoices issued for 2002 renewals]~~\$802.

(5) The initial and renewal agency license fee includes the following services for which no additional fee is required:

- (a) issuance of letter of certification;
- (b) issuance of letter of clearance;
- (c) issuance of duplicate license;
- (d) ~~[agent]filing of producer~~ designation to agency license - initial~~[-, effective October 2002];~~
- (e) ~~[agent]filing of producer~~ designation to agency license - termination~~[-, effective October 2002];~~
- (f) ~~[agent]filing of producer~~ designation to agency license - biennial renewal~~[-, effective October 2002];~~
- (g) filing of amendment to agency license; ~~and~~
- (h) filing of power of attorney; and
- (~~h~~i) any other services provided to the licensee.

(6) The initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

~~—(7) The initial and renewal agency license fee EXCLUDES services related to paper filings when the department has an electronic filing method available.]~~

R590-102-~~10~~11. Continuing Education Fees.

(1) Continuing education provider approval fees:

(a) initial approval fee - due with application: ~~[\$250, effective July 1, 2002]~~\$252;

(b) renewal approval fee if renewed prior to renewal deadline - due with renewal application: ~~[\$250, effective with renewal invoices beginning with the October 2002 renewals]~~\$252;

(c) renewal approval fee if renewed 1 through 60-days after renewal deadline and prior to approval lapse - due with renewal application: ~~[\$300, effective with renewal invoices beginning with the October 2002 renewals]~~\$302; and

(d) Lapsed approval reinstatement fee if reinstated 61 days ~~[through 365 days]~~ after renewal deadline - due with application for reinstatement: ~~[\$350, effective with renewal invoices beginning with the October 2002 renewals]~~\$352.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee ~~[\$25]~~\$27.

R590-102-~~10~~12. Dedicated Fees.

The following are fees dedicated to specific uses:

(1) annual fraud assessment fee - due by the due date on the invoice~~[-, effective July 1, 2002];~~

(2) annual title assessment fee - due by the due date on the invoice~~[-, effective July 1, 2002];~~

(3) relative value study book fee - due when book purchased or by invoice due date: ~~[\$10]~~12;

(4) Utah insurance codebook fee - due when book purchased or by invoice due date: ~~[\$25]~~\$32; and

(5) mailing fee for books - due if book is to be mailed to purchaser: \$3.

R590-102-~~14~~12. Electronic Commerce Dedicated Fees.

(1) E-commerce and internet technology services fee:

(a) ~~[insurer,]admitted [and non-admitted]insurer, captive insurer, and surplus lines insurer[-, accredited reinsurer, trustee reinsurer]~~ - due with the annual initial, ~~[and]~~annual renewal, or reinstatement application: \$75~~[-, effective for initial licenses, July 1, 2002; effective for renewal licenses issued after November 30, 2002];~~

(b) other organization and viatical settlement provider - due

with the annual initial, annual renewal, or reinstatement application: \$50~~[-, effective for initial licenses, July 1, 2002; effective for renewal licenses issued after November 30, 2002];~~

(c) ~~[agency]continuing education provider~~ - due with the ~~[biennial]annual~~ initial, ~~[biennial]annual~~ renewal, or reinstatement application: ~~[\$10, effective for initial licenses, July 1, 2002]~~\$20; ~~[effective for renewal licenses issued beginning October 2002; and]~~

(d) ~~[individual]agency~~ - due with the biennial initial, biennial renewal, or reinstatement application: ~~[\$5 effective for initial licenses, July 1, 2002; effective for renewal licenses issued beginning October 2002.]~~\$10; and

~~(e) individual - due with the biennial initial, biennial renewal, or reinstatement application: \$5.~~

~~(2) The e-commerce and internet technology services fees are authorized until July 1, 2006.~~

~~[(2) Electronic transaction]~~(3) Database access fee - due when the department's database is accessed to input or acquire data: \$3 per transaction~~[-, effective July 1, 2002].~~

~~[(3)]~~(4) Non-electronic [transaction]payment fee - added to fees due the department when a payment that can be made electronically is done through some other method: \$5 per payment~~[-, effective July 1, 2002].~~

~~—(4) The fees in this section are authorized until July 1, 2006.]~~

R590-102-~~12~~14. Other Fees.

(1) photocopy fee ~~[-per page: \$.50, effective July 1, 2002]-~~ per page: \$0.

(2) ~~[complete]Complete~~ annual statement copy fee ~~[-per statement: \$40]per statement: \$42.~~

(3) ~~[fee]Fee~~ for accepting service of legal process: ~~[\$10]~~\$12.

(4) ~~[fees]Fees~~ for production of information lists regarding admitted insurers, other organizations, individuals[;], agencies[; companies], or other information that can be produced by list:

~~[(a) Printed list: \$1 per page;]~~

~~[(b)a] [Electronic]printed list: \$1 per page;~~

~~(b) electronic list:~~

(i) 1 to 500 records: ~~[\$50]~~\$52; and

(ii) 501 or more records: ~~[\$.10]~~\$.11 per record.

~~[(e)]~~(5) Returned check fee: \$20.

~~(6) Workers compensation loss cost multiplier schedule: \$5.~~

~~(7) Title agency filing (rate, form, or report) - due with filing: \$25.~~

R590-102-~~13~~15. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

KEY: insurance

~~[June 7, 2002]~~2003

Notice of Continuation February 21, 2002

31A-3-103



Labor Commission, Safety **R616-3-14** Remodeled Elevators

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26643

FILED: 09/11/2003, 16:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides that remodeled hydraulic elevators shall be considered the same as new hydraulic elevators for purposes of inspection standards.

SUMMARY OF THE RULE OR CHANGE: This amendment adds Subsection R616-3-14(B) which clarifies that the same standards for inspecting a new hydraulic elevator shall apply to a remodeled hydraulic elevator.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-201

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Because there is no change to the fee structure for inspections, there should be no cost or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: Because there is no change to the fee structure for inspections, there should be no cost or savings to local government budgets.
- ❖ OTHER PERSONS: This rule applies to approximately three inspections per year. Application of the rule to these three inspections will increase the permit fee by \$50, or an aggregate total of \$150.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment will not impose additional compliance requirements, but will increase the subject inspection fees by \$50 to cover actual inspection costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Safety considerations require that the same standards be applied to both new and remodeled hydraulic elevators.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: R Lee Ellertson, Commissioner

R616. Labor Commission, Safety.**R616-3. Elevator Rules.****R616-3-14. Remodeled Elevators.**

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

B. When a hydraulic elevator has been remodeled it is considered a new installation.

KEY: elevators, certification, safety

[May 8,]2003

Notice of Continuation January 10, 2002

34A-1-101 et seq.



Natural Resources, Parks and
Recreation
R651-401
Off-Highway Vehicle and Registration
Stickers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26608

FILED: 09/09/2003, 13:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is difficult for off-highway vehicle (OHV) users to follow, and is very difficult for law enforcement officers to enforce. Updating this rule will eliminate much of the confusion over sticker placement and enhance compliance to the rule. The reference to a "decal" is changed for consistency with "sticker".

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule change is simply to streamline and make easier the sticker placement for OHVs. Changes in the design and manufacture of OHVs has made the placement of registration and/or husbandry stickers challenging for many OHV users. The materials now used may not adhere to the stickers where they have been mandated to be placed. Some all terrain vehicles (ATVs) have no fork in the later models and it states they must have the sticker placed in that position. So this rule change will make the process smoother and easier to enforce.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-3(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment is to streamline the placing of stickers on OHVs in areas where the material will

adhere to the sticker and show up as well. Some of the materials will not adhere to the stickers. There is no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: This amendment is strictly a state matter with placement of stickers on OHVs and therefore, there will be no cost or savings to local government.

❖ OTHER PERSONS: This amendment changes the location to put the OHV stickers on the machine. There are no additional charges to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this is a change of location for stickers, there are no compliance costs at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment simply involves the placement of registration stickers, there are no anticipated impacts to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-401. Off-Highway Vehicle and Registration Stickers.
R651-401-1. Stickers.

Upon receipt of the application in the approved form, the Division of Motor Vehicles shall issue annual registration stickers which shall be displayed as follows: on snowmobiles, a sticker shall be mounted on both sides of the hood, ~~tunnel~~ or pan; on motorcycles ~~[or all-terrain type I vehicles]~~, a sticker shall be mounted on both sides of the fork; and on all-terrain ~~type I and type II~~ vehicles, ~~[a base decal]~~ stickers shall be mounted on the front and the rear of the vehicle. Vehicle types are defined in 41-22-2. In all instances, sticker shall be mounted in a visible location.

