

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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EDITOR'S NOTES

CORRECTION FOR THE FILINGS ON RULES R746-420 AND R746-430 IN THE JANUARY 15, 2007, BULLETIN

The Public Service Commission filed two changes to proposed rules (CPRs) in this issue, April 1, 2007, of the Bulletin on two proposed new rules that were published in the January 15, 2007, issue of the Bulletin. While proofing these CPRs, errors were discovered in the titles that were published for the new rules.

Rule R746-420, under DAR No. 29376, was published with the title in the rule analysis as "Significant Energy Resource Solicitation Rule". The text for this rule indicates that the title should have been "Requests for Approval of a Solicitation Process".

Rule R746-430, under DAR No. 29377, was published with the title in the rule analysis as "Action Plan and Significant Energy Resource Decision Rule". The text for this rule indicates that the title should have been "Procedural and Information Requirements for Review of Utility's Action Plan".

The CPRs have the correct titles in this issue.

Questions regarding this error may be directed to: Nancy L. Lancaster, Publications Editor, Division of Administrative Rules, PO Box 141007, Salt Lake City UT 84114-1007; Phone: (801) 538-3218; FAX: (801) 538-1773; or E-mail: nllancaster@utah.gov.

LEGISLATION WHICH AFFECTS RULEMAKING

During the 2007 General Session, the Legislature passed the following bills affecting administrative rules.

H.B. 64. "Impact of Administrative Rules on Small Businesses." (Rep. S. Clark)

H.B. 64 changes anticipated cost or savings information an agency is required to provide on the rule analysis when it files a proposed rule, change in proposed rule, or emergency rule.

Specifically, beginning 07/01/2007 agencies must provide anticipated costs or savings to "small businesses" (defined to mean a business employing fewer than 50 people). In addition, agencies must now assess anticipated costs or savings to "persons other than small businesses, businesses, or local governmental entities" instead of "other persons." Agencies will still assess overall business impacts under the "comments by the department head on the fiscal impact the rule may have on businesses".

The Governor signed H.B. 64 on 03/09/2007. H.B. 64 (Chapter 102, Laws of Utah 2007) goes into effect on 07/01/2007. More information about H.B. 64 is available on the Legislature's web site at <http://le.utah.gov/~2007/htmdoc/hbillhtm/hb0064.htm>.

H.B. 327. "State Agency Timely Adoption of Administrative Rules." (Rep. D. Clark)

H.B. 327, requiring timely adoption of administrative rules, has passed. It amends Section 63-46a-4 and requires an agency to "initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that requires the rulemaking." If the agency is unable to file the rule by the deadline, it is required to "appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay."

The Division of Administrative Rules has filed an administrative rule to clarify H.B. 327. The filing under DAR No. 29554, amending Section R15-3-5, was published in the March 15, 2007, issue of the Utah State Bulletin.

The Governor signed H.B. 327 on 03/12/2007. H.B. 327 (Chapter 168, Laws of Utah 2007) goes into effect on 04/30/2007. More information about H.B. 327 is available on the Legislature's web site at <http://le.utah.gov/~2007/htmdoc/hbillhtm/hb0327.htm>.

S.B. 122. "Administrative Rules Reauthorization" (Sen. H. Stephenson)

The Reauthorization bill is the Administrative Rules Review Committee's annual bill required by Section 63-46a-11.5. S.B. 122 reauthorized all rules, except a portion of an Education rule -- Section R277-437-1. The Governor signed S.B. 122 on 03/13/2007. S.B. 122 (Chapter 225, Laws of Utah 2007) goes into effect on 05/01/2007. More information about S.B. 122 is available on the Legislature's web site at <http://le.utah.gov/~2007/htmdoc/sbillhtm/sb0122.htm>.

Other Legislation recommended by the Legislature's Administrative Rules Review Committee.

The Legislature's Administrative Rules Review Committee recommended two other pieces of legislation that also passed. These bills affect more than one, but not all, rulemaking agencies.

S.B. 32, "Filing of Administrative Rules, Orders, and Regulations" corrected Section 63-5a-7 to make it consistent with the Utah Administrative Rulemaking Act. In part, it provides that rules and orders of state government issued in accordance with Title 63, Chapter 5a, have the full force and effect of law during a state of emergency when a copy of the document is filed with the Division of Administrative Rules. The Governor signed S.B. 32 on 03/12/2007. S.B. 32 (Chapter 177, Laws of Utah 2007) goes into effect on 04/30/2007. More information about S.B. 32 is available on the Legislature's web site at <http://le.utah.gov/~2007/htmdoc/sbillhtm/sb0032.htm>.

1st Substitute S.B. 138, "Administrative Rule Criminal and Civil Penalty Amendments" amends sections throughout the Utah Code. In some cases, sections that provided criminal penalties for violating rules were amended to provide for civil penalties. In other instances, provisions that had previously appeared in rule were incorporated into statute and the criminal penalty was maintained. The Governor signed S.B. 138 on 03/15/2007. S.B. 138 (Chapter 320, Laws of Utah 2007) goes into effect on 04/30/2007. More information about 1st Substitute S.B. 138 is available on the Legislature's web site at <http://le.utah.gov/~2007/htmdoc/sbillhtm/sb0138s01.htm>.

Questions about this legislation may be directed to Ken Hansen, Director, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114-1201, phone: 801-538-3777, FAX: 801-538-1773, or Internet E-mail: khansen@utah.gov

End of the Editor's Notes 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 March 2, 2007, 12:00 a.m., and March 15, 2007, 11:59 p.m. are included in this, the April 1, 2007, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least May 1, 2007. 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 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 July 30, 2007, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE 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 Section 63-46a-4; and 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, Real Estate
R162-104
Experience Requirement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29623

FILED: 03/07/2007, 17:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The federal Appraisal Subcommittee, which monitors the states' appraiser licensing and certification programs, has informed the Division of Real Estate that its method of measuring the experience of those candidates who have been working in the areas of mass appraisal or governmental investigations is no longer acceptable and must be changed. The Division of Real Estate was also told that it was no longer acceptable to grant experience credit for textbook or journal article authorship and that those provisions must be deleted.

SUMMARY OF THE RULE OR CHANGE: The provisions pursuant to which mass appraisers and government investigators received so many experience points per month of employment are deleted and replaced by a system that grants so many points for each task that they perform. The provisions which granted experience credit for authorship are deleted. Clarifications are added to make it clear that a certain amount of experience points is equivalent to a certain number of hours of appraisal experience. Numerous minor technical changes and corrections are also made.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 61-2b-6(1)(l) and 61-2b-8(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It is anticipated that the State Tax Commission might incur additional costs as a result of this rule change in documenting the experience of any of its employees who apply for licensed or certified appraiser status. However, the Division of Real Estate has no choice but to revise this rule in accordance with the direction from the Appraisal Subcommittee representatives to do so. Any state that refuses to comply with such directives could have its appraisal regulatory program "disapproved", which would mean that there would be no new federally-related loans made in that state. The Division of Real Estate cannot calculate what the increased cost in documenting State employees' experience would be. The budget of the Division of Real Estate might also be impacted because it would no longer be able to grant experience credit to its own investigators for an appraisal investigation unless the investigators did a Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3 appraisal review in the case. This could make it more difficult for the Division of Real Estate to hire appraisal investigators, and more costly to investigate each case. These costs cannot be estimated, however.

❖ **LOCAL GOVERNMENTS:** Local governments employ a large number of appraisers and appraisal trainees in their County Assessors' offices. Counties might incur additional costs as a result of this rule change in documenting the experience of any of its employees who apply for licensed or certified appraiser status. However, the Division of Real Estate has no choice but to revise this rule in accordance with the direction from the Appraisal Subcommittee representatives to do so. Any state that refuses to comply with such directives could have its appraisal regulatory program "disapproved", which would mean that there would be no new federally-related loans made in that state. The Division of Real Estate cannot calculate what the increased cost in documenting local government employees' experience would be.

❖ **OTHER PERSONS:** The only other persons who would be affected by this rule change would be candidates for appraisal licensure or certification whose experience has been earned through mass appraisal or government regulatory investigations. It is anticipated that there will be increased cost in documenting the appraisal experience of these persons, but the Division of Real Estate cannot estimate that cost. Regardless of the cost, the Division of Real Estate has no choice but to revise this rule in accordance with the direction from the Appraisal Subcommittee representatives, as explained above in the "state budget" and local government" sections.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As explained above, it may cost candidates for appraisal licensure or certification more to document their experience. The Division of Real Estate cannot calculate the potential increased cost to these persons, and, as explained above, the Division of Real Estate has no choice but to revise this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There appears to be no fiscal impact to businesses beyond the costs to the Division of Real Estate, the State Tax Commission and the local governments in documenting the experience of their employees, as discussed in the rule filing. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Shelley Wismer at the above address, by phone at 801-366-0145, by FAX at 801-366-0315, or by Internet E-mail at swismer@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Derek Miller, Director

R162. Commerce, Real Estate.

R162-104. Experience Requirement.

R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104[~~17~~]-14, appraisal experience shall be measured in points according to the Appraisal Experience Points Schedules in Section R162-104-~~14~~15 of this rule and also in time accrued.

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants for the state-licensed category shall submit proof of at least 400 points of experience and a minimum of 2000 appraisal hours of experience. Applicants for certified residential shall submit proof of at least 100 additional points and 500 additional appraisal hours accrued after state-licensed status was obtained, for a total of 500 points and 2500 appraisal hours of experience. Applicants for certified general shall submit proof of at least 200 additional points and 1000 appraisal hours accrued after state-licensed status was obtained, for a total of 600 points and 3000 appraisal hours of experience.

R162-104-4. Proof of Experience.

104.4 The Division shall require the applicant to substantiate the experience claimed using the form required~~[furnish the following information for each appraisal for which points are claimed: property address or legal description, date of the appraisal, type of property, and any other information deemed appropriate]~~ by the Division.

R162-104-5. Compliance with USPAP and Licensing Requirements,~~[USPAP Limited Appraisals]~~

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, ~~[or]~~ the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional points for certification required by ~~Subs[§]ection~~ R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 ~~[For the purposes of this rule, limited appraisals are defined as opinions of value performed under, and resulting from, invoking the departure provision of USPAP, but do not include mass appraisals. Limited appraisals shall be granted 50% of the credit awarded an appraisal which is not a limited appraisal. Limited]~~Except for experience points claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property.~~[is not a limited appraisal.]~~ Not more than 25% of the total experience required

for licensure or certification may be earned from ~~[limited]~~ appraisals where the interior of the subject property is not inspected.

R162-104-~~7~~6. State-Licensed and State-Certified Applicants.

104.~~7~~6.1 Except for those applicants who qualify under Section R162-104-~~17~~14, applicants applying for licensure as State-Licensed Appraisers shall be awarded points from ~~[either the Residential Experience Points Schedule or the General Experience Points Schedule]~~the Points Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with ~~Sub[§]ection~~ R162-105-3.

104.~~7~~6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the points submitted from the Residential Experience Points Schedule or the residential portion of the Mass Appraisal Points Schedule. No more than 25% of the total points submitted may be from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

104.~~7~~6.3 Applicants applying for certification as State-Certified General Appraisers may claim points for experience from ~~[either the Residential Experience Points Schedule or the General Experience Points Schedule]~~any of the Points Schedules in Section R162-104-15, so long as at least 50% of the total points has been earned from the General Experience Points Schedule or from assignments listed on the Mass Appraisal Points Schedule other than 1 to 4 unit residential properties.

~~[R162-104-8. Points from Authorship.~~

~~104.8 The cumulative points from appraisal textbook and article authorship shall not exceed 50% of the cumulative points submitted.~~

R162-104-~~9~~7. Review or Supervision of Appraisals.