KEY: off-highway vehicles
[~~June 15, 2001~~ November 1, 2003
Notice of Continuation November 13, 2001
41-22-3(4)

Natural Resources, Parks and Recreation **R651-402** Registration Expiration

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26611

FILED: 09/09/2003, 13:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Motor Vehicles (DMV) (mostly county clerks/assessors) doing DMV work locally, and the dealers have not liked the old system of expiring all snowmobile registrations on October 31 annually, and all registrations on off-highway vehicles (OHVs) and all terrain vehicles (ATVs) on April 30 annually. These groups did not like the system and wanted a change, and the Legislature agreed, and changed the law. S.B. 209 (2003) amended Section 41-22-5 by striking requirements for the Parks and Recreation board to determine the day and month when the annual registration expires, and establishes a system for 12 months following the initial registration.

SUMMARY OF THE RULE OR CHANGE: During the 2003 legislative session, S.B. 209 was passed and signed by the governor. This bill amended Section 41-22-5 by striking the requirement for the Parks and Recreation board to determine the day and month when the annual a registration expires, and created Section 41-22-3.5 that establishes a system wherein registrations expire 12 months following the initial registration and on the anniversary in subsequent years. Prior to this bill, the board had authority to set the day and month of OHV registration expirations. They did this by Rule R651-402, that states all snowmobile registrations will expire October 31, annually and all ATV and off-highway motorcycle registrations will expire April 30, annually. This was a source of irritation for the dealers and the DMV, who collectively asked the legislature to change the system. S.B. 209 (2003) does that and therefore there is no need for Rule R651-402 and it is repealed in its entirety. (DAR NOTE: S.B. 209 is found at UT L 2003 Ch 317, and will be effective January 1, 2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-3(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Since this is a change in the way of handling the registration expiration and it is going to be enforced by the Utah State Code, it will not affect the state budget. Therefore, there will be no aggregate anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: This rule affects only the state and public who are registering their ATV's to ride on public lands. There is no aggregate anticipated cost or savings to local government.

❖ OTHER PERSONS: This repeal brings the Division's rule in line with the statute. There will be no effect to other persons as this is a compliance item.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since S.B. 209 amends Section 41-22-5 which strikes the requirement for the parks and recreation board to set timelines. Therefore, there is no cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the new law simply changes the date upon which OHVs are to be registered, there are no anticipated fiscal impacts on businesses from repealing Rule R651-403, which the law supercedes.

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

NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.

~~[R651-402. Registration Expiration.~~

~~R651-402-1.~~

~~— Snowmobile registrations shall expire annually on the last day of October. All other off-highway vehicle registrations shall expire annually on the last day of April.~~

~~KEY: off-highway vehicles~~

~~1987~~

~~Notice of Continuation November 13, 2001~~

~~41-22-5(1)]~~



Natural Resources, Parks and
 Recreation
R651-403
 Dealer Registration

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 26609

FILED: 09/09/2003, 13:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R651-403 was adopted to regulate the issuance of off-highway vehicles (OHV) dealer registrations. Because of H.B. 253 (2003), that responsibility is now with the Motor Vehicle Enforcement Division (MVED) and therefore, this rule is no longer needed. (DAR NOTE: H.B. 253 is found at UT L 2003 Ch 157, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: In meeting with the Legislative General Counsel and asking them about the applicability of this rule and an apparent conflict in the law, they made it clear that their interpretation and intent of the legislature clearly was to have OHV dealers regulated by the MVED and that this rule should be repealed since it no longer meets the requirement of law. Therefore, this rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-5-(2)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The repealing of this rule impacts only MVED and Utah State Parks. MVED now has to accept responsibility for regulating OHV dealers, who will have some impact due to a change in process, but that impact appears to be minor. Therefore there is no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: There is no involvement of local government in this rule repeal. There will be no aggregate anticipated cost or savings to local government.

❖ OTHER PERSONS: Since the responsibility of overseeing this process is changing hands only, there should not be any impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The MVED will now regulate dealer registrations of OHVs and therefore there is no anticipated compliance cost for affected persons by this repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Fiscal impact to businesses will be limited to OHV dealers, who will need to make minor adjustments in order to work with a different state division to handle OHV registrations; because this change was requested by the dealers themselves, it may be assumed that the long-run impact on OHV dealers will be favorable.

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

NATURAL RESOURCES
 PARKS AND RECREATION
 Room 116
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.**~~R651-403. Dealer Registration.~~****~~R651-403-1.~~**

~~—(1) Each person acting as a dealer who has an established place of business and is engaged in the business of selling off-highway vehicles may make application to the division, who is acting as agent for the division, in order to obtain dealer registration.~~

~~—(2) The application shall contain the following information:~~

~~—(a) the name of the business;~~

~~—(b) the business address;~~

~~—(c) the business owner's name (if the business is a corporation, the names of the principal officers of the corporation);~~

~~—(d) the type of vehicles offered for sale; and~~

~~—(e) the manufacture line of vehicles for which the dealer holds franchise from the manufacturer to sell. Attached to the application shall be copies of the appropriate city, county, and state licenses required to do business in this state and a copy of document(s) from the manufacturer authorizing the sale of new off-highway vehicles.~~

~~—(3) Upon filing the application by the dealer the division may assign a dealer number and the number of registrations to be issued, after which the Division of Motor Vehicles may assign the number of approved dealer registrations to the dealer.~~

~~—(4) Dealer registrations are valid only when demonstrating an off-highway vehicle to a prospective purchaser and shall not be permanently attached to a vehicle.~~

~~—(5) Every off-highway vehicle dealer who obtains dealer registration is responsible to maintain the registration and control its use.~~

~~—(6) Dealer registrations are not valid on any off-highway vehicle which is a rental or lease unit or on an off-highway vehicle which is not a part of the dealer inventory and available for immediate sale.~~

~~—(7) If the division has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, dealer registrations may be suspended. Upon suspension, the dealer will surrender all of his dealer registrations to the Division of Motor Vehicles within 15 days.~~

KEY: off-highway vehicles**June 15, 2001****Notice of Continuation November 13, 2001
41-22-5(2)]**

Natural Resources, Parks and Recreation

R651-404

Temporary Registration

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26612

FILED: 09/09/2003, 13:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2003 legislative session, H.B. 253 was passed and signed by the governor. This bill amended Sections 41-3-102, 41-3-202, 41-3-205, and 41-3-601 to include dealers of off-highway vehicles (OHVs) under the same requirements as dealers of other motor vehicles. The act requires licensing of dealers and sales people, and imposes bonding fees upon OHV dealers. By including OHV dealers in the provisions of this code, it also alters the manner in which Dealer Registrations and Temporary Registrations are issued for OHVs.

SUMMARY OF THE RULE OR CHANGE: Prior to the effective date of this act, the Division approved the number of Dealer Registrations to be issued to OHV dealers. Because of that authority, the State Parks and Recreation board had adopted Rule R651-404 to regulate the issuance of OHV temporary registrations. Because of H.B. 253 (2003), that responsibility now rests in the hands of the Motor Vehicle Enforcement Division (MVED). Thus, Rule R651-404 no longer meets the requirement of the law and it is repealed in its entirety. (DAR NOTE: H.B. 253 is found at UT L 2003 Ch 157, and was effective May 5, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-5(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The responsibility of regulating OHV temporary registrations is changing hands from Parks and Recreation to the MVED. There is no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: The temporary OHV registrations are state registrations and therefore there is no cost to local government.

❖ OTHER PERSONS: OHV Dealers will now go to MVED for questions regarding temporary OHV registrations instead of to Parks and Recreation. There is no cost or savings to other persons as a result of this repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment simply moves responsibility from one state agency to another to handle the temporary OHV registrations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Fiscal impact to businesses will be limited to OHV dealers, who will need to make minor adjustments in order to work with a different state division to handle temporary OHV registrations. Because this change

was requested by the dealers themselves, it may be assumed that the long-run impact on OHV dealers will be favorable.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.

~~R651-404. Temporary Registration.~~

~~R651-404-1.~~

~~— (1) An off highway vehicle dealer may apply for temporary registrations to be used on off highway vehicles sold by his business. The application to obtain temporary registrations is the same as outlined in Rule R651-403(1).~~

~~— (2) Each temporary registration will be valid for a period not to exceed 30 days from date of issue.~~

~~— (3) A temporary registration will not be valid on any off highway vehicle held in the dealer inventory for sale or any off highway vehicle not sold by the same dealer who issued the registration.~~

~~— (4) A dealer shall not issue more than one temporary registration for any off highway vehicle.~~

~~— (5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the off highway vehicle sold, the name and address of the purchaser, and the date issued.~~

~~— (6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the division during regular business hours.~~

~~— (7) If the division has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registrations may be suspended. Upon suspension, the dealer will surrender all of his unused temporary registrations to the Division of Motor Vehicles within 15 days.~~

KEY: off highway vehicles

June 15, 2001

Notice of Continuation November 13, 2001

41-22-5(3)]



Natural Resources, Parks and Recreation **R651-405** Off-Highway Implement of Husbandry Sticker Fee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26610

FILED: 09/09/2003, 13:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is hard to follow and difficult to enforce because some of the areas where the stickers are designated to be placed do not adhere to the material in the sticker and updating this rule by adding simple language will help eliminate some of the confusion about husbandry sticker placement and would enhance compliance.

SUMMARY OF THE RULE OR CHANGE: Making some of the off-highway vehicle (OHV) rules easier to enforce and understand is a goal that will help everyone involved, and this rule amendment accomplishes that task. It gives a two sentence directive so there will be no confusion and there will be surfaces that will adhere to the husbandry sticker.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 41-22-5.5(5)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This is another amendment for a different sticker placement. This time for husbandry stickers and therefore, it is strictly the location of adhesive surfaces and there is no anticipated cost or savings to the state budget.

❖ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government. This is a state decision to help improve the placement of husbandry stickers on OHVs.

❖ **OTHER PERSONS:** There is no anticipated cost or savings to other persons, only an easier way to have their husbandry stickers displayed, but on a surface that will hold the stickers permanently.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since this amendment is simply to make things easier for everyone involved, and it does not involve additional costs, there are no compliance costs added for this amendment regarding any affected persons

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment simply involves the placement of husbandry stickers, there are no anticipated impacts to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION

Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320,
by FAX at 801-538-7378, or by Internet E-mail at
deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY
SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER
THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-405. Off-Highway Implement of Husbandry Sticker Fee.
R651-405-1.

The sticker fee shall be \$10.

R651-405-2. Off-Highway Implement of Husbandry Sticker Display.

~~[The implement of husbandry sticker shall be displayed as follows: On snowmobiles, the sticker shall be mounted on the left side of the hood or pan; on motoreycles or all terrain type I vehicles, the sticker shall be mounted on the left side of the fork.]~~ For all off-highway vehicle types, the implementation of husbandry stickers shall be permanently and visibly affixed on the left side of the machine. In all instances, the sticker shall be mounted in a visible location.

KEY: off-highway vehicles
[1987]November 1, 2003
Notice of Continuation November 13, 2001
41-22-5.5(1)



Natural Resources, Parks and
Recreation
R651-606-10
Quiet Hours

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE No.: 26607
FILED: 09/09/2003, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R651-606-10 is lacking in definition as to the word, "quiet", and it is difficult to uphold in court. After further research, it was determined that the Quiet Hour section is also covered under Section 76-9-192, Disorderly Conduct. This section of the Utah Code will provide penalties for people who make

unreasonable noises in public places; or make unreasonable noises in private areas that can be heard in public places. The enforcement of the rule will remain the same, but will be using a different reference.

SUMMARY OF THE RULE OR CHANGE: Section 76-9-192 covers the "quiet hour" that is Section of R651-606-10. Therefore, it is duplicated and is harder to enforce under the rule than under the statute. This amendment will take out the duplication in the rule by removing Section R651-606-10.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-11-17(8)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Removing this section simply moves the "quiet hours" violation to be covered under Section 76-9-192, and it will make it more effective and easier to defend in court to be covered by the statute.
- ❖ LOCAL GOVERNMENTS: This is a change to a state rule, and does not affect local government. Therefore, there is no cost to local governments.
- ❖ OTHER PERSONS: People violating Section 76-9-192 will be disciplined according to the statute and each violation will be covered under those provisions on a case-by-case basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A person who receives a citation for violating "quiet hours" will be judged by the statute and appropriate penalties will be applied.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment eliminates rule redundancy regarding quiet hours, there are no anticipated impacts to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320,
by FAX at 801-538-7378, or by Internet E-mail at
deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY
SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER
THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director



R651. Natural Resources, Parks and Recreation.**R651-606. Camping.****~~R651-606-10. Quiet Hours.~~**

~~— No person shall violate the 10 p.m. to 7 a.m. park area quiet hours, except in the following area(s): Coral Pink Sand Dunes State Park, which shall be 10 p.m. to 9 a.m.~~

]

KEY: parks

~~September 28, 2000~~ **November 1, 2003**

Notice of Continuation June 29, 1999

63-11-17(8)



Natural Resources, Parks and
Recreation
R651-633-2
Special Closures or Restrictions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26613

FILED: 09/09/2003, 13:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds Black Rocks Canyon and West Canyon which also have hiking and walking opportunities for the public. It changes closure dates at Johnson Canyon, Jenny's Canyon, Black Rocks, and West Canyon (climbing routes) to create consistency for opening and closing dates reserve wide.

SUMMARY OF THE RULE OR CHANGE: One of the Canyons listed, Johnson Canyon, would have one extra month for the trail to be open to the general public making 4.5 months of the year accessible; change Jenny's Canyon to March 15 - June 1. No change to Black Rocks or West Canyon.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-11-27(2)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: With two other canyons added to the hiking, and the season being extended, the number of hikers may increase. It is estimated that these revenues will not exceed \$10,000.

❖ LOCAL GOVERNMENTS: Since this is specifically for park areas, there will be no impact to local government.

❖ OTHER PERSONS: If visitation by hikers increases with the additional open months at some areas and with the other two canyons being added, they will pay the normal entry fee as any other visitor to the park.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If a person doesn't pay the entrance fee, they are not allowed in the park. If they comply and pay the fee, they are free to hike on all designated trails at Snow Canyon.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this amendment would extend the season and availability of hiking/walking trails for the public, there may be some fiscal impact on businesses, which would benefit from the additional demand for goods and services associated with increased park traffic.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.**R651-633. Special Closures or Restrictions.****R651-633-2. General Closures or Restrictions.**

Persons are prohibited from being in a closed area or participating in a restricted in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordan River State Park - Possession or consumption of any alcoholic beverage is prohibited except at the Jordan River Par 3 Golf Course;

(5) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(6) Palisade State Park - Cliff diving is prohibited;

(7) Red Fleet State Park - Cliff diving is prohibited; and

(8) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March ~~20~~15 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March ~~21~~15 to ~~November 14~~October 31 by permit or guided walk, the canyon is open from ~~November 15~~November 1 to March 14,

(d) Black Rocks Canyon is closed annually from March 15 to June 30.

(e) West Canyon climbing routes are closed annually from February 1 to June 1 to protect nesting raptors.

(d)f) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

KEY: parks

~~October 4, 1999~~ **November 1, 2003**

63-11-17(2)(b)



Natural Resources, Parks and
Recreation
R651-633-2
Special Closures or Restrictions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 26606

FILED: 09/09/2003, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment deletes the reference to the Jordan River Par 3 Golf Course that is no longer under the State's operation.

SUMMARY OF THE RULE OR CHANGE: The Jordan River Golf Course is no longer being operated by the State, but is now being operated by Salt Lake City. Therefore, the reference to possession or consumption of any alcoholic beverage be prohibited "except at the Jordan River Park 3 Golf Course", no longer applies and therefore needs to be deleted. The State still has other property considered part of Jordan River State Park and therefore the first part of the rule still applies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state no longer operates the Jordan River Golf Course. There would be no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: Salt Lake City took over the control of the Jordan River Golf Course and any fines or changes to the alcoholic beverages being permitted at the Golf Course would be at their discretion under the city ordinances and laws.

❖ OTHER PERSONS: This does not apply to State Parks as we no longer have the Jordan River Golf Course in our park system. Therefore, the removal of this language from the rule has no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs would be at the discretion of Salt Lake City and their laws and ordinances. The changes made to this rule impose no compliance costs as it simply removes reference to the golf course.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the golf course is no longer operated by the state, and because the change in operators was not initiated by the proposed rule amendment itself, there are no anticipated fiscal impacts to businesses associated with the proposed rule amendment.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-538-7378, or by Internet E-mail at deeguess@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Gordon Topham, Interim Deputy Director

R651. Natural Resources, Parks and Recreation.