104.~~9~~7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following points shall be awarded for review or supervision of appraisals:

104.~~9~~7.1 ~~[Review of appraisals which does not include a physical inspection of the property and verification of the data, commonly known as a desk review, shall be worth 20% of the points awarded to the appraisal if a separate written review appraisal report is prepared.]~~Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a [A] maximum of 100 points may be earned by desk review of appraisals.

104.~~9~~7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the points awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a [A] maximum of 100 points may be earned by field review of appraisals.

104.~~9~~7.3 Supervision of appraisers shall be worth 20% of the points awarded to the appraisal. A maximum of 100 points may be earned by supervision of appraisers.

104.~~9~~7.4 Except as provided in Subsection R162-104.7.5, [N]ot more than 50% of the total experience required for certification may be granted under Subsections R162-104[~~9~~(104.9.1)]7.1 through

R162-104[~~9(104.9.3)~~].7.3 and R162-104[~~11(104.11.1)~~].9.1 and R162-104[~~11(104.11.3)~~].9.3 combined.

104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the point limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.

R162-104-~~10~~8. Condemnation Appraisals.

104.~~10~~8 Condemnation appraisals shall be worth an additional 50% of the points normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-~~11~~9. Preliminary Valuation Estimates, Comparative Market Analysis, Real Estate Consulting Services, and Other Real Estate Experience.

104.~~11~~9.1 Preliminary valuation estimates, range of value estimates or similar studies, and other real estate related experience gained by bankers, builders, city planners and managers, or other individuals may be granted credit for up to 50% of the experience required for certification in accordance with Section R162-104-~~17~~14 [of this rule], so long as the experience demonstrates to the Board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions.

104.~~11~~9.2 Comparative market analysis by real estate licensees may be granted up to 100% experience credit toward certification in accordance with Section R162-104-~~17~~14 [of this rule], when the analysis is prepared in conformity with USPAP Standards Rules 1 and 2 and the individual can demonstrate to the Board that he is using similar techniques as appraisers to value properties and effectively utilize the appraisal process.

104.~~11~~9.3 Appraisal analysis, real estate counseling or consulting services, and feasibility analysis/study will be awarded experience credit in accordance with Section R162-104-~~17~~14 [of this rule] for up to 50% of the experience required toward certification so long as the services were performed in accordance with USPAP Standards Rules 4 and 5.

104.~~11~~9.4 Not more than 50% of the total experience required for certification may be granted under Subsections R162-104-~~11~~(104.11.1).9.1 and R162-104-~~11~~(104.11.3).9.3 and R162-104-~~9~~(104.9.1).7.1 through R162-104-~~9~~(104.9.3).7.3 combined.

~~**R162-104-12. Ad Valorem Appraisal and Benchmark Appraisal.**~~

~~104.12 Ad valorem appraisal and benchmark appraisal by property type will earn the same number of points as fee appraisal where the individual can demonstrate that he performed highest and best use analysis, developed the model in model specification, or developed adjustments to the model in model calibration, and where the individual can demonstrate the appraisal was performed in accordance with Standards Rule 6 of the Uniform Standards of Professional Appraisal Practice.~~

R162-104-~~13~~10. Experience Participation.

104.~~13~~10 An applicant for certification must be able to prove more than 50% participation in the data collection, verification of data, reconciliation, analysis, identification of property and property interests, compliance with USPAP standards [and all Advisory Opinions of USPAP], and preparation and development of the appraisal report in order to count the appraisal for experience credit. With the exception of experience claimed under Subsection R162-104.15.3,

[E]xperience credit will be granted to only one [registered or] licensed appraiser per completed appraisal even though more than one may have participated in the development of the appraisal.

R162-104-~~14~~11. Unacceptable Experience.

104.~~14~~11 An applicant will not receive points toward satisfying the experience requirement for licensure or certification for performing the following:

- (a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or
- (b) Personal property appraisals.

R162-104-~~15~~12. Verification of Experience.

104.~~15~~12 The Board, at its discretion, may verify the claimed experience by any of the following methods: verification with the clients; submission of selected reports to the Board; and field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-104-~~16~~13. Experience Review Committee.

104.~~16~~13 There may be a committee appointed by the Board to review the experience claimed by applicants for licensure or certification.

104.~~16~~13.1 The Committee shall:

104.~~16~~13.1.1 Review all applications for adherence to the experience required for licensure or certification;

104.~~16~~13.1.2 Correspond with applicants concerning submissions, if necessary; and

104.~~16~~13.1.3 Make recommendations to the Division and the Board for licensure or certification approval or disapproval.

104.~~16~~13.2 Committee composition. The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and [ad valorem] mass appraisers.

104.~~16~~13.2.1 The chairperson of the committee shall be appointed by the Board.

104.~~16~~13.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

104.~~16~~13.3 New Review. If the review of an application has been performed by the Experience Review Committee, and the Board has denied the application based on insufficient experience, the applicant may request that the Board review the issue again by making a written request within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

R162-104-~~17~~14. Special Circumstances.

104.~~17~~14 Applicants having experience in categories other than those shown on the Appraisal Experience Points Schedules, or applicants who believe the Experience Points Schedules do[es] not adequately reflect their experience, or applicants who believe the Experience Points Schedules do[es] not adequately reflect the complexity or time spent on an appraisal, may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may [waive experience points, give an applicant credit for months of experience, or both] accept the alternate experience and

award the applicant an appropriate number of points for the alternate experience.]

~~104.17.1 Full time elected county assessors and any person performing an appraisal for the purpose of establishing the fair market value of real estate for the assessment roll may, as an alternative to using the Appraisal Experience Points Schedule, be awarded points as provided in Section 104.17.2, provided that they have experience in at least three of the following categories and no more than one-third of their experience comes from any one of the following categories:~~

- ~~104.17.1.1 Property description/identification;~~
- ~~104.17.1.2 Highest and best use analysis;~~
- ~~104.17.1.3 Land value estimates;~~
- ~~104.17.1.4 Cost approach;~~
- ~~104.17.1.5 Sales comparison;~~
- ~~104.17.1.6 Income capitalization approach.~~

~~104.17.2 Full time elected county assessors may be awarded 200 points for every year of service. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded 200 points for every year of full-time service that is substantiated by the applicant. If the applicant requests that experience points be granted for employment in other than one-year increments, the number of points allowable under this section may be prorated in proportion to the number of months of full-time employment substantiated by the applicant.~~

~~104.17.2.1 Part time employment. Any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll may be awarded a number of points for part time service that has been pro-rated in proportion to the average number of hours worked per week during the months for which points are claimed. For the purposes of this rule, full-time service is defined as 40 hours per week.]~~

~~104.17.3]14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the limitations in Subs[S]ection R162-105.3.]~~

~~104.17.4 Fulltime investigators with the Division who perform appraisal investigations may be awarded 200 points for every 18 months of service. They are not subject to the limitations in Section 105.3.]~~

R162-104-[48]15. Appraisal Experience Points Schedules.

104.[48]15 Points shall be awarded as follows[;]. The point schedule in Table 1 is intended to award one experience point for every five hours of appraisal experience.

104.[48]15.1 Residential Experience Points Schedule. The following points shall be awarded to form appraisals. Three points may be added to the points shown if the appraisal was a narrative appraisal instead of a form appraisal.

TABLE 1

(a) One-unit dwelling, <u>above-grade living area less than 4,000 square feet</u> , including a site	1 point
<u>(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site</u>	1.5 points
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
<u>(1) 1-25 dwellings</u>	1 point per dwelling up to a maximum of 6 points

<u>(2) Over 25 dwellings</u>	A total of 10 points
(c) Two[-] to four-unit dwelling	4 points
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	2 points
(e) Residential lot, 1-4 <u>unit[family]</u>	1 point
(f) Multiple lots in the same subdivision which are substantially similar	
<u>(1) 1-25 lots</u>	1 point per lot up to a maximum of 6 points
<u>(2) Over 25 lots</u>	A total of 10 points
(g) Small parcel up to 5 acres	1 point
(h) Vacant land, 20-500 acres	4-8 points,
[A maximum of 50 points may be awarded for] <u>appraisal of vacant land-</u>	<u>as determined by the Board</u>
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	2 points
Over 10 acres	3 points
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	1-[5]7 points as determined by the Board
[(k) Residential appraisal textbook authorship, not to exceed 20 points per year	As determined by the Board
(l) Residential appraisal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points]
<u>(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies</u>	2-10 points

104.15.1.1 Government Agency Experience. Applicants whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:

- 104.15.1.1.1 Applicants for State-Licensed Appraiser: five.
- 104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.

104.15.1.2 A maximum of 50 experience points may be earned from appraisal of vacant land.

104.[48]15.2 General Experience Points Schedule. All appraisal reports claimed must be narrative appraisal reports. The point schedule in Table 2 is intended to award one experience point for every five hours of appraisal activity. Experience points listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra points claimed on the Appraiser Experience Log submitted by the applicant and maintains in the workfile for the appraisal an explanation about why the extra points are claimed.

TABLE 2

(a) Apartment buildings, 5-100 units	8 points
Over 100 units	10 points
(b) Hotel or motels, 50 units or fewer	6 points
51-150 units	8 points
Over 150 units	10 points
(c) Nursing home, rest home, care facilities,	
Fewer than 80 beds	8 points
Over 80 beds	10 points
(d) Industrial or warehouse building,	
Fewer than 20,000 square feet	6 points
Over 20,000 square feet, single tenant	8 points
Over 20,000 square feet, multiple tenants	10 points

(e) Office buildings			
Fewer than 10,000 square feet	6 points		
Over 10,000 square feet, single tenant	8 points		
Over 10,000 square feet, multiple tenants	10 points		
(f) Entire condominium projects, using income approach to value			
5- to 30-unit project	6 points		
31- or more-unit project	10 points		
(g) Retail buildings			
Fewer than 10,000 square feet	6 points		
More than 10,000 square feet, single tenant	8 points		
More than 10,000 square feet, multiple tenants	10 points		
(h) Commercial, multi- family unit, industrial, or other nonresidential use acreage			
Fewer than 10 acres	4 points		
10 acres or more	6 points		
1 to 99 acres	4-8 points		
100 acres or more, income approach to value	10-12 points		
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	1 to 20 points as determined by Board		
(j) Textbook authorship in general appraisal topics, not to exceed 20 points per year	As determined by Board		
(k) General field journal articles in journals of approved national appraisal organizations, not to exceed 20 points per year	10 points		
(l) Entire Subdivisions or Planned Unit Developments (PUDs)			
1- to 25-unit subdivision or PUD	6 points		
Over 25-unit subdivision or PUD	10 points		
(m) Feasibility or market analysis, maximum 100 points	1 to 20 points as determined by Board		
(n) Development and implementation of multiple regression model - land valuation guide, up to 5000 parcels	20 points		
For each additional 5000 parcels, add 1 point			
(o) Depreciation study and analysis	20 points		
(p) Sales ratio study and implementation - physical inspection and review, maximum 50 points	10 points		
(q) Development of standards of practice for assessment administration and writing of those guidelines, maximum 40 points	10-20 points as determined by Board		
(r) State assessed property - gravel pits, mines, utilities	1-20 points as determined by Board		
Farm and Ranch appraisals	Form	Narrative	
(s) Separate grazing privileges or permits	4 pts.	5 pts.	
(t) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	2 pts.	3 pts.	
11-50 acres	2.5 pts.	4 pts.	
51-200 acres	3 pts.	5 pts.	
201-1000 acres	5 pts.	8 pts.	
More than 1000 acres	8 pts.	10 pts.	
(u) Dry farm, 1 to 1000 acres	3 pts.	5 pts.	
More than 1000 acres	4 pts.	8 pts.	
(v) Improvements on properties other than a rural residence, maximum 2 points:			
Dwelling	1 pt.	1 pt.	
Sheds	0.5 pt.	0.5 pt.	
(w) Cattle ranches			
0-200 head	3 pts.	4 pts.	
201-500 head	5 pts.	6 pts.	
501-1000 head	6 pts.	8 pts.	
More than 1000 head	8 pts.	10 pts.	
(x) Sheep ranches			
0-2000 head	5 pts.	6 pts.	
More than 2000 head	7 pts.	9 pts.	