R651-633. Special Closures or Restrictions.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating ~~in a restricted~~ in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordan River State Park - Possession or consumption of any alcoholic beverage is prohibited ~~except at the Jordan River Par 3 Golf Course~~;

(5) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(6) Palisade State Park - Cliff diving is prohibited;

(7) Red Fleet State Park - Cliff diving is prohibited; and

(8) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March ~~20~~15 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March 2 to November 14 by permit or guided walk, the canyon is open from November 15 to March 1[;].

(d) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

KEY: parks

~~October 4, 1999~~ **November 1, 2003**
63-11-17(2)(b)



Pardons (Board Of), Administration
R671-511
Warrants of Arrest

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26622

FILED: 09/11/2003, 15:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The elements outlined in this rule are included in changes that will be submitted for Rule R671-510. Changes to Rule R671-510 cause this rule to no longer be necessary.

SUMMARY OF THE RULE OR CHANGE: The entire elimination of this rule removes duplication of elements caused by changes that will be submitted for Rule R671-510. Therefore, this rule is repealed in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-11

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Rule R671-511 duplicates elements required to process a warrant that will be covered by changes to Rule R671-510. The Board feels there is no need for two rules. There is no cost to the state by eliminating this rule.
- ❖ LOCAL GOVERNMENTS: Local government does not participate in this process nor is there a cost that passes on to the local government.
- ❖ OTHER PERSONS: Subsection 77-27-11(3) grants the Board authority to issue warrants of arrest. Because Rule R671-511 is duplicative, its removal will have no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Board believes this rule has become redundant and unnecessary. The rule is duplicative and there are no costs to be passed on to affected parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department head believes this rule is unnecessary as compliance with current case law ensures due process protection to offenders. There is no cost to business by eliminating this rule.

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

PARDONS (BOARD OF)
ADMINISTRATION

Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Mike Sibbett, Chairman

R671. Pardons (Board of), Administration.~~[R671-511. Warrants of Arrest.~~~~R671-511-1. Warrants of Arrest.~~

~~— A member of the Board of Pardons may issue a warrant in compliance with the Board's rule on Evidence for Issuance of Warrants. Such warrants shall have the same force and effect as if signed by all members. Issuance of a warrant constitutes a determination of probable cause that the parolee has violated a condition of parole.~~

~~— The warrant shall include:~~

- ~~— a. the name of the parolee and prison number;~~
- ~~— b. a Board member's signature;~~
- ~~— c. the general nature of the alleged violation(s).~~

~~KEY: parole, warrant, probable cause~~~~January 1, 1999~~~~77-27-11~~~~77-27-27~~~~77-27-28~~~~77-27-29~~~~77-27-30]~~

Pardons (Board Of), Administration
R671-521
Alternative to Re-Incarceration of
Parolees

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 26639

FILED: 09/11/2003, 15:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R671-521 should be repealed as it duplicates authority granted to the Board by Article VII, Section 12 of the Utah Constitution and Utah Code Annotated Sections 77-27-9 and 77-27-11.

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

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule outlines how the Board may use alternatives to reincarceration for parole violations. This rule pertains to a decision making process. There is not cost to the state to eliminate this rule.

❖ LOCAL GOVERNMENTS: Local government does not participate in this process nor is there a cost that passes on to local government.

❖ OTHER PERSONS: Rule R671-521 duplicates authority granted to the Board by Article VII, Section 12 of the Utah Constitution, and Utah Code Annotated, Sections 77-27-9 and 77-27-11. Because no changes are being made to existing law, there is no fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R671-521 is duplicative of Article VII, Section 12 of the Utah Constitution, and Utah Code Annotated, Sections 77-27-5, 77-27-9, and 77-27-11, and consequently will not effect anyone.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department head believes this rule is unnecessary. There is no cost to business by eliminating this rule.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/01/2003

AUTHORIZED BY: Mike Sibbett, Chairman

R671. Pardons (Board of), Administration.

~~[R671-521. Alternatives to Re-Incarceration of Parolees.~~

~~R671-521-1. Alternatives to Re-Incarceration of Parolees.~~

~~— The Board may pursue alternatives other than further imprisonment for parole violators. A parole violation shall not preclude an offender from being considered for continuance on parole or re-parole.~~

~~R671-521-2. Considerations:~~

~~— At any time during the parole revocation process, the Board may consider alternatives to reincarceration. In order to determine whether to place or retain an alleged parole violator in custody, the Board shall consider:~~

- ~~— a. the nature of the alleged violation;~~
- ~~— b. the offender's criminal history (particularly violent behavior and escapes);~~
- ~~— c. the impact of reincarceration on the offender; and~~
- ~~— d. any other factors relating to public safety and the well-being of the offender.~~

~~R671-521-3. Release Before Adjudication.~~

~~— Release before adjudication of a parole violation allegation may be granted by the Board for good cause.~~

~~R671-521-4. Re-parole.~~

~~— When the Board decides that a parolee has violated his parole, the offender may be considered for re-parole.~~

~~KEY: parole, alternatives, hearings~~

~~January 1, 1999~~

~~77-27-5~~

~~77-27-9~~

~~77-27-11]~~



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 October 31, 2003. At its option, the agency may hold public hearings.

From the end of the waiting period through January 29, 2004, 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 (2001); 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.

**Human Services, Services for People
with Disabilities**
R539-1
Eligibility

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 26063
Filed: 09/15/2003, 16:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are due to public comment from the original amendment related to eligibility determination for general developmental disability services and the Home and Community-Based Waiver.

SUMMARY OF THE RULE OR CHANGE: These changes apply to Sections R539-1-1 and R539-1-2. The changes in Section R539-1-1 clarify the remedies available with respect to Agency actions; and there are also formatting changes. The Division is adding a statement to clarify that due to budget shortfalls, reduced legislative allocations, and/or reevaluations of eligibility, Non-Waiver Persons or Waiver Persons receiving non-Waiver services may have reductions in service packages or be discharged from services completely. The changes in Section R539-1-2 clarify the requirements for the Home and Community-Based Waiver. (DAR NOTE: This is the second change in proposed rule (CPR) for R539-1. The original proposed amendment upon which the first CPR was based was published in March 15, 2003, issue of the Utah State Bulletin, on page 10. The first CPR upon which this second CPR is based was published in the July 15, 2003, issue of the Utah State Bulletin, on page 55. 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 first CPR, the second CPR, and the proposed amendment 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 62A-5-101 and 62A-5-102

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Rule R414-61 (effective August 9, 2001)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** The addition of the new Subsection R539-1-1(14) is one of the many processes the Division is taking to clarify the ongoing eligibility process. Any monies saved will be used toward balancing the budget deficits.
- ❖ **LOCAL GOVERNMENTS:** No local government funding is used in any of these activities, therefore, it is expected that there is no cost to local governments.
- ❖ **OTHER PERSONS:** Persons applying for division services must apply for Medicaid prior to entering services, but there is no cost involved in making this application. Non-Waiver Persons or Waiver Persons receiving non-Waiver services

may have reductions in service packages or be discharged from services completely.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons must go to their local Department of Workforce Services (DWS) or Department of Health (DOH) to apply for Medicaid and receive a financial determination. Costs may be incurred in DWS or DOH staff time when conducting interviews and making financial determination. This is an addition to the existing process and a clarification of the applicant's role in the process. Non-Waiver Persons or Waiver Persons receiving non-Waiver services may have reductions in service packages or be discharged from services completely.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The majority of the changes to this rule have no fiscal impact on the providers because this is a determination of eligibility not a determination of funding. Due to the new Subsection R539-1-1(14), providers may lose funding if a Person is discharged from services due to budget reductions or a reevaluation of eligibility.

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

**HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.**

DIRECT QUESTIONS REGARDING THIS RULE TO:
Meredith Mannebach at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at mmannebach@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/31/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R539. Human Services, Services for People with Disabilities.

R539-1. Eligibility.

R539-1-1. Eligibility for General Developmental Disability Services.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

(2) When determining limitations in the areas listed below, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive

devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age [47]-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) The Applicant, parent of a minor child, or the Applicant's ~~Representative~~ Guardian must be a Resident of the state of Utah prior to the Division's final determination of eligibility. Resident is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.

(4) The Applicant or Applicant's Representative shall be provided with information about Division service options and a copy of the Division's Guide to Services, Medicaid, state and local Family Councils, community resources (e.g. vocational rehabilitation, SSI, etc.). If an Applicant's Representative is interested in residential services for an Applicant who is 17 years of age and under, the Applicant's Representative shall be provided with (in addition to the information listed above) an Office of Recovery Services (ORS) Pamphlet and given instructions on how to contact ORS in order to request a required Duty of Support application.

~~(5) The intake process determines eligibility for Division funding as per R539-3-1.~~

~~(6)(7)~~ It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the Intake worker to determine eligibility.

~~(7)(8)~~ The following documents are required to determine eligibility for State funded developmental disabilities services.

~~(a)[-]~~ A Division Eligibility for Services Form 19 signed by a licensed physician, licensed psychologist or certified school psychologist. For children under seven years of age, two separate Eligibility for Services Form 19c signed by a certified or licensed professional working in the disability field will be accepted in lieu of the Eligibility for Services Form 19. The professional will indicate on the Eligibility for Services Form 19c that the child has substantial functional limitation in three areas of major life activity or is at risk due to an existing condition associated with these limitations; that the limitations are likely to continue indefinitely; and what assessment provides the bases of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, ~~M~~ mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

~~(8)(9)~~ If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter ~~and Hearing Rights Form, Form 490S~~ shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status. The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information. The Applicant or Applicant's Representative shall be required to update information.

~~(9)(10)~~ When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall ~~a-~~ determine the Applicant eligible or ineligible for funding for developmental disabilities supports. ~~or~~

~~b-~~ if Region staff are unable to determine eligibility, the Region staff may forward the Applicant's name and intake information to the State Eligibility Committee for placement on the Committee's next meeting agenda. The Committee shall review the Applicant's information and determine if the Applicant is eligible for funding. ~~If the timeline goes over 90 calendar days from the date of initial referral, the Region Supervisor may grant an extension of the 90 day time frame.~~

~~(40)(11)~~ A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

~~(44)(12)~~ Non-Waiver Persons who do not meet Waiver level of care must apply for a Medicaid Card prior to entering into services. Non-Waiver Persons who meet Waiver level of care must apply for determination of financial eligibility using Form 927 prior to entering into services. Non-Waiver Persons who apply for a Medicaid Card or for a determination of Waiver financial eligibility shall provide the support coordinator with the determination letter within 10 days of the receipt of such documentation. Non-Waiver Persons who fail to comply with these requirements shall have funding reduced to the state match rate. ~~As per R539-1-5.~~

~~(42)(13)~~ This policy does not apply to Applicants who meet the separate eligibility criteria for personal assistance and brain injury outlined in Rule 539-1-3 and Rule 539-1-4 respectively.

(14) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-2. Eligibility for Developmental Disabilities/Mental Retardation Waiver Services.

(1) Matching federal Medicaid funds are available through the Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs ~~[to avoid institutionalization.]~~ To be determined eligible for Waiver funding Applicants must:

(a) Meet all state defined, age-appropriate eligibility requirements as listed in R539-1-1; and

(b) Meet ~~[eligibility]~~ the following requirements, as contained in the State Implementation Plan which is incorporated by reference in [as detailed in] the Department of Health Rule R414-61 (August 9, 2001) which this Division incorporates by reference:

(i) The individual is Medicaid eligibility;

(ii) The individual's diagnosis of mental retardation/developmental disability is documented by a physician or psychologist's assessment;

(iii) A qualified waiver support coordinator has documented that the individual meets the level of care requirements specified in R414-502-8: Criteria for Intermediate Care Facility for the Mentally Retarded; and

(iv) The individual, but for the provision of waiver services would otherwise require placement in an ICF/MR to receive needed services.

(c) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or

Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding ~~[must]~~ may participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

(3) Children six years of age, who are currently receiving Division funding, must initiate a division Form 19 before a child's seventh birthday to re-determine eligibility for Division funding. If the child is determined to not be eligible or the Division Form 19 is not returned within 90 calendar days from the day a Form 19 was either given or mailed to the Applicant or Applicant's Representative, a Notice of Agency Action, Form 522I and a Notice of ~~[Agency Action,]~~ Hearing Rights Form 490S shall be sent to the Applicant or Applicant's Representative.

KEY: disabled persons, social services

2003

Notice of Continuation December 18, 2002

62A-5-103



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) (2001)).

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 (2001); and *Utah Administrative Code* Section R15-4-8.

Education, Administration **R277-487** Charter School Revolving Loan Fund

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 26652
FILED: 09/15/2003, 17:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures and standards for eligible charter schools to apply for and receive loans to pay for the costs of constructing, renovating, and purchasing charter school facilities.

SUMMARY OF THE RULE OR CHANGE: The rule provides for program eligibility, application process, funding criteria, review criteria for a loan, loan approval, property reversion of disposal in the event of charter school revocation or loan default, and repayment provisions. (DAR NOTE: A corresponding proposed new rule is under DAR No. 26654 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-21-104 requires the State Board of Education to make rules regarding the school building revolving account that includes a charter school building Subaccount.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no anticipated cost/savings to state budget in addition to the 2003 legislative appropriation (from the Minimum School Program which reduces the total amount available to other public schools) of \$1,500,000 in S.B. 57 and \$500,000 in S.B. 3.

❖ **LOCAL GOVERNMENTS:** Costs to local government entities (charter schools) that may benefit from the loan fund are speculative. It is expected that most loans will be the \$300,000 maximum. The interest rate is tied to what the State Treasurer would receive on a general obligation bond, which is expected to fluctuate between 2 and 5% of the loan amount.

The repayment—including interest—will be withheld from the monthly state disbursement to the charter schools with outstanding loans. As long as the charter school is in compliance with the law, is in business, the State will receive repayments.

❖ **OTHER PERSONS:** The rule provides for repayment of charter school loans through the monthly disbursements to charter schools by the State. There will be careful scrutiny of a charter school's stability and ability to repay a loan before it is awarded. In the event of default, the charter school's assets will be used to repay the loan, as provided for in the rule. There should be no costs to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule provides for repayment of charter school loans through the monthly disbursements to charter schools by the State. There will be careful scrutiny of a charter school's stability and ability to repay a loan before it is awarded. In the event of default, the charter school's assets will be used to repay the loan, as provided for in the rule. There should be no costs to affected persons.

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

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements. place the agency in violation of federal or state law.

This rule is necessary because the 2003 Utah Legislature appropriated \$2,000,000 (S.B. 57, \$1,500,000; and S.B. 3, Item 85, \$500,000) from the School Building Revolving Loan Account for fiscal year 2003-04 only, to make loans to charter schools for charter school building construction and renovation following development of rules and procedures. With great concern for fiscal responsibility and accountability, the State Board of Education staff met with various groups and individuals to develop rules and procedures to protect state funds in this loan process. That process was recently completed and this rule is filed as an emergency rule so that funds may be available immediately to charter schools. (DAR NOTE: S.B. 57 is found at UT L 2003 Ch 199, and was effective July 1, 2003; and S.B. 3, Item 85, is found at UT L 2003 Ch 343, and was effective July 1, 2003.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear 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

THIS RULE IS EFFECTIVE ON: 09/15/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

R277. Education, Administration.

R277-487. Charter School Revolving Loan Fund.

R277-487-1. Definitions.

A. "Application" means the application provided by the Loan Committee available from the USOE or online at www.usoe.k12.ut.us.

B. "Board" means Utah State Board of Education.

C. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

D. "Charter school assurances" means written agreements available from the USOE and signed by charter schools that include such written documentation as adequate insurance, civil rights compliance, and compliance with health and safety requirements.

E. "Charter School Revolving Loan Committee (Loan Committee)" is a committee appointed by the Superintendent and comprised of members of the Finance Committee of the Board representing expertise in finance and real-estate, a charter school representative, and a member nominated by the Governor. The Loan Committee shall review applications and recommend approval of loans to the Superintendent.

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

G. "USOE" means Utah State Office of Education.

R277-487-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-21-104 which requires the Board to make rules regarding the school building revolving account that includes charter school building Subaccount; Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities; and, Section 53A-21-104 which creates the Charter School Building Subaccount.

B. The purpose of this rule is to provide procedures and standards for eligible charter schools to apply for and receive loans to pay for the costs of constructing, renovating, and purchasing charter school facilities.

R277-487-3. Program Eligibility.

A. Applicant Eligibility:

(1) Schools shall have received final and official approval of their charters by either a local board of education or the Board and, if chartered by the Board, signed a contract under Section 53A-1a-505(3)(b) prior to making application for a loan.