(y) Dairies, includes all improvements except a dwelling			
1-100 head	4 pts.	5 pts.	
101-300 head	5 pts.	6 pts.	
More than 300 head	6 pts.	7 pts.	
(z) Orchards			
5-50 acres	6 pts.	8 pts.	
More than 50 acres	8 pts.	10 pts.	
(aa) Rangeland/timber			
0-640 acres	4 pts.	5 pts.	
More than 640 acres	6 pts.	7 pts.	
(ab) Poultry			
0-100,000 birds	6 pts.	8 pts.	
More than 100,000 birds	8 pts.	10 pts.	
(ac) Mink			
0-5000 cages	6 pts.	7 pts.	
More than 5000 cages	8 pts.	10 pts.	
(ad) Fish farms			
8 pts.	10 pts.		
(ae) Hog farms			
8 pts.	10 pts.		
<u>(v) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies</u>			4-20 points

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit family form reports shall be worth 75% of the points normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience Points Schedule. The point schedule in Table 3 is intended to award one experience point for every five hours of mass appraisal activity.

TABLE 3

<u>(a) One-unit dwelling, above-grade living area less than 4,000 square feet</u>		
<u>(1) Exterior inspection, highest and best use analysis, data collection only</u>		.1 point
<u>(2) Interior and exterior inspection, highest and best use analysis, data collection only</u>		.2 point
<u>(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>		.75 point
<u>(b) One-unit dwelling, above-grade living area 4,000 square feet or more</u>		
<u>(1) Exterior inspection, highest and best use analysis, data collection only</u>		.15 point
<u>(2) Interior and exterior inspection, highest and best use analysis, data collection only</u>		.3 point
<u>(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>		1 point
<u>(c) Two to four unit dwelling</u>		
<u>(1) Exterior inspection, highest and best use analysis, data collection only</u>		.3 point
<u>(2) Interior and exterior inspection, highest and best use analysis, data collection only</u>		.6 point
<u>(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>		3 points
<u>(d) Commercial and industrial buildings, depending on complexity</u>		

<u>(1) Exterior inspection, highest and best use analysis, data collection only</u>	<u>.2 to 1 point</u>
<u>(2) Interior and exterior inspection, highest and best use analysis, data collection only</u>	<u>.4 to 2 points</u>
<u>(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>	<u>1.5 to 7.5 points</u>
<u>(e) Agricultural and other improvements, depending on complexity</u>	
<u>(1) Exterior inspection, highest and best use analysis, data collection only</u>	<u>.1 to .5 point</u>
<u>(2) Interior and exterior inspection, highest and best use analysis, data collection only</u>	<u>.2 to 1 point</u>
<u>(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>	<u>.75 to 4 points</u>
<u>(f) Vacant land, depending on complexity</u>	
<u>(1) Inspection, highest and best use analysis, data collection only</u>	<u>.1 to .5 point</u>
<u>(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report</u>	<u>.5 to 5 points</u>
<u>(3) Land segregation (division) analysis and processing, no field inspection</u>	<u>.05 point</u>
<u>(4) Land segregation (division) analysis and processing, field inspection</u>	<u>.1 point</u>
<u>(g) Data input and review for experience points claimed under Subsections R162-104-15.3(a) through (f)</u>	<u>.01 point</u>
<u>(h) Land valuation guideline</u>	
<u>(1) 25 or fewer parcels</u>	<u>2 points</u>
<u>(2) 26 to 500 parcels</u>	<u>6 points</u>
<u>(3) Over 500 parcels</u>	<u>5 additional points for each 500 parcels, up to a maximum of 25 points</u>
<u>(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation</u>	
<u>(1) Base study of 100 reviewed sales</u>	<u>25 points</u>
<u>(2) Additional increments of 100 sales</u>	<u>Add 5 points for each 100 additional sales, up to a maximum of 75 points</u>
<u>(j) Multiple Regression Model, Development and Implementation</u>	
<u>(1) Less than 5,000 parcels</u>	<u>20 points</u>
<u>(2) Additional increments of 500 parcels</u>	<u>Add 1 point for each additional 500 parcels, up to a maximum of 75 points</u>
<u>(k) Depreciation study and analysis</u>	<u>20 points</u>
<u>(1) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505</u>	
<u>(1) Office review only</u>	<u>.05 point</u>
<u>(2) Field review</u>	<u>.1 point</u>
<u>(m) Natural Resource Properties, depending on complexity</u>	
<u>(1) Sand and Gravel, per site</u>	<u>1.5 to 4 points</u>
<u>(2) Mine</u>	<u>1.5 to 22 points</u>
<u>(3) Oil and Gas, per site</u>	<u>.33 to 10 points</u>
<u>(n) Pipelines and gas distribution properties, depending on complexity</u>	<u>2 to 8 points</u>
<u>(o) Telephone and electric properties, depending on complexity</u>	<u>1 to 16 points</u>

<u>(p) Airline and railroad properties, depending on complexity</u>	<u>2 to 16 points</u>
<u>(q) Appraisal review/audit, depending on complexity</u>	<u>.5 to 25 points</u>
<u>(r) Capitalization rate study</u>	<u>16 points</u>

104.15.3.1 Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of points shown in Tables 1 and 2.

104.15.3.2 Review and supervision of appraisals by mass appraisers will receive points in accordance with Subsection R162-104.7.

104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the points shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.

104.15.3.4 Applicants for State-Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.3.5 No more than 60% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.

104.15.3.6 No more than 25% of the total points submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.

104.15.3.7 No more than 20% of the total points submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).

104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience points shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience points.

KEY: real estate appraisals, experience
Date of Enactment or Last Substantive Amendment: ~~November 24, 2004~~ 2007
Notice of Continuation: February 15, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-1 through 61-2b-40



Education, Administration
R277-419
 Pupil Accounting

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE No.: 29690
 FILED: 03/15/2007, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to implement contingencies for public school attendance when dealing with emergencies such as a deadly influenza pandemic.

SUMMARY OF THE RULE OR CHANGE: The rule provides a new definition and provides procedures for waiver of the day and hour requirement and other contingencies in the event of a pandemic or other public health emergency.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-401(3) and 53A-1-402(1)(e)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated cost or savings to state budget. The amendment provides for contingencies in the event of a pandemic or other public health emergency so that public schools may continue to the extent possible.

❖LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The amendment provides for contingencies in the event of a pandemic or other public health emergency so public schools may continue to the extent possible.

❖OTHER PERSONS: There are no anticipated cost or savings to other persons. The amendment provides for contingencies in the event of a pandemic or other public health emergency so that public schools may continue to the extent possible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendment provides for contingencies in the event of a pandemic or other public health emergency so that the public schools may continue to the extent possible.

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. Patti Harrington, State Superintendent of Public Instruction

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 carol.lear@schools.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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

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

R277. Education, Administration.

R277-419. Pupil Accounting.

R277-419-1. Definitions.

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1.

D. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

E. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

F. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

[F]G. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

[G]H. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

[H]I. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

[I]J. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

[F]K. "Retained senior" means a student beyond the general compulsory education age who is authorized by at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

- (1) sickness;
- (2) hospitalization;
- (3) pending court investigation or action or both; or
- (4) other extenuating circumstances beyond the control of the student.

[K]L. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

[E]M. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

[M]N. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

[N]O. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

[O]P. "School year" means the 12 month period from July 1 through June 30.

[P]Q. "Self-contained" means a public school student with an IEP who receives 180 minutes or more of special education services during a typical school day.

[Q]R. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

[R]S. "SSID" means Statewide Student Identifier.

[S]T. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

[F]U. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-3B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

[U]V. "USOE" means the Utah State Office of Education.

[V]W. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

[W]X. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

[X]Y. "YIC" means Youth in Custody.

[X]Z. "YICISIS" means YIC Student Information System.

R277-419-3. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of days for individual students and schools are provided for in R277-419-7.

(2) The required days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(3)4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

- (a) entry date;
- (b) exit date;
- (c) exit or high school completion status;
- (d) whether or not an absence was excused; and
- (e) disability status (resource or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

- (i) entry date;
- (ii) exit date; and
- (iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C(1) Due to school activities requiring schedule and program modification during the first days and last days of the school year, an LEA may report for the first five days, aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last three-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding three-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-7. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1[M]N, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school participating in the School Professional Development Days Pilot Program, consistent with R277-418, may use a maximum of 22 hours of the 990 hours of student instructional time required under R277-419-3A(1) for professional development days. Use of this time, consistent with R277-418, requires prior Board approval.

E. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

KEY: education finance, school enrollment

Date of Enactment or Last Substantive Amendment: ~~November 9, 2006~~ 2007

Notice of Continuation: October 18, 2002

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410



Education, Administration R277-459 Classroom Supplies Appropriation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29691

FILED: 03/15/2007, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add and clarify definitions and to clarify procedures to be used for supplies purchased when a teacher moves to another school/school district.

SUMMARY OF THE RULE OR CHANGE: The rule expands on the classroom teacher definition, adds a Computer Aided Credentials of Teachers in Utah System (CACTUS), provides language in determining teacher count of full-time classroom teachers, and provides language describing ownership of materials purchased with classroom supply funds.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of this amended rule. The changes merely provide clarification.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of this amended rule. The changes merely provide clarification.

❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons as a result of this amended rule. The changes merely provide clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as a result of this amended rule. The changes merely provide clarification.

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. Patti Harrington, State Superintendent of Public Instruction

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 carol.lear@schools.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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

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

R277. Education, Administration.

R277-459. Classroom Supplies Appropriation.

R277-459-1. Definitions.

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

B. "Classroom teacher" means a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, ~~the Edith Bowen Laboratory School,~~ and charter schools. These teachers are licensed personnel, and paid on the teachers' salary schedule or a charter school salary schedule. Teachers shall be employed for an entire contract period. The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools. Specific categories of staff to be included may be changed, therefore, current definitions may be found in the most recent legislation.

C. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected

under Section 63-2-302 or 304 and is accessible only to specific designated individuals.

~~[C]~~D. "Field trip" means a district, or school authorized excursion for educational purposes.

~~[D]~~E. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

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

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, ~~the Edith Bowen Laboratory School,~~ and charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. The USOE shall generate from the CACTUS database a teacher count of the full-time classroom teachers as defined above for ~~[E]~~each school district, the Utah Schools for the Deaf and the Blind, ~~the Edith Bowen Laboratory School,~~ and charter schools ~~[shall provide the USOE with a teacher count of full-time classroom teachers, as defined above,~~ as of November 1 of each year.

B. The USOE shall distribute funds through each school district, the Utah Schools for the Deaf and the Blind, ~~the Edith Bowen Laboratory School,~~ and charter schools proportionally per eligible position to the extent of the appropriation.

C. Individual teachers shall designate the uses for their allocations within the criteria of this rule. Districts and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by teachers the following years.

F. These funds are to supplement, not supplant, existing funds for these purposes.

G. These funds are to be accounted for by the district or eligible school using state or district procurement and accounting policies.

H. These funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, and charter schools. Employees may not claim personal ownership of materials purchased with these public funds.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, [~~the Edith Bowen Laboratory School,~~] and charter schools shall allow, but not require, teachers to jointly use their allocations.

B. Districts, the Utah Schools for the Deaf and the Blind, [~~the Edith Bowen Laboratory School,~~] and charter schools shall allow part-time or job-sharing teachers a proportionate allocation.