(a) Schools chartered by a local board of education shall provide a signed copy of the Utah Charter School Assurances contained in the Charter School Application for Board-chartered schools.

(b) Existing schools chartered by the Board shall provide written affirmation that the schools are in compliance with the Utah Charter School Assurances.

(2) Charter schools operating in facilities owned by a school district or other governmental entity (e.g. state, city, county, public institution of higher education) are not eligible for this program unless they are paying reasonable rent for the facility to the governmental owner.

B. Project Eligibility:

(1) Section 53A-21-102 authorizes a loan and application procedure to pay the costs of constructing, renovating, and purchasing charter school facilities.

(2) All applicants shall demonstrate that the construction, renovation or purchase of facilities shall meet all applicable requirements of law, administrative rule, and building codes prior to submitting a loan application.

(3) Compliance includes administrative approval of safety and health requirements and accommodations mandated by the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA).

R277-487-4. Application Process.

A. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

B. To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation. The information requested is necessary to evaluate the loan request based on the review criteria.

C. The evaluation/review shall not begin until all information is provided to the satisfaction of the Loan Committee.

D. The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(1) agrees to enter into the loan as provided in the application materials;

(2) agrees to the interest established in R277-487-5E and repayment schedule of the loan designated by the Superintendent;

(3) agrees that loan funds shall only be used for facilities consistent with the purposes of the approved charter;

(4) agrees to any and all audits or financial reviews ordered by the Loan Committee;

(5) agrees to any and all inspections or reviews ordered by the Loan Committee;

(6) specifies the proposed loan repayment period; and

(7) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. If the Loan Committee recommends approval of a loan application, the Loan Committee's recommendation shall include:

(1) the amount of the loan;

(2) the repayment schedule; and

(3) the interest rate to be charged.

R277-487-5. Funding Criteria.

A. The maximum amount per loan is \$300,000.

B. No charter school shall have more than one outstanding loan from the Charter School Revolving Loan Fund at a single time.

C. The loan may not exceed 75% of total project costs.

D. Priority shall be given to projects necessary to address student health and safety issues.

E. Interest shall be charged on the loan at the rate which the State Treasurer would receive for a five (5) year AAA rated general obligation bond at the date of loan recommendation by the Loan Committee.

R277-487-6. Review Criteria for a Loan.

A. The Loan Committee and Superintendent may consider the following and any additional criteria deemed relevant when recommending or approving a charter school's loan application:

(1) Soundness of the financial business plan of the applicant charter school;

(a) Soundness shall be determined by such factors as:

(i) debt to income ratios performed and available with application;

(ii) adequately performed cash flow analysis;

(iii) available and current financial statement analysis; and

(iv) adequate estimate of non-real estate assets.

(b) The Loan Committee may request additional documentation of this criterion, as needed.

(2) Availability of other sources of funding for the charter school;

(3) Geographic distribution of loans made from the Charter School Revolving Loan Fund;

(4) The impact that receipt of funds received pursuant to this section shall have on the charter school's receipt of other private and public financing;

(5) Plans for creative uses of the funds received pursuant to this section, such as loan guarantees or other types of credit enhancements; and

(6) The overall facility needs of the charter school.

B. Priority for loans from the Charter School Revolving Loan Fund shall be given to charter schools in the first year of operation for startup facility and renovation costs.

C. Because charter schools are frequently start-up programs and do not have any financial history, the loan approval process shall rely heavily on acceptable budgets and cash flow statements

that demonstrate the school's ability to repay the loans. The proposed budgets cannot show deficits.

D. The loan approval shall rely heavily on the relevant experience and expertise of the management and governing board of the school.

E. The loan approval process disfavors making fundraising too large a portion of the revenues of a charter school. The Loan Committee may question the school's ability to repay the loan if the projected fundraising goal appears unrealistic or accounts for too high a percentage of the charter school's annual operating budget (more than 15 percent). A school may be asked to back up an ambitious fundraising goal with a detailed plan and designated manpower toward this effort.

R277-487-7. Loan Approval.

A. The Superintendent shall have the final authority to approve loans following recommendation by the Loan Committee.

B. The Superintendent's decision is final and is not subject to additional administrative appeals.

C. If an application is refused, a school may reapply only with material changes to the original application and may be considered following other applicants.

R277-487-8. Property Reversion or Disposal in the Event of Charter School Revocation or Loan Default.

A. If the school creates, incurs, or assumes any indebtedness in addition to a loan pursuant to this rule, the charter school shall ensure that the instrument documenting indebtedness attests that repayment rights of any and all creditors are subordinate to repayment rights of the Board.

B. Property purchased by the charter school remains the property of the charter school until such a time as its charter is revoked or the school closes.

C. In the event that a charter school closes, it is the responsibility of the charter school governing body to properly dispose of all school assets. Any assets remaining after satisfying all indebtedness associated with a loan from the Board and the claims of creditors have been satisfied shall revert to the Board and deposited in the revolving loan account.

D. The reversion of such equipment, property, and furnishings shall focus on recoverable assets, but not on intangible or irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations.

E. The reversion of all property secured with public funds is subject to the complete satisfaction of all lawful liens or encumbrances.

F. Property purchased or leased with state funds by a charter school may be used only for a purpose for which a school district may use school district property.

G. The charter school shall maintain the property and improvements to such a degree that market value is preserved.

R277-487-9. Repayment Provisions.

A. Loans shall be repaid within five years, beginning one year from the date the loan is approved by the Superintendent.

B. Repayments, including interest payments, shall be made in equal monthly installments over the repayment period.

C. Each installment shall be deducted from the monthly funds transfer to the charter school.

D. The amount being repaid (both principal and interest) shall be deposited into the Charter School Building Subaccount in the State Treasury for subsequent loans to future borrowers.

Art X Sec 3
53A-21-104
53A-1-401(3)

KEY: charter schools, loans, facilities
September 15, 2003



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 (1998).

Administrative Services, Administration **R13-1** Public Petitions for Declaratory Orders

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26614
FILED: 09/10/2003, 13:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63-46b-21 requires each agency to issue rules that govern procedures for declaratory orders.

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 since it was last reviewed.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the department and should be continued.

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

ADMINISTRATIVE SERVICES
ADMINISTRATION
Room 3120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kenneth A. Hansen or Sal Petilos at the above address, by phone at 801-538-3777 or 801-538-3091, by FAX at 801-538-1773 or 801-538-3844, or by Internet E-mail at

khansen@utah.gov or spetilos@utah.gov

AUTHORIZED BY: Camille Anthony, Executive Director

EFFECTIVE: 09/10/2003



Human Services, Recovery Services **R527-301** Non-IV-D Income Withholding

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26603
FILED: 09/04/2003, 15:45

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is enacted under the statutory authority granted under Section 62A-11-502, which gives the Office of Recovery Services (ORS) the responsibility of collecting Non-IV-D child support payments. The rule defines the responsibilities ORS has to collect Non-IV-D income withholding and clarifies the services ORS offers for Non-IV-D cases in accordance with Sections 62A-11-502 and 62A-11-504. Under Sections 62A-11-502 and 62A-11-504, the rule explains the procedures the requesting parent(s) follows to apply for Non-IV-D income withholding. The rule also clarifies it is the responsibility of the parent(s) to either modify or terminate the income withholding and proceed judicially if an employer fails to comply with an income withholding or apply for IV-D services, in accordance with Sections 62A-11-502, 62A-11-506, and 62A-11-508.

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 should be continued to give further direction and clarification to both ORS and the parent(s) when pursuing Non-IV-D income withholding.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kari Smith at the above address, by phone at 801-536-8137, by FAX at 801-536-8509, or by Internet E-mail at ksmith@utah.gov

AUTHORIZED BY: Emma Chacon, Director

EFFECTIVE: 09/04/2003



Natural Resources, Forestry, Fire and
State Lands
R652-7
Public Petitions for Declaratory Orders

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26644
FILED: 09/12/2003, 17:31

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63-46b-21(2) specifically requires agencies to issue rules regarding declaratory orders.