KEY: teachers, supplies

Date of Enactment or Last Substantive Amendment: [~~August 8, 2006~~] **2007**

Notice of Continuation: July 6, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(b)



Education, Administration
R277-503
Licensing Routes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29692

FILED: 03/15/2007, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide new requirements for testing in areas specific to the No Child Left Behind (NCLB).

SUMMARY OF THE RULE OR CHANGE: The rule provides a new definition and provides an effective date for implementation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated cost or savings to state budget because individuals seeking licensing will be responsible for costs relating to licensing exams.

❖ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government because individuals seeking licensing will be responsible for costs relating to licensing exams.

❖ **OTHER PERSONS:** Individuals seeking a Utah educator license will be required to take a test which will cost between \$75-\$125. This amount covers registration and multiple test-taking opportunities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals seeking a Utah educator license will be required to take a test which will cost between \$75-\$125. This amount covers registration and multiple test-taking opportunities.

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. Patti Harrington, State Superintendent of Public Instruction

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 carol.lear@schools.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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

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

R277. Education, Administration.

R277-503. Licensing Routes.

R277-503-1. Definitions.

A. "Alternative Routes to Licensure (ARL) advisors" mean a USOE specialist with specific professional development and educator licensing expertise, and a USOE-designated curriculum specialist.

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

C. "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

D. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.

E. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

F. "Letter of authorization" means a formal approval given to an individual such as an out-of-state candidate or a first year ARL candidate who is employed by a school district/charter school in a position requiring a professional educator license who has not completed the requirements for an ARL license or a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements. A teacher working under a letter of authorization cannot be designated highly qualified under R277-520-1G.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

- (1) requirements established by law or rule;
- (2) three years of successful education experience within a five-year period; and
- (3) satisfaction of requirements under R277-522 for teachers employed after January 1, 2003.

I. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school.

J. "National Association of State Directors of Teacher Education and Certification (NASDTEC)" is an educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

L. "NCLB core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

[E]M. "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that go beyond an educator's content knowledge of an academic discipline.

[M]N. "Praxis II - Principles of Learning and Teaching" is a standards-based test provided by ETS and designed to assess a beginning teacher's pedagogical knowledge. This test is used by many states as part of their teacher licensing process. Colleges and universities may use this test as an exit exam from teacher education programs. All Utah Level 1 license holders employed or reemployed after January 1, 2003 shall pass this test prior to the issuance of a Level 2 professional educator license consistent with R277-522-1H(3).

[N]O. "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

- (1) Middle States Commission on Higher Education;
- (2) New England Association of Schools and Colleges;
- (3) North Central Association Commission on Accreditation and School Improvement;
- (4) Northwest Commission on Colleges and Universities;
- (5) Southern Association of Colleges and Schools; and
- (6) Western Association of Schools and colleges: Senior College Commission.

[O]P. "Restricted endorsement" means a qualification based on content area knowledge obtained through a USOE-approved program of study or test and shall be available only to teachers in necessarily existent small school settings and teachers in youth in custody programs.

[P]Q. "State-approved Endorsement Plan (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator.

[Q]R. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

[R]S. "USOE" means the Utah State Office of Education.

R277-503-3. USOE Licensing Eligibility.

A. Traditional college/university license - A license applicant shall have completed an approved college/university teacher preparation program, been recommended for licensing, and shall have satisfied all other requirements for educator licensing required by law; or

B. Alternative Licensing Route

(1) A license applicant shall have a bachelors degree or higher from an accredited higher education institution in an area related to the position he seeks; and

(2) A license applicant shall have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program.

(3) While beginning an alternative licensing program, an applicant shall be approved for employment under a letter of authorization for a maximum of one school year and may be employed under an ARL license for an additional two years. An ARL program may not exceed three school years. ARL candidates who receive ARL licensure status may be designated highly qualified under R277-520-1G.

C. All license applicants seeking a Level 1 Utah educator license or an area of concentration or an endorsement in an NCLB core academic subject area after ~~July 1~~ March 3, 2006 shall submit passing score(s) on a rigorous Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(1) Early childhood (K-3) and elementary majors (1-8) are required to submit a passing score from a rigorous Board-designated content test.

(2) Secondary teachers are required to submit passing scores on a rigorous Board-designated content test(s), where test(s) are available, for each endorsement NCLB core academic area to be posted on the license.

(3) An applicant shall submit electronic or original documentation of USOE-designated passing score(s).

D. ~~For a~~ Any educator seeking a Utah Level 1 license who submits a score below the final Utah state passing score on the test designated in R277-503-3C[;] shall be issued a nonrenewable conditional Level 1 license ~~shall be issued~~. If the educator fails to submit a passing score on a rigorous Board-designated content test during the three-year duration of the conditional Level 1 license, the educator's license or endorsement shall lapse on the educator's renewal date.

E. The credentials and documentation of experience of applicants for Level 2 and 3 professional educator licenses shall be evaluated by the USOE to determine the appropriate license level.

R277-503-4. Licensing Routes.

Applicants who seek Utah licenses shall successfully complete accredited programs or legislatively mandated programs consistent with this rule.

A. Institution of higher education teacher preparation programs shall be:

(1) Nationally accredited by:

- (a) NCATE; or
- (b) TEAC; or

(2) Regionally accredited competency-based teacher preparation programs as provided under R277-503-1N.

B. USOE Alternative Routes to Licensure (ARL)

(1) To be eligible to begin the ARL program, an applicant for an elementary or early childhood school position shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas. Elementary curriculum areas are provided under R277-700-4. To proceed from temporary license status, an ARL applicant shall submit a score on the ETS Praxis II Elementary Education Content Knowledge Examination (0014) to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(2) To be eligible to begin the ARL program, applicants for secondary school positions shall hold a degree major or major equivalent directly related to the assignment. To proceed from temporary license status an ARL license applicant shall submit a score on ~~the~~ identified ETS Praxis II Applicable Content Knowledge test(s) where available to be used as a diagnostic tool and as part of the development of a professional plan and the issuance of the ARL license.

(3) Licensing by Agreement

(a) An individual employed by a school district shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district.

(b) An applicant shall obtain an ARL application for licensing from the USOE or USOE web site.

(c) After evaluation of candidate transcript(s), and rigorous Board-designated content test score, the USOE ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(d) The USOE ARL advisors may identify institution of higher education courses, district inservice classes, Board-approved training, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(e) The employing school district shall assign a trained mentor to work with the applicant for licensing by agreement.

(f) The school district shall supervise and assess the license applicant's classroom performance during a minimum one school year full-time employment experience. The district may request assistance from a institution of higher education or the USOE in the monitoring and assessment.

(g) The school district shall assess the license applicant's disposition as a teacher following a minimum one school year full-time teaching experience. The district may request assistance in this assessment; and

(h) The USOE ARL advisors shall annually review and evaluate the license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the school district.

(i) Consistent with evidence and documentation received, the USOE ARL advisor may recommend the license applicant to the Board for a Level 1 educator license.

(4) USOE Licensing by Competency

(a) A school district employs an individual as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the district who satisfies the minimum requirements of R277-503-3.

(b) An employing school district, in consultation with the applicant and the USOE, shall identify Board-approved content knowledge and pedagogical knowledge examinations. The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(c) The employing school district shall assign a trained mentor to work with the applicant for licensing by competency.

(d) The school district shall monitor and assess the license applicant's classroom performance during a minimum one-year full-time teaching experience.

(e) The school district shall assess the license applicant's disposition for teaching following a minimum one-year full-time teaching experience.

(f) The school district may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(g) Following the one-year training period, the school district and USOE shall verify all aspects of preparation (content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching) to the USOE.

(h) If all evidence/documentation is complete, the USOE shall recommend the applicant for a Level 1 educator license.

(5) USOE ARL candidates under R277-503-4B(3) and (4) may teach under a letter of authorization for a maximum of one year. The letter of authorization shall expire after the first year on June 30 when the ARL candidate submits documentation of progress in the program, and the candidate shall be issued an ARL license.

(6) The ARL license may be extended annually for two subsequent school years with documentation of progress in the ARL program.

(7) Documentation shall include, specifically, a copy of the supervisor's successful end-of-year evaluation, copies of transcripts and test results or both showing completion of required coursework, verification of working with a trained mentor, and satisfaction of the full-time full year experience.

C. School district/charter school specific competency-based licenses:

(1) A local board/charter school board may apply to the Board for a letter of authorization to fill a position in the district.

(2) The employing school district/charter school shall request a letter of authorization no later than 60 days after the date of the individual's first day of employment.

(3) The application for the letter of authorization from the local board/charter school board for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test, similar to the test required

under R277-503-3E, in each of the core academic subjects in which the teacher teaches.

(4) The application for the letter of authorization from the local board/charter school board for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation and consistent with Section 53A-6-104.5(2), the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual with a district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the letter of authorization and for the individual originally employed under the letter of authorization or district/charter school specific competency-based license.

(8) The written copy of the district/charter school specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL SPECIFIC COMPETENCY-BASED LICENSE.

(9) A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

(10) School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-503-5. Endorsement Routes.

A. An applicant shall successfully complete one of the following for endorsement:

(1) a USOE-approved institution of higher education educator preparation program with endorsement(s); or

(2) assessment, approval and recommendation by a designated and subject-appropriate USOE specialist under a SAEP. The USOE shall be responsible for final recommendation and approval; or

~~[(3) USOE approved examination(s) assessing content knowledge and content specific pedagogical knowledge. The USOE is responsible for final review and approval; or~~

[(4)] a USOE-approved Utah institution of higher education or Utah school district-sponsored endorsement program which includes content knowledge and content-specific pedagogical knowledge approved by the USOE. The university or school district shall be responsible for final review and recommendation. The USOE shall be responsible for final approval.

B. A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445, and teachers in youth in custody programs. Teacher qualifications shall include at least nine semester hours of USOE-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

C. All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

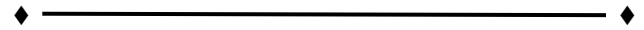
D. Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have school district/charter school and USOE authorization.

KEY: teachers, alternative licensing

Date of Enactment or Last Substantive Amendment: ~~May 16, 2006~~ **2007**

Notice of Continuation April 15, 2002

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401(3)



Education, Administration **R277-612** Foreign Exchange Students

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 29693

FILED: 03/15/2007, 16:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Legislation enacted during the 2006 Legislative Session in S.B. 5, provides for a number of foreign exchange students to be counted for purposes of apportioning state monies beginning 07/01/2007. The law requires the Utah State Board of Education make a rule to administer the cap for the program. Funding begins 07/01/2007. (DAR NOTE: S.B. 5 (2006) is found at Chapter 354, Laws of Utah 2006, and was effective 07/01/2006.)

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions, standards and procedures for a foreign exchange student cap, and criteria for school district foreign exchange student policies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-2-206(2)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget. The Legislature assured the Board that funding would be provided for foreign exchange students under this rule.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The Legislature assured school districts/charter schools that funding would be provided for foreign exchange students under this rule.

❖ **OTHER PERSONS:** There are no anticipated costs or savings to other persons. Eligible foreign exchange students will be able to attend Utah public schools with no tuition charged by public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some compliance costs for foreign exchange student entities to ensure compliance with all applicable policies of the local board of education or charter school, including submitting to a

household study, a background check study, and ensuring that host families have received training appropriate to their position. Costs are too speculative to determine at the present time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may have some fiscal impact on foreign exchange student placing agencies for compliance with the requirements of this rule. The fiscal impact is to speculative to determine at the present time. Patti Harrington, State Superintendent of Public Instruction

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 carol.lear@schools.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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

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

R277. Education, Administration.

R277-612. Foreign Exchange Students.

R277-612-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Foreign exchange student" means a student sponsored by an agency approved by the district's local school board or charter school's governing board, subject to the limitation of Section 53A-2-206(2).
- C. "USOE" means the Utah State Office of Education.

R277-612-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-2-206(2) which directs the Board to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to administer the cap on the number of foreign exchange students that may be counted by school districts and charter schools for state funding. An additional purpose of the rule is to provide guidance to school districts and charter schools in working with exchange student agencies and accepting foreign exchange students to provide for safety and fairness to the exchange students and Utah public school students.

R277-612-3. Foreign Exchange Student Cap.

- A. School districts and charter schools shall be compensated from a specific legislative appropriation designated annually to pay the costs of educating foreign exchange students who meet all criteria of the law.
- B. School districts and charter schools are encouraged to enroll foreign exchange students and report those enrollment numbers annually to the USOE in the October 1 Superintendents' Report.
- C. When the number of reported foreign exchange students reaches 250 in a school year, the USOE may notify school districts of quotas in enrolling foreign exchange students or may seek funding for a USOE employee to promote the program among school districts and charter schools and ensure that all requirements of the law are satisfied by foreign exchange student agencies, foreign exchange students, school districts and charter schools.
- D. School districts and charter schools shall include in their report to the USOE only foreign exchange students that satisfy all requirements of 53A-2-206(6) and school district/charter school policies. School districts/charter schools may enroll foreign exchange students who do not qualify for state monies and pay the costs of those students with other school district/charter school funds or charge the students tuition.

R277-612-4. School District Policy for Working with Foreign Exchange Student Agencies and Protecting Foreign Exchange Students and Utah Students.

- A. School districts and charter schools that enroll foreign exchange students shall have a policy that satisfies the requirements of 53A-2-206(6) in addition to other provisions which create a safe environment for foreign exchange students and school district/charter school students.
- B. Each school district/charter school shall, prior to accepting students through the foreign exchange student agency, require and maintain from each foreign exchange student entity from which the district/charter school accepts students, a sworn affidavit of compliance that the agency has complied with all applicable policies of the local board of education or the charter school including the following:
- (1) agency has complied with all applicable policies of the local board of education/charter school governing board;
 - (2) a household study, including a background check consistent with 53A-3-410, of all adult residents has been completed of each household where foreign exchange students will reside and the information has been reviewed and concerns satisfied by an appropriate school district employee;
 - (3) a background study assures that the exchange student will receive proper care and supervision in a safe environment;
 - (iv) host parents have received training appropriate to their positions, including information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who are in a position of special trust;
 - (4) a representative of the exchange student agency shall visit each student's place of residence at least monthly during the student's stay in Utah;
 - (5) the agency will cooperate with school and other public authorities to ensure that no exchange student becomes an unreasonable burden upon the public schools or other public agencies;
 - (6) each exchange student will be given, in the exchange student's native language, names and telephone numbers of agency

representatives and others who could be called at any time if a serious problem occurs; and

(7) alternate placements are readily available so that no student is required to remain in a household if conditions appear to exist which unreasonably endanger the student's welfare.

C. Each school district/charter school that accepts foreign exchange students shall provide each approved foreign exchange student agency with a list of names and telephone numbers of individuals not associated with the agency who could be called by an exchange student in the event of a serious problem.

D. The agency shall make a copy of the list provided by the school district/charter school to each foreign exchange student in the student's native language.

KEY: foreign exchange students, enrollment
Date of Enactment or Last Substantive Amendments: 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-2-206(2), 53A-1-401(3)



Education, Administration **R277-746-3** Standards and Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29694

FILED: 03/15/2007, 16:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to reflect title and revision date changes made to the August 2004 Driver Education for Utah High Schools manual.

SUMMARY OF THE RULE OR CHANGE: The title of the driver education manual and revision date have been changed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-13-201(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated cost or savings to state budget. The changes to the rule merely update the title and revision date of the driver education manual.

❖ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government. The changes to the rule merely update the title and revision date of the driver education manual.

❖ OTHER PERSONS: There are no anticipated cost or savings to other persons. The changes to the rule merely update the title and revision date of the driver education manual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to the rule merely update the title and revision date of the driver education manual.

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. Patti Harrington, State Superintendent of Public Instruction

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 carol.lear@schools.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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

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

R277. Education, Administration.
R277-746. Driver Education Programs for Utah Schools.
R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, [~~August, 2004~~]December, 2006, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, [~~August, 2004~~]December, 2006, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education
Date of Enactment or Last Substantive Amendment:
~~November 2, 2004~~2007
Notice of Continuation March 12, 2003
Authorizing, and Implemented or Interpreted Law: 53A-13-201(4); 53A-1-401(3)



Environmental Quality, Air Quality **R307-130-4** Options

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29652

FILED: 03/14/2007, 16:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is correct a typographical error in Section R307-130-4 that was discovered during a recent five-year review.

SUMMARY OF THE RULE OR CHANGE: The word "not" was accidentally placed in Section R307-130-4. Therefore, the Air Quality Board is proposing to remove the word "not" in Section R307-130-4.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-2-104 and 19-2-115

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no change in costs for state government, because the revisions to this rule do not change the duties of state staff.

❖ LOCAL GOVERNMENTS: The revision clarifies language and does not create new requirements; no change in costs is expected for local governments.

❖ OTHER PERSONS: The revision clarifies language and does not create new requirements; no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The revision clarifies language and does not create new requirements; no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The revision made to Section R307-130-4 is not expected to have fiscal impact on businesses, because it clarifies existing requirements and does not create new requirements. Dianne R. Nielson, Executive Director

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:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@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 05/01/2007

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/18/2007 at 2:00 PM, DEQ Building, 150 N 1950 W, Main Conference Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.**R307-130. General Penalty Policy.****R307-130-4. Options.**

Consideration may be given to suspension of monetary penalties in trade-off for expenditures resulting in additional controls and/or emissions reductions beyond those [not] required to meet existing requirements. Consideration may be given to an increased amount of suspended penalty as a deterrent to future violations where appropriate.

KEY: air pollution, penalty

Date of Enactment or Last Substantive Amendment: [September 15, 1998] 2007

Notice of Continuation: March 27, 2002

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-2-115

**Environmental Quality, Drinking Water****R309-105**

**Administration: General
Responsibilities of Public Water
Systems**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29646

FILED: 03/14/2007, 10:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to update references and to clarify recent changes to the rule in response to comments from Region 8 of the United States Environmental Protection Agency. This clarification is needed to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: The amendment updates the reference to the currently adopted statewide plumbing code and clarifies record keeping requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-4-104 and 63-46b-4, and 40 CFR 141 and 142

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Chapter 6 of the 2006 International Plumbing Code

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to the state budget as the changes simply clarify existing language.

❖LOCAL GOVERNMENTS: There is no impact to the local governments as the changes simply clarify existing language.
 ❖OTHER PERSONS: There is no impact to other persons as the changes simply clarify existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to the compliance costs for affected persons as the changes simply clarify existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the comments in the cost and compliance summaries above.
 Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ken Bousfield, Acting Director

R309. Environmental Quality, Drinking Water.

R309-105. Administration: General Responsibilities of Public Water Systems.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2006[~~2003~~] International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

- (a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);
- (b) providing public education or awareness material or presentations;
- (c) an operator with adequate training in the area of cross connection control or backflow prevention;
- (d) written records of cross connection control activities, such as, backflow assembly inventory; and
- (e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

- (a) The date, place and time of sampling, and the name of the person who collected the sample;
- (b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.
- (c) Date of analysis;
- (d) Laboratory and person responsible for performing analysis;
- (e) The analytical technique/method used; and
- (f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Executive Secretary determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Executive Secretary approves alternative monitoring locations, you must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. You must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

KEY: drinking water, watershed management
Date of Enactment or Last Substantive Amendment: May 21 [~~March 6~~], 2007
Notice of Continuation: May 16, 2005
Authorizing, and Implemented or Interpreted Law: 19-4-104; 63-46b-4



Environmental Quality, Drinking Water **R309-110-4** Definitions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE No.: 29649
FILED: 03/14/2007, 10:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct a typographical error and to correct a definition in response to comments received by Region 8 of the United States Environmental Protection Agency. This clarification is needed to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This amendment corrects a typographical error and slightly clarifies one definition in Section R309-110-4.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-4-104 and 63-46b-4, and 40 CFR 141.2

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget as the changes simply clarify existing language.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government as the changes simply clarify existing language.
- ❖ OTHER PERSONS: There is no impact to other persons as the changes simply clarify existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to the compliance costs for affected persons as the changes simply clarify existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the comments in the cost and compliance summaries above.
Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ken Bousfield, Acting Director



R309. Environmental Quality, Drinking Water. **R309-110. Administration: Definitions.** **R309-110-4. Definitions.**

As used in R309:

"Action Level" means the concentration of lead or copper in drinking water tap samples (0.015 mg/l for lead and 1.3 mg/l for copper) which determines, in some cases, the corrosion treatment, public education and lead line replacement requirements that a water system is required to complete.

.....

"Practical Quantitation Level" (PQL) means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "CT_{99.9}").

.....

"UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

"Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

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KEY: drinking water, definitions
Date of Enactment or Last Substantive Amendment: May 21 [~~March 6~~], 2007
Notice of Continuation: May 16, 2005
Authorizing, and Implemented or Interpreted Law: 19-4-104; 63-46b-4



Environmental Quality, Drinking Water
R309-210
Monitoring and Water Quality:
Distribution System Monitoring
Requirements

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 29647
 FILED: 03/14/2007, 10:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to correct references and to clarify recent changes to the rule in response to comments from Region 8 of the United States Environmental Protection Agency. The clarification is needed to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: The amendment corrects incorrect references and adds language inadvertently left out of the recent rule amendment to adopt the Federal Stage 2 Disinfection Byproducts rule. (DAR NOTE: The recent amendment was under DAR No. 29365 in the January 15, 2007, issue of the Bulletin, and was effective 03/06/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-4-104 and 63-46b-4, and 40 CFR 141 and 142

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget as the changes simply clarify existing language.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government as the changes simply clarify existing language.
- ❖ OTHER PERSONS: There is no impact to other persons as the changes simply clarify existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to the compliance costs for affected persons as the changes simply clarify existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ken Bousfield, Acting Director

R309. Environmental Quality, Drinking Water.
R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.
R309-210-8. Disinfection Byproducts - Stage 1 Requirements.

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- (2) Monitoring requirements for disinfection byproducts.
 - (a) TTHMs and HAA5s
 - (i) Routine monitoring. Systems must monitor at the frequency indicated in the following:
 - (A) If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.
 - (B) Surface water systems serving at least 10,000 persons shall take four water samples per quarter per treatment plant. At least 25 percent of all samples collected each quarter shall be at locations

representing maximum residence time. The remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.

(C) Surface water systems serving from 500 to 9,999 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(D) Surface water systems serving fewer than 500 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (2)(a)(v) of this section.

(E) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons shall take one water sample per quarter per treatment plant at a locations representing maximum residence time.

(F) Systems using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons shall take one sample per year per treatment plant during month of warmest water temperature at a location representing maximum residence time. If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets criteria in paragraph (2)(a)(v) of this section for reduced monitoring.

(ii) Systems may reduce monitoring, except as otherwise provided, if the system has monitored for at least one year and is in accordance with the following paragraphs. Any Surface water system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.

(A) A surface water system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per quarter at a distribution system location reflecting maximum residence time.

(B) A surface water system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, of less than or equal to 4.0 mg/L and has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(C) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to 0.030 mg/L may reduce monitoring to one sample per treatment plant per year at a distribution system location reflecting maximum residence time during the month of warmest water temperature.

(D) A system using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons that has a TTHM annual average of less than or equal to 0.040 mg/L and has a HAA5 annual average of less than or equal to

0.030 mg/L for two consecutive years or has a TTHM annual average of less than or equal to 0.020 mg/L and has a HAA5 annual average of less than or equal to 0.015mg/L for one year may reduce monitoring to one sample per treatment plant per three year monitoring cycle at a distribution system location reflecting maximum residence time during the month of warmest water temperature, with the three-year cycle beginning on January 1 following the quarter in which the system qualifies for reduced monitoring.

(iii) Monitoring requirements for source water TOC in order to qualify for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, surface water systems not monitoring under the provisions of paragraph (d) of this section must take monthly TOC samples every 30 days at a location prior to any treatment, beginning April 1, 2008 or earlier, if specified by the Executive Secretary. In addition to meeting other criteria for reduced monitoring in paragraph (2)(a)(ii) of this section, the source water TOC running annual average must be equal to or less than 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under paragraph (2)(a)(ii) of this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(iv) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHM or HAA5, respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the system must go to the increased monitoring identified in paragraph (2)(a)(i) of this section in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(v) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring their TTHM annual average is less than or equal to 0.060 mg/L and their HAA5 annual average is less than or equal to 0.045 mg/L.

(vi) The Executive Secretary may return a system to routine monitoring when appropriate to protect public health.

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R309-210-9. Disinfection Byproducts - Initial Distribution System Evaluations.

(1) General requirements.

(a) The requirements of this sub-section establish monitoring and other requirements for identifying R309-210-10 compliance monitoring locations for determining compliance with maximum contaminant levels for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5). The water system must use an Initial Distribution System Evaluation (IDSE) to determine locations with representative high TTHM and HAA5 concentrations throughout the distribution system. IDSEs are used in conjunction with, but separate from, R309-

210-8 compliance monitoring, to identify and select R309-210-10 compliance monitoring locations.

(b) Applicability. Community water systems that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; ~~or if the system is a~~ ~~and~~ non-transient non-community water systems that serves at least 10,000 people and uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light are subject to these requirements.

(c) Schedule. The water system must comply with the requirements of this subpart on the schedule in ~~[the table in this]~~ paragraph (c)(i).

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2006.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2008.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2009.

(B) For water systems that serve a population from 50,000 to 99,999:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2009.

(C) For water systems that serve a population from 10,000 to 49,999:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by October 1, 2007.

(II) The water system must complete the standard monitoring or system specific study by September 30, 2009.

(III) The water system must submit the IDSE report to the Executive Secretary by January 1, 2010.

(D) For community water systems that serve a population less than 10,000:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive Secretary by or receive very small system waiver from the Executive Secretary by April 1, 2008.

(II) The water system must complete the standard monitoring or system specific study by March 31, 2010.

(III) The water system must submit the IDSE report to the Executive Secretary by July 1, 2010.

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems:

(I) The water system must submit a standard monitoring plan or system specific study plan or 40/30 certification to the Executive

Secretary by or receive very small system waiver from the Executive Secretary at the same time as the system with the earliest compliance date in the combined distribution system.

(II) The water system must complete the standard monitoring or system specific study at the same time as the system with the earliest compliance date in the combined distribution system.

(III) The water system must submit the IDSE report to the Executive Secretary by at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) If, within 12 months after the date the water is required to submit the information in (i)(A)(I), (B)(I), (C)(I), (D)(I) and (ii)(A)(I) above, the Executive Secretary does not approve the water system plan or notify the water system that it has not yet completed its review, the water system may consider the plan that was submitted as approved. The water system must implement that plan and must complete standard monitoring or a system specific study no later than the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above.

(iv) The water system must submit the 40/30 certification under R309-210-9(4) by the date identified in (i)(A)(II), (B)(II), (C)(II), (D)(II) and (ii)(A)(II) above. ~~[indicated-]~~

(v) If, within three months after the date identified in (i)(A)(III), (B)(III), (C)(III), (D)(III) and (ii)(A)(III) above (nine months after the date identified in this column if the water system must comply on the schedule in paragraph (c)(i)(C) of this section), the Executive Secretary does not approve the IDSE report or notify the water system that it has not yet completed its review, the water system may consider the report submitted as approved and must implement the recommended R309-210-10 monitoring as required.

(vi) For the purpose of the schedule in paragraph (c)(i) through (c)(v) of this section, the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) The water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3), or certify to the Executive Secretary that the water system meet 40/30 certification criteria under R309-210-9(4), or qualify for a very small system waiver under R309-210-9(5).

(i) The water system must have taken the full complement of routine TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 (or the water system must have taken the full complement of reduced TTHM and HAA5 compliance samples required of a system with the population and source water under R309-210-8 if the water system meets reduced monitoring criteria under R309-210-8) during the period specified in R309-210-9(4)(a) to meet the 40/30 certification criteria in R309-210-9(4) the water system must have taken TTHM and HAA5 samples under R309-200-4(3) and R309-210-8 to be eligible for the very small system waiver in R309-210-9(5).

(ii) If the water system has not taken the required samples, the water system must conduct standard monitoring that meets the requirements in R309-210-9(2), or a system specific study that meets the requirements in R309-210-9(3).

(e) The water system must use only the analytical methods specified in R309-200-4(3), or otherwise approved by EPA for monitoring under this subpart, to demonstrate compliance with the requirements of this subpart.

(f) IDSE results will not be used for the purpose of determining compliance with MCLs in R309-200-5(3)(c).

(2) Standard monitoring.

(a) Standard monitoring plan. The standard monitoring plan must comply with paragraphs (a)(i) through (a)(iv) of this section. The water system must prepare and submit the standard monitoring plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The standard monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected R309-210-8 compliance monitoring.

(ii) The standard monitoring plan must include justification of standard monitoring location selection and a summary of data the water system relied on to justify standard monitoring location selection.

(iii) The standard monitoring plan must specify the population served and system type (surface water or ground water).

(iv) The water system must retain a complete copy of the standard monitoring plan submitted under this paragraph (a), including any Executive Secretary modification of the standard monitoring plan, for as long as the water system is required to retain the IDSE report under R309-105-17(8).

(b) Standard monitoring.

(i) The water system must monitor as indicated in ~~the table in this~~ paragraph (b)(i). The water system must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5. The water system must conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. The water system must review available compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

(A) Surface water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(B) Surface water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(C) Surface water systems serving between 500 to 3,300 population which are consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(D) Surface water systems serving between 500 to 3,300 population which are non-consecutive systems.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(E) Surface water systems serving between 3,301 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Four dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(IV) One dual sample set must be taken at an average residence time of ~~of~~ the disinfected water in the distribution system.

(F) Surface water systems serving between 10,000 to 49,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of ~~of~~ the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(G) Surface water systems serving between 50,000 to 249,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 16 dual samples sets must be collected per monitoring period.

(II) Five dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Four dual sample sets must be taken at an average residence time of ~~of~~ the disinfected water in the distribution system.

(V) Three dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(H) Surface water systems serving between 250,000 to 999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 24 dual samples sets must be collected per monitoring period.

(II) Eight dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Six dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Six dual sample sets must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) Four dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(I) Surface water systems serving between 1,000,000 to 4,999,999 population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 32 dual samples sets must be collected per monitoring period.

(II) Ten dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Eight dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Eight dual sample sets must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) Six dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(J) Surface water systems serving 5,000,000 or more population.

(I) Six monitoring periods per year, dual sample sets must be taken every 60 days. 40 dual samples sets must be collected per monitoring period.

(II) ~~Twelve~~~~Ten~~ dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) ~~Ten~~~~Eight~~ dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Eight dual sample sets must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) ~~Eight~~~~Six~~ dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(K) Ground water systems serving less than 500 population which are consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(L) Ground water systems serving less than 500 population which are non-consecutive systems.

(I) One monitoring period per year, dual sample sets must be taken during the peak historical month. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(M) Ground water systems serving between 500 to 9,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(II) One dual sample set must be taken at the high TTHM location in the distribution system.

(III) One dual sample set must be taken at the high HAA5 location in the distribution system.

(N) Ground water systems serving between 10,000 to 99,999 population.

(I) ~~Four~~~~Six~~ monitoring periods per year, dual sample sets must be taken every ~~90~~~~60~~ days. Six dual samples sets must be collected per monitoring period.

(II) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Two dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(O) Ground water systems serving between 100,000 to 499,999 population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Eight dual samples sets must be collected per monitoring period.

(II) Three dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Three dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) One dual sample set must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) One dual sample set must be taken near the entry point of the disinfected water into the distribution system.

(P) Ground water systems serving 500,000 or greater population.

(I) Four monitoring periods per year, dual sample sets must be taken every 90 days. Twelve dual samples sets must be collected per monitoring period.

(II) Four dual sample sets must be taken at the high TTHM locations in the distribution system.

(III) Four dual sample sets must be taken at the high HAA5 locations in the distribution system.

(IV) Two dual sample sets must be taken at an average residence time of ~~60~~ the disinfected water in the distribution system.

(V) Two dual sample sets must be taken near the entry point of the disinfected water into the distribution system.

(Q) A dual sample set (i.e., a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.

(R) The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

(ii) The water system must take samples at locations other than the existing R309-210-8 monitoring locations. Monitoring locations must be distributed throughout the distribution system.

(iii) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, the water system must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, the water system must take samples at entry points to the distribution system having the highest annual water flows.

(iv) The system monitoring under this paragraph (b) may not be reduced under the provisions of R309-105-5(2).

(c) IDSE report. The IDSE report must include the elements required in paragraphs (c)(i) through (c)(iv) of this section. The water system must submit the IDSE report to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) The IDSE report must include all TTHM and HAA5 analytical results from R309-210-8 compliance monitoring and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the Executive Secretary. If changed from the standard monitoring plan submitted under paragraph (a) of this section,

the report must also include a schematic of the distribution system, the population served, and system type (surface water or ground water).

(ii) The IDSE report must include an explanation of any deviations from the approved standard monitoring plan.

(iii) The water system must recommend and justify R309-210-10 compliance monitoring locations and timing based on the protocol in R309-210-9(6).

(iv) The water system must retain a complete copy of the IDSE report submitted under this section for 10 years after the date that the water system submitted the report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that the water system recommended in the IDSE report or if the Executive Secretary approves alternative monitoring locations, the water system must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. The water system must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(3) System specific studies.

(a) System specific study plan. The water system specific study plan must be based on either existing monitoring results as required under paragraph (a)(i) of this section or modeling as required under paragraph (a)(ii) of this section. The water system must prepare and submit the system specific study plan to the Executive Secretary according to the schedule in R309-210-9(1)(c).

(i) Existing monitoring results. The water system may comply by submitting monitoring results collected before the water system ~~is~~^{are} required to begin monitoring under R309-210-9(1)(c). The monitoring results and analysis must meet the criteria in paragraphs (a)(i)(A) and (a)(i)(B) of this section.

(A) Minimum requirements.

(I) TTHM and HAA5 results must be based on samples collected and analyzed in accordance with R309-200-4(3). Samples must be collected no earlier than five years prior to the study plan submission date.

(II) The monitoring locations and frequency must meet the conditions identified in this paragraph (a)(i)(A)(II). Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all R309-210-8 compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements.

(III) Surface water systems serving a population less than 500 shall have data from:

(aa) three monitoring locations; and

(bb) three samples for each TTHM and HAA5.

(IV) Surface water systems serving a population between 500 to 3,300 shall have data from:

(aa) three monitoring locations; and

(bb) nine samples each for TTHM and HAA5.

(V) Surface water systems serving a population between 3,301 to 9,999 shall have data from:

(aa) six monitoring locations; and

(bb) 36 samples each for TTHM and HAA5.

(VI) Surface water systems serving a population between 10,000 to 49,999 shall have data from:

(aa) 12 monitoring locations; and

(bb) 72 samples each for TTHM and HAA5.

(VII) Surface water systems serving a population between 50,000 to 249,999 shall have data from:

(aa) 24 monitoring locations; and

(bb) 144 samples each for TTHM and HAA5.