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: Although the Division's volume of business in declaratory orders is very low, continuation of the rule will provide consistency in processing requests for declaratory orders, and will maintain Division compliance with the statutory requirement for the rule.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
Room 3520
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jennifer Gregerson or Karl Kappe at the above address, by phone at 801-538-5418 or 801-538-5495, by FAX at 801-533-4111 or 801-533-4111, or by Internet E-mail at jennifergregerson@utah.gov or karlkappe@utah.gov

AUTHORIZED BY: Karl Kappe, FFSL Strategic Planner

EFFECTIVE: 09/12/2003



Natural Resources, Forestry, Fire and
State Lands
R652-110
Off-Highway Vehicle Designations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26645
FILED: 09/12/2003, 18:02

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted to comply with Section 41-22-10.1 which authorizes off-highway vehicle designations for State lands. The Division of Forestry, Fire and State Lands has management authority for all sovereign lands, some of which are covered by water and some of which are high and dry.

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: Off-Highway Vehicle (OHV) use is allowed on some sovereign lands, so the rule for management of OHV use is still needed and should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
Room 3520
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jennifer Gregerson or Karl Kappe at the above address, by phone at 801-538-5418 or 801-538-5495, by FAX at 801-533-4111 or 801-533-4111, or by Internet E-mail at jennifergregerson@utah.gov or karlkappe@utah.gov

AUTHORIZED BY: Karl Kappe, FFSL Strategic Planner

EFFECTIVE: 09/12/2003

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Pardons (Board Of), Administration **R671-312** Commutation Hearings for Death Penalty Cases

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26623
FILED: 09/11/2003, 15:31

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 outlines the authority of the Board at commutation hearings pursuant to Section R671-312-3; and Article VII, Section 12.

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 defines the authority and procedure for commutation hearings conducted by the Board and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

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Pardons (Board Of), Administration **R671-509** Parole Incident Reports

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26618
FILED: 09/11/2003, 15:26

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 outlines the process for submission of parole progress reports pursuant to Section 77-27-11.

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 defines a process that precedes the scheduling of hearings and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

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Pardons (Board Of), Administration
R671-510
 Evidence of Issuance of Warrants

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 26620
 FILED: 09/11/2003, 15:27

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule outlines the elements that are necessary to issue a warrant pursuant to Section 77-27-11.

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 defines the elements necessary to process a warrant of arrest and should be continued.

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

PARDONS (BOARD OF)
 ADMINISTRATION
 Room 300
 448 E 6400 S
 SALT LAKE CITY UT 84107-8530, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

Pardons (Board Of), Administration
R671-512
 Execution of the Warrant

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 26628
 FILED: 09/11/2003, 15:35

**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 outlines timelines for serving the warrant pursuant to Section 77-27-11.

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 defines the procedure for serving a warrant on a parolee and should be continued.

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

PARDONS (BOARD OF)
 ADMINISTRATION
 Room 300
 448 E 6400 S
 SALT LAKE CITY UT 84107-8530, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

Pardons (Board Of), Administration
R671-513
 Expedited Determination on Parolee
 Challenge to Probable Cause

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 26625
 FILED: 09/11/2003, 15:33

**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 outlines the timeline and procedure for a challenge to probable cause after issuing a warrant and is pursuant to Section 77-27-11.

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 defines the procedure for a parolee's challenge of probable cause and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

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Pardons (Board Of), Administration **R671-514** Waiver and Pleas of Guilt

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26626
FILED: 09/11/2003, 15:33

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 outlines the procedure for informing a parolee of their right to enter a plea and is pursuant to Section 77-27-11.

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 defines the procedure for providing an opportunity for the offender to enter a plea upon execution of the warrant and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

▼ ————— ▼

Pardons (Board Of), Administration **R671-515** Timeliness of Parole Revocation Hearings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26629
FILED: 09/11/2003, 15:36

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 outlines the timeline for conducting a revocation hearing pursuant to Section 77-27-11.

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 defines the procedure for conducting a revocation hearing within the specified timeline and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003



Pardons (Board Of), Administration
R671-516
Parole Revocation Hearings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26631
 FILED: 09/11/2003, 15:38

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 outlines the procedure for conducting a revocation hearing pursuant to Sections 77-27-5 and 77-27-11.

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 defines the procedure for conducting a revocation hearing and should be continued.

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

**PARDONS (BOARD OF)
 ADMINISTRATION**
 Room 300
 448 E 6400 S
 SALT LAKE CITY UT 84107-8530, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003



Pardons (Board Of), Administration
R671-517
Evidentiary Hearings and Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26633
 FILED: 09/11/2003, 15:39

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule outlines the procedures for conducting an evidentiary hearing pursuant to Section 77-27-5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 defines the procedures associated with conducting an evidentiary hearing and should be continued.

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

**PARDONS (BOARD OF)
 ADMINISTRATION**
 Room 300
 448 E 6400 S
 SALT LAKE CITY UT 84107-8530, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003



Pardons (Board Of), Administration
R671-518
Conduct of Proceedings When a Criminal Charge Results in Conviction

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 26634
 FILED: 09/11/2003, 15:39

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule outlines the procedures associated with a conviction of criminal charges and the revocation of parole pursuant to Section 77-27-5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 defines the proceedings following a criminal conviction and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

▼ ————— ▼

**Pardons (Board Of), Administration
R671-519**

**Conduct of Proceedings When Criminal
Charge Results in Acquittal**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26636
FILED: 09/11/2003, 15:41

**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 outlines the procedure following criminal charges resulting in an acquittal pursuant to Section 77-27-5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 defines the procedures to take place upon receiving an acquittal of criminal charges for a parolee and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003

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**Pardons (Board Of), Administration
R671-520
Treatment of Confidential Testimony**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 26638
FILED: 09/11/2003, 15:42

**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 outlines the procedure for admitting confidential testimony in hearings pursuant to Section 77-27-5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 defines the procedures associated with using confidential testimony at a hearing and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003



Pardons (Board Of), Administration
R671-522
Continuances Due to Pending Criminal
Charges

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26640
FILED: 09/11/2003, 15:43

**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 outlines the procedure and timeline defined under Section 77-27-9 as it relates to continuation of a hearing.

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 defines the procedure for continuation of hearings when criminal charges are pending and should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
Room 300
448 E 6400 S
SALT LAKE CITY UT 84107-8530, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Nannette Johnson at the above address, by phone at 801-261-6485, by FAX at 801-261-6481, or by Internet E-mail at njohnson@utah.gov

AUTHORIZED BY: Mike Sibbett, Chairman

EFFECTIVE: 09/11/2003



Public Service Commission,
Administration
R746-600
Postretirement Benefits other than
Pensions

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 26647
FILED: 09/15/2003, 15:03

**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: As a part of its ratemaking authority in Section 54-4-1, the Public Service Commission must determine how utility costs, such as postretirement benefits, are accounted for.

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 regarding this rule since the five-year review in 1998.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary so that the Commission can continue to determine how postretirement benefits are accounted for by the utility companies.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barbara Stroud or Sandy Mooy at the above address, by
phone at 801-530-6714 or 801-530-6708, by FAX at 801-530-
6796 or 801-530-6796, or by Internet E-mail at
bstroud@utah.gov or smooy@utah.gov

AUTHORIZED BY: Barbara Stroud, Paralegal

EFFECTIVE: 09/15/2003



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

Commerce

Occupational and Professional Licensing

No. 26451 (AMD): R156-9. Funeral Service Licensing Act Rules.

Published: August 1, 2003
Effective: September 4, 2003

No. 26469 (REP): R156-58. Preneed Funeral Arrangement Act Rules.

Published: August 1, 2003
Effective: September 4, 2003

Community and Economic Development

Community Development, Fine Arts

No. 26185 (AMD): R207-1. Utah Arts Council General Program Rules.

Published: May 15, 2003
Effective: September 12, 2003

No. 26186 (AMD): R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.

Published: May 15, 2003
Effective: September 12, 2003

Environmental Quality

Air Quality

DAR Note: Due to a clerical error at the Division of Administrative Rules, the notice of effective date for the Proposed Amendment to Rule R307-840 (26282) was submitted on August 6, 2003, but it was not published in the September 1, 2003, Bulletin. The notice is published here to correct the error.

No. 26282 (AMD): R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.

Published: June 1, 2003
Effective: August 6, 2003

Solid and Hazardous Waste

No. 26370 (AMD): R315-1-2. Utah Hazardous Waste Definitions and References.

Published: July 1, 2003
Effective: September 15, 2003

No. 26376 (AMD): R315-2. General Requirements - Identification and Listing of Hazardous Waste.

Published: July 1, 2003
Effective: September 15, 2003

No. 26372 (AMD): R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.

Published: July 1, 2003
Effective: September 15, 2003

No. 26374 (AMD): R315-7-22. Incinerators.