(VIII) Surface water systems serving a population between 250,000 to 999,999 shall have data from:

(aa) 36 monitoring locations; and

(bb) 216 samples each for TTHM and HAA5.

(IX) Surface water systems serving a population between 1,000,000 to 4,999,999 shall have data from:

(aa) 48 monitoring locations; and

(bb) 288 samples each for TTHM and HAA5.

(X) Surface water systems serving a population 5,000,000 or greater shall have data from:

(aa) 60 monitoring locations; and

(bb) 360 samples each for TTHM and HAA5.

(XI) Ground water systems serving a population less than 500 shall have data from:

(aa) three monitoring locations; and

(bb) three samples for each TTHM and HAA5.

(XII) Ground water systems serving a population between 500 to 9,999 shall have data from:

(aa) three monitoring locations; and

(bb) nine samples each for TTHM and HAA5.

(XIII) Ground water systems serving a population between 10,000 to 99,999 shall have data from:

(aa) 12 monitoring locations; and

(bb) 48 samples each for TTHM and HAA5.

(XIV) Ground water systems serving a population between 100,000 to 499,999 shall have data from:

(aa) 18 monitoring locations; and

(bb) 72 samples each for TTHM and HAA5.

(XV) Ground water systems serving a population of 500,000 or greater shall have data from:

(aa) 24 monitoring locations; and

(bb) 96 samples each for TTHM and HAA5.

(B) Reporting monitoring results. The water system must report the information in this paragraph (a)(i)(B).

(I) The water system must report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent R309-210-8 results.

(II) The water system must certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.

(III) The study monitoring plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.

(IV) The water system specific study plan must specify the population served and system type (surface water or ground water).

(V) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(i), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(v) of this section.

(VI) If the water system submits previously collected data that fully meet the number of samples required under paragraph (a)(i)(A)(II) of this section and the Executive Secretary rejects some of the data, the water system must either conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves or conduct standard monitoring under R309-210-9(2).

(ii) Modeling. The water system may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis must meet the criteria in this paragraph (a)(ii).

(A) Minimum requirements. (I) The model must simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time.

(II) The model must represent the criteria listed in paragraphs (a)(ii)(A)(II)(aa) through (ii) of this section.

(aa) 75% of pipe volume;

(bb) 50% of pipe length;

(cc) All pressure zones;

(dd) All 12-inch diameter and larger pipes;

(ee) All 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water;

(ff) All 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system;

(gg) All storage facilities with standard operations represented in the model; and

(hh) All active pump stations with controls represented in the model; and

(ii) All active control valves.

(III) The model must be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. All required calibration must be completed no later than 12 months after plan submission.

(B) Reporting modeling. The system specific study plan must include the information in this paragraph (a)(ii)(B).

(I) Tabular or spreadsheet data demonstrating that the model meets requirements in paragraph (a)(ii)(A)(II) of this section.

(II) A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time).

(III) Model output showing preliminary 24 hour average residence time predictions throughout the distribution system.

(IV) Timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no less than would be required for the system under standard monitoring in R309-210-9(2) during the historical month of high TTHM. These samples must be taken at locations other than existing R309-210-8 compliance monitoring locations.

(V) Description of how all requirements will be completed no later than 12 months after the water system submits the system specific study plan.

(VI) Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all R309-210-8 compliance monitoring.

(VII) Population served and system type (surface water or ground water).

(VIII) The water system must retain a complete copy of the system specific study plan submitted under this paragraph (a)(ii), including any Executive Secretary modification of the system specific study plan, for as long as the water system is required to retain the IDSE report under paragraph (b)(vii) of this section.

(C) If the water system submits a model that does not fully meet the requirements under paragraph (a)(ii) of this section, the water system must correct the deficiencies and respond to Executive Secretary inquiries concerning the model. If the water system fails to correct deficiencies or respond to inquiries to the Executive Secretary's satisfaction, the water system must conduct standard monitoring under R309-210-9(2).

.....

(6) Stage 2 (R309-210-10) compliance monitoring location recommendations.

(a) The IDSE report must include the recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring for R309-210-10 of this part should be conducted. The water system must base the recommendations on the criteria in paragraphs (b) through (e) of this section.

(b) The water system must select the number of monitoring locations specified in this paragraph (b). The water system will use these recommended locations as R309-210-10 routine compliance monitoring locations, unless Executive Secretary requires different or additional locations. The water system should distribute locations throughout the distribution system to the extent possible.

(i) Surface water systems serving less than 500.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(ii) Surface water systems serving between 500 to 3,300.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM location in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every 90 days. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 location in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year, dual sample sets must be taken every ~~90~~ days. Four dual samples sets must be collected per monitoring period.

(B) Two dual sample sets must be taken at the high TTHM locations in the distribution system.

(C) One dual sample set must be taken at the high HAA5 locations in the distribution system.

(D) One dual sample set must be taken at an existing R309-210-8 compliance location.

.....

(c) The water system must recommend R309-210-10 compliance monitoring locations based on standard monitoring results, system specific study results, and R309-210-8 compliance monitoring results. The water system must follow the protocol in paragraphs (c)(i) through (c)(viii) of this section. If required to monitor at more than eight locations, the water system must repeat the protocol as necessary. If the water system do not have existing R309-210-8 compliance monitoring results or if the water system do not have enough existing R309-210-8 compliance monitoring results, the water system must repeat the protocol, skipping the provisions of paragraphs (c)(iii) and (c)(vii) of this section as necessary, until the water system have identified the required total number of monitoring locations.

(i) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(ii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(iv) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(v) Location with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(vi) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(vii) Existing R309-210-8 average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a R309-210-10 monitoring location.

(viii) Location with the highest HAA5 LRAA not previously selected as a R309-210-10 monitoring location.

(d) The water system may recommend locations other than those specified in paragraph (c) of this section if the water system include a rationale for selecting other locations. If the Executive Secretary approves the alternate locations, the water system must monitor at these locations to determine compliance under R309-210-10 of this part.

(e) The recommended schedule must include R309-210-10 monitoring during the peak historical month for TTHM and HAA5 concentration, unless the Executive Secretary approves another month. Once the water system have identified the peak historical month, and if the water system is[are] required to conduct routine monitoring at least quarterly, the water system must schedule R309-210-10 compliance monitoring at a regular frequency of every 90 days or fewer.

R309-210-10. Disinfection Byproducts - Stage 2 Requirements.

(1) General requirements.

(a) General. The regulations in this sub-section establish monitoring and other requirements for achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(b) Applicability. The water system is[are] subject to these requirements if the system is a community water system or a non-transient non-community water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) Schedule. The water system must comply with the requirements in this subpart on the schedule in the following sub-paragraphs (c)(i) through (vi)[table] based on the system type.

(i) For water systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system.

(A) For water systems that serve a population greater than or equal to 100,000 the water system must comply with R309-210-10 monitoring by April 1, 2012.

(B) For water systems that serve a population from 50,000 to 99,999 the water system must comply with R309-210-10 monitoring by October 1, 2012.

(C) For water systems that serve a population from 10,000 to 49,999 the water system must comply with R309-210-10 monitoring by October 1, 2013.

(D) For water systems that serve a population less than 10,000 the water system must comply with R309-210-10 monitoring by October 1, 2013 if no Cryptosporidium monitoring is required under R309-215-15(2)(a)(iv) or October 1, 2014 if Cryptosporidium monitoring is required under R309-215-15(a)(iv) or (a)(vi).

(ii) For other water systems that are part of a combined distribution system:

(A) For wholesale systems or consecutive systems the water system must comply with R309-210-10 monitoring at the same time as the system with the earliest compliance date in the combined distribution system.

(iii) The Executive Secretary may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the water system requires capital improvements to comply with an MCL.

(iv) The monitoring frequency is specified in R309-210-10(2)(a)(ii).

(A) If the water system is[are] required to conduct quarterly monitoring, the water system must begin monitoring in the first full calendar quarter that includes the compliance date in [the table in this]paragraph (c).

(B) If the water system is[are] required to conduct monitoring at a frequency that is less than quarterly, the water system must begin monitoring in the calendar month recommended in the IDSE report prepared under R309-210-9(2) or R309-210-9(3) or the calendar month identified in the R309-210-10 monitoring plan developed under R309-210-10(3) no later than 12 months after the compliance date in R309-210-10(1)(c).

(v) If the water system is[are] required to conduct quarterly monitoring, the water system must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If the water system is[are] required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(vi) For the purpose of the schedule in this paragraph (c), the Executive Secretary may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Executive Secretary may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) Monitoring and compliance.

(i) Systems required to monitor quarterly. To comply with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this sub-section and determine that each LRAA does not exceed the MCL. If the water system fails to complete four consecutive quarters of monitoring, the water system must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If the water system takes more than one sample per quarter at a monitoring location, the water system must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(ii) Systems required to monitor yearly or less frequently. To determine compliance with R309-210-10 MCLs in R309-200-5(3)(c)(3)(vi), the water system must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, the water system must comply with the requirements of R309-210-10(6). If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(e) Violation. The water system ~~is~~ in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(2) Routine monitoring.

(a) Monitoring.

(i) If the water system submitted an IDSE report, the water system must begin monitoring at the locations and months the water system have recommended in the IDSE report submitted under R309-210-9(6) following the schedule in R309-210-10(1)(c), unless the Executive Secretary requires other locations or additional locations after its review. If the water system submitted a 40/30 certification under R309-210-9(4) or the water system qualified for a very small system waiver under R309-210-9(5) or the water system ~~is~~ a non-transient non-community water system serving less than 10,000, the water system must monitor at the location(s) and dates identified in the monitoring plan in R309-210-8(5), updated as required by R309-210-10(3).

(ii) The water system must monitor at no fewer than the number of locations identified in this paragraph (a)(ii).

(A) Surface water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(B) Surface water systems serving between 500 to 3,300 shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(C) Surface water systems serving between 3,301 to 9,999 population shall have four monitoring periods per year and shall collect two dual samples sets per monitoring period.

(D) Surface water systems serving between 10,000 to 49,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(E) Surface water systems serving between 50,000 to 249,999 population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(F) Surface water systems serving between 250,000 to 999,999 population shall have four monitoring periods per year and shall collect 12 dual samples per monitoring period.

(G) Surface water systems serving between 1,000,000 to 4,999,999 population shall have four monitoring periods per year and shall collect 16 dual samples sets per monitoring period.

(H) Surface water systems serving 5,000,000 or more population shall have four monitoring periods per year and shall collect 20 dual samples sets per monitoring period.

(I) Ground water systems serving less than 500 shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(J) Ground water systems serving between 500 to 9,999 population shall have one monitoring period per year and shall collect two dual samples sets per monitoring period.

(K) Ground water systems serving between 10,000 to 99,999 population shall have four monitoring periods per year and shall collect four dual samples sets per monitoring period.

(L) Ground water systems serving between 100,000 to 499,999 population shall have four monitoring periods per year and shall collect six dual samples sets per monitoring period.

(M) Ground water systems serving 500,000 or greater population shall have four monitoring periods per year and shall collect eight dual samples sets per monitoring period.

(N) All systems must monitor during month of highest DBP concentrations.

(O) Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for surface water systems serving 500-3,300. Systems on annual monitoring and surface water systems serving 500-3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

(iii) If the water system is an undisinfected system that begins using a disinfectant other than UV light after the dates in R309-210-9 for complying with the Initial Distribution System Evaluation requirements, the water system must consult with the Executive Secretary to identify compliance monitoring locations for this sub-section. The water system must then develop a monitoring plan under R309-210-10(3) that includes those monitoring locations.

(b) Analytical methods. The water system must use an approved method listed in R309-200-4(3) for TTHM and HAA5 analyses in this sub-section. Analyses must be conducted by laboratories that have received certification by EPA or the Executive Secretary as specified in R309-200-4(3).

(3) Stage 2 monitoring plan.

(a)(i) The water system must develop and implement a monitoring plan to be kept on file for Executive Secretary and public review. The monitoring plan must contain the elements in paragraphs (a)(i)(A) through (a)(i)(D) of this section and be complete no later than the date the water system conduct the initial monitoring under this sub-section.

(A) Monitoring locations;

(B) Monitoring dates;

(C) Compliance calculation procedures; and

(D) Monitoring plans for any other systems in the combined distribution system if the Executive Secretary has reduced monitoring requirements under the Executive Secretary authority in R309-105-5(2).

(ii) If the water system were not required to submit an IDSE report under either R309-210-9(2) or R309-210-9(3), and the water system do not have sufficient R309-210-8 monitoring locations to identify the required number of R309-210-10 compliance monitoring locations indicated in R309-210-9(6)(b), the water system must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The water system must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If the water system have more R309-210-8 monitoring locations than required for R309-210-10 compliance monitoring in R309-210-9(6)(b), the water system must identify which locations the water system will use for R309-210-10 compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of R309-210-10 compliance monitoring locations have been identified.

(b) If the water system ~~is~~ a surface water system serving greater than 3,300 people, the water system must submit a copy of the monitoring plan to the Executive Secretary prior to the date the water system conduct the initial monitoring under this sub-section, unless the IDSE report submitted under R309-210-9 contains all the information required by this section.

(c) The water system may revise the monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for Executive Secretary-approved reasons, after consultation with the Executive Secretary regarding the need for changes and the appropriateness of changes. If the water system changes monitoring locations, the water system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The Executive Secretary may also require modifications in the monitoring plan. If the water system ~~is~~ a surface water system serving greater than 3,300 people, the water system must submit a copy of the modified monitoring plan to the Executive Secretary prior to the date the water system ~~is~~ required to comply with the revised monitoring plan.

(4) Reduced monitoring.

(a) The water system may reduce monitoring to the level specified in this paragraph (a) any time the LRAA is equal to or less than 0.040 mg/L for TTHM and equal to or less than 0.030 mg/L for HAA5 at all monitoring locations. The water system may only use data collected under the provisions of this sub-section or R309-210-8 to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(i) Surface water systems serving a population less than 500. Monitoring reduction

(A) Monitoring may not be reduced.

(ii) Surface water systems serving between 500 to 3,300 population.

(A) One monitoring periods per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(iii) Surface water systems serving between 3,301 to 9,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(iv) Surface water systems serving between 10,000 to 49,999 population.

(A) Four monitoring periods per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(v) Surface water systems serving between 50,000 to 249,999 population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(vi) Surface water systems serving between 250,000 to 999,999 population.

(A) Four monitoring periods per year. Six dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the three highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the three highest HAA5 LRAAs.

(vii) Surface water systems serving between 1,000,000 to 4,999,999 population.

(A) Four monitoring periods per year. Eight dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the four highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the four highest HAA5 LRAAs.

(viii) Surface water systems serving 5,000,000 or more population.

(A) Four monitoring periods per year. 10 dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the five highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the five highest HAA5 LRAAs.

(ix) Ground water systems serving less than 500.

(A) One monitoring period every three years. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(x) Ground water systems serving between 500 to 9,999 population.

(A) One monitoring period per year. 1 TTHM and 1 HAA5 sample must be collected per monitoring period.

(B) One sample at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One sample at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(D) Only one dual sample set per year is required if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

(xi) Ground water systems serving between 10,000 to 99,999 population.

(A) One monitoring period per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set at the location and during the quarter with the highest TTHM single measurement in the distribution system.

(C) One dual sample set at the location and during the quarter with the highest HAA5 single measurement in the distribution system.

(xii) Ground water systems serving between 100,000 to 499,999 population.

(A) Four monitoring periods per year. Two dual samples sets must be collected per monitoring period.

(B) One dual sample set must be taken at the location of the highest TTHM LRAAs.

(C) One dual sample set must be taken at the location of the highest HAA5 LRAAs.

(xiii) Ground water systems serving 500,000 or greater population.

(A) Four monitoring periods per year. Four dual samples sets must be collected per monitoring period.

(B) A dual sample set must be taken at each of the locations of the two highest TTHM LRAAs.

(C) A dual sample set must be taken at each of the locations of the two highest HAA5 LRAAs.

(xiv) Systems on quarterly monitoring must take dual sample sets every 90 days.

(b) The water system may remain on reduced monitoring as long as the TTHM LRAA less than or equal to 0.040 mg/L and the HAA5 LRAA less than or equal to 0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample less than or equal to 0.060 mg/L and each HAA5 sample less than or equal to 0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either R309-210-8(2)(a)(iii) or R309-215-12.

(c) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or ground water

under the direct influence of surface water, the water system must resume routine monitoring under R309-210-10(2) or begin increased monitoring if R309-210-10(6) applies.

(d) The Executive Secretary may return the system to routine monitoring at the Executive Secretary's discretion.

(5) Additional requirements for consecutive systems.

If the water system ~~is~~are a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, the water system must comply with analytical and monitoring requirements for chlorine and chloramines in R309-200-4(3) and the compliance requirements in R309-210-8(6)(c)(i) beginning April 1, 2009, unless required earlier by the Executive Secretary, and report monitoring results under R309-105-16(2)(c).

(6) Conditions requiring increased monitoring.

(a) If the water system ~~is~~are required to monitor at a particular location annually or less frequently than annually under R309-210-10(2) or R309-210-10(4), the water system must increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is greater than 0.080 mg/L or a HAA5 sample is greater than 0.06 mg/L at any location.

(b) The water system ~~is~~are in violation of the MCL when the LRAA exceeds the R309-210-10 MCLs in R309-200-5(3)(c)(vi), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). The water system ~~is~~are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the water system fail to monitor.

(c) The water system may return to routine monitoring once the water system have conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(7) Operational evaluation levels.

(a) The water system have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average, exceeds 0.060 mg/L.

(b)(i) If the water system exceeds the operational evaluation level, the water system must conduct an operational evaluation and submit a written report of the evaluation to the Executive Secretary no later than 90 days after being notified of the analytical result that causes the water system to exceed the operational evaluation level. The written report must be made available to the public upon request.

(ii) The operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

(A) The water system may request and the Executive Secretary may allow the water system to limit the scope of the evaluation if the water system is able to identify the cause of the operational evaluation level exceedance.

(B) The request to limit the scope of the evaluation does not extend the schedule in paragraph (b)(i) of this section for submitting the written report. The Executive Secretary must approve this limited scope of evaluation in writing and the water system must keep that approval with the completed report.

(8) Requirements for remaining on reduced TTHM and HAA5 monitoring based on R309-210-8 results.

The water system may remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section only if the water system ~~qualifies~~[qualify] for a 40/30 certification under R309-210-9(4) or have received a very small system waiver under R309-210-9(5), plus the water system ~~meets~~[meet] the reduced monitoring criteria in R309-210-10(4)(a), and the water system ~~does~~[do] not change or add monitoring locations from those used for compliance monitoring under R309-210-8. If the monitoring locations under this sub-section differ from the monitoring locations under R309-210-8, the water system may not remain on reduced monitoring after the dates identified in R309-210-10(1)(c) for compliance with this sub-section.

(9) Requirements for remaining on increased TTHM and HAA5 monitoring based on R309-210-8 results.

If the water system ~~was~~[were] on increased monitoring under R309-210-8(2)(a), the water system must remain on increased monitoring until the water system ~~qualifies~~[qualify] for a return to routine monitoring under R309-210-10(6)(c). The water system must conduct increased monitoring under R309-210-10(6) at the monitoring locations in the monitoring plan developed under R309-210-10(3) beginning at the date identified in R309-210-10(1)(c) for compliance with this sub-section and remain on increased monitoring until the water system ~~qualifies~~[qualify] for a return to routine monitoring under R309-210-10(6)(c).

(10) Reporting and recordkeeping requirements.

(a) Reporting.

(i) The water system must report the following information for each monitoring location to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:

(A) Number of samples taken during the last quarter.

(B) Date and results of each sample taken during the last quarter.

(C) Arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the water system must report this information to the Executive Secretary as part of the first report due following the compliance date or anytime thereafter that this determination is made. If the water system ~~is~~[are] required to conduct monitoring at a frequency that is less than quarterly, the water system must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the water system ~~is~~[are] required to conduct increased monitoring under R309-210-10(6).

(D) Whether, based on R309-200-5(3)(c)(vi) and this sub-section, the MCL was violated at any monitoring location.

(E) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(ii) If the system is a surface water system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, the water system must report the following source water TOC information for each treatment

plant that treats surface water or ground water under the direct influence of surface water to the Executive Secretary within 10 days of the end of any quarter in which monitoring is required:

(A) The number of source water TOC samples taken each month during last quarter.

(B) The date and result of each sample taken during last quarter.

(C) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.

(D) The running annual average (RAA) of quarterly averages from the past four quarters.

(E) Whether the RAA exceeded 4.0 mg/L.

(iii) The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.

(b) Recordkeeping. The water system must retain any R309-210-10 monitoring plans and the R309-210-10 monitoring results as required by R309-105-17.

KEY: drinking water, distribution system monitoring, compliance determinations

Date of Enactment or Last Substantive Amendment: May 21~~March 6~~, 2007

Notice of Continuation: May 16, 2005

Authorizing, and Implemented or Interpreted Law: 19-4-104; 63-46b-4



Environmental Quality, Drinking Water

R309-215

Monitoring and Water Quality: Treatment Plant Monitoring Requirements

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29645

FILED: 03/14/2007, 10:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is to correct references and to clarify recent changes to the rule in response to comments from Region 8 of the United States Environmental Protection Agency. The clarification is needed to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: The amendment corrects rule references and adds language inadvertently left out of the recent rule amendment to adopt the Federal Long Term 1 and 2 Surface Water Treatment Rules. (DAR NOTE: The recent amendment was under DAR No. 29366 in the January 15, 2007, issue of the Bulletin, and was effective 03/06/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-4-104 and 63-46b-4, and 40 CFR 141 and 142

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget as the changes simply clarify existing language.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government as the changes simply clarify existing language.
- ❖ OTHER PERSONS: There is no impact to other persons as the changes simply clarify existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to the compliance costs for affected persons as the changes simply clarify existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the comments in the cost and compliance summaries above.
Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ken Bousfield, Acting Director

R309. Environmental Quality, Drinking Water.

R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.

R309-215-9. Turbidity Monitoring and Reporting.

Public water systems utilizing surface water and ground water under the direct influence of surface water shall monitor for turbidity in accordance with this section. Small surface water systems serving a population less than 10,000 shall monitor in accordance with subsections (1), (2), (3), (5) and (6). Large surface water systems serving 10,000 or more population shall monitor in accordance with subsections (1), (2), (3), (4) and (6).

(1) Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

(a) All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor for turbidity at the treatment plant's clearwell outlet. This monitoring shall be independent of the individual filter monitoring required by R309-525-15(4)(b)(vi) and R309-525-15(4)(c)(vii). Where the plant facility does not have an internal

clearwell, the turbidity shall be monitored at the inlet to a finished water reservoir external to the plant provided such reservoir receives only water from the treatment plant and, furthermore, is located before any point of consumer connection to the water system. If such external reservoir does not exist, turbidity shall then be monitored at a location immediately downstream of the treatment plant filters.

(b) All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section (c) below, shall be equipped with continuous turbidity monitoring and recording equipment for which the direct responsible charge operator will validate the continuous measurements for accuracy in accordance with paragraph (d) below. These plants shall continuously record the finished water turbidity of the combined filter effluent as well as each individual filter. All systems shall be equipped to continuously monitor the turbidity at each filter unless the treatment plant is only equipped with two filters and the turbidity is measured at the combined filter effluent (CFE). If there is a failure in continuous monitoring equipment the system shall conduct grab sampling