Published: July 1, 2003
Effective: September 15, 2003

No. 26375 (AMD): R315-8-15. Incinerators.

Published: July 1, 2003
Effective: September 15, 2003

No. 26369 (AMD): R315-13-1. Land Disposal Restrictions.

Published: July 1, 2003
Effective: September 15, 2003

No. 26373 (AMD): R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces.

Published: July 1, 2003
Effective: September 15, 2003

No. 26371 (AMD): R315-50. Appendices.

Published: July 1, 2003
Effective: September 15, 2003

Financial Institutions

Credit Unions

No. 26458 (AMD): R337-5. Allowance for Loan Losses - Credit Unions.

Published: August 1, 2003
Effective: September 5, 2003

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 26433 (AMD): R414-301. Medicaid General Provisions.

Published: July 15, 2003
Effective: September 9, 2003

No. 26349 (AMD): R414-307. Eligibility Determination and Redetermination.

Published: July 1, 2003
Effective: September 9, 2003

Human Services

Administration, Administrative Hearings
 No. 26396 (AMD): R497-100. Adjudicative Proceedings.
 Published: July 15, 2003
 Effective: September 15, 2003

Aging and Adult Services
 No. 26467 (AMD): R510-100-2. In-Home Services.
 Published: August 1, 2003
 Effective: September 11, 2003

Child and Family Services
 No. 26471 (NEW): R512-100. Home Based Services.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26478 (NEW): R512-200. Child Protective Services,
 Intake Services.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26472 (NEW): R512-201. Child Protective Services,
 Investigation Services.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26480 (NEW): R512-202. Child Protective Services,
 General Allegation Categories.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26473 (NEW): R512-300. Out of Home Services.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26475 (NEW): R512-301. Out of Home Services,
 Responsibilities Pertaining to a Parent or Guardian.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26474 (NEW): R512-302. Out of Home Services,
 Responsibilities Pertaining to Out of Home Caregiver.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26476 (NEW): R512-305. Out of Home Services,
 Independent Living Services.
 Published: August 1, 2003
 Effective: September 3, 2003

No. 26477 (NEW): R512-500. Kinship Services.
 Published: August 1, 2003
 Effective: September 3, 2003

Mental Health

No. 26424 (AMD): R523-1-20. Family Involvement in
 Mental Health Treatment.
 Published: July 15, 2003
 Effective: September 8, 2003

No. 26425 (AMD): R523-1-21. Declaration for Mental
 Health Treatment.
 Published: July 15, 2003
 Effective: September 8, 2003

Money Management Council

Administration
 No. 26493 (AMD): R628-2. Investment of Funds of
 Member Institutions of the State System of Higher
 Education and Public Education Foundations established
 under Section 53A-4-205.
 Published: August 1, 2003
 Effective: September 3, 2003

Public Safety

Fire Marshal
 No. 26491 (NEW): R710-5. Automatic Fire Sprinkler
 System Inspecting and Testing.
 Published: August 1, 2003
 Effective: September 3, 2003

Public Service Commission

Administration
 No. 26489 (AMD): R746-310. Uniform Rules Governing
 Electricity Service by Electric Utilities..
 Published: August 1, 2003
 Effective: September 15, 2003

Transportation

Motor Carrier
 No. 26495 (AMD): R909-19. Safety Regulations for Tow
 Truck Operations - Tow Truck Requirements for
 Equipment, Operation, and Certification.
 Published: August 1, 2003
 Effective: September 3, 2003

Workforce Services

Employment Development
 No. 26487 (AMD): R986-100. Employment Support
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 Published: August 1, 2003
 Effective: September 12, 2003

No. 26230 (AMD): R986-900-902. Options and Waivers.
 Published: May 15, 2003
 Effective: September 12, 2003

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, 2003, including notices of effective date received through September 15, 2003, the effective dates of which are no later than October 1, 2003. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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R23-3	Authorization of Programs for Capital Development Projects	25639	R&R	01/02/2003	2002-23/3
R23-3	Planning and Programming for Capital Projects	25989	AMD	03/24/2003	2003-4/4
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63

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R23-7	Utah State Building Board Policy Statement Master Planning	25770	REP	02/04/2003	2003-1/5
R23-8	Planning Fund Use	25640	REP	01/02/2003	2002-23/5
R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-9	Building Board State/Local Cooperation Policy	25988	R&R	03/24/2003	2003-4/5
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-11	Facilities Allocation and Sales Procedures (5YR EXTENSION)	25986	NSC	02/04/2003	Not Printed
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	26117	5YR	03/25/2003	2003-8/44
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R25-6	Relocation Reimbursement	26205	NSC	06/01/2003	Not Printed
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R25-7	Travel-Related Reimbursements for State Employees	26204	AMD	07/01/2003	2003-10/4
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R27-3	Vehicle Use Standards	26459	AMD	09/17/2003	2003-15/4
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R33-3	Source Selection and Contract Formation	26138	AMD	05/27/2003	2003-8/9
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R81-4B	Airport Lounges	26325	AMD	08/01/2003	2003-12/20
R81-4C	Limited Restaurant Licenses	26326	NEW	08/01/2003	2003-12/21
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R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6
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R151-14	New Automobile Franchise Act Rule	25838	NSC	02/01/2003	Not Printed
R151-14	New Automobile Franchise Act Rule	26199	AMD	06/17/2003	2003-10/9
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R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25763	AMD	04/03/2003	2003-1/10

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R156-22-303	Examination Requirements for Licensure as a Professional Land Surveyor	25727	NSC	01/01/2003	Not Printed
R156-26a-302a	Qualifications for CPA Licensure - Education Requirements	26297	AMD	07/17/2003	2003-12/37
R156-28	Veterinary Practice Act Rules	26150	AMD	06/03/2003	2003-9/3
R156-31b	Nurse Practice Act Rules	26319	5YR	06/02/2003	2003-12/70
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R156-47b-202	Massage Therapy Education Peer Committee	26126	AMD	05/19/2003	2003-8/17
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-53	Landscape Architects Licensing Act Rules	26320	5YR	06/02/2003	2003-12/70
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R156-55a-301	License Classifications - Scope of Practice	26338	NSC	07/01/2003	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	25411	AMD	01/01/2003	2002-20/3
R156-56	Utah Uniform Building Standard Act Rules	25821	NSC	01/01/2003	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	26154	AMD	07/01/2003	2003-9/7
R156-56	Utah Uniform Building Standard Act Rules	26153	CPR	07/17/2003	2003-12/52
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R156-56-707	Statewide Amendments to the IPC	26152	AMD	07/01/2003	2003-9/57
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R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-59	Professional Employer Organization Act Rules	26116	REP	05/19/2003	2003-8/18
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R156-60a	Social Worker Licensing Act Rules	26500	AMD	09/16/2003	2003-1/16
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R277-419	Pupil Accounting	26436	AMD	08/15/2003	2003-14/3
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R277-600	Student Transportation Standards and Procedures	25928	5YR	01/14/2003	2003-3/68
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R280-203	Certification Requirements for Interpreters for the Hearing Impaired	26240	NSC	05/01/2003	Not Printed
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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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	26443	R765-607	5YR	07/03/2003	2003-15/83
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	25713	R765-660	NSC	04/01/2003	Not Printed
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	26364	R612-3-4	NSC	07/01/2003	Not Printed
	26317	R612-5	5YR	05/28/2003	2003-12/76
	26365	R612-5-4	NSC	07/01/2003	Not Printed
	26314	R612-7	5YR	05/28/2003	2003-12/77
<u>working toward employment</u>					
Workforce Services, Employment Development	26216	R986-400	AMD	07/01/2003	2003-10/127
	25827	R986-400-404	AMD	02/06/2003	2003-1/43

<u>KEYWORD</u> <u>AGENCY</u>	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>x-ray</u> Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
<u>youth</u> Human Services, Administration, Administrative Services, Licensing	25707	R501-8	AMD	01/17/2003	2002-24/19
	25978	R501-8	NSC	03/01/2003	Not Printed
	25703	R501-16	NSC	02/26/2003	Not Printed
	26055	R501-16	5YR	02/26/2003	2003-6/17
<u>zoning</u> Administrative Services, Facilities Construction and Management	25988	R23-9	R&R	03/24/2003	2003-4/5
	25957	R23-9	5YR	01/15/2003	2003-3/63
<u>zoological animals</u> Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/135
	26166	R657-3	AMD	06/03/2003	2003-9/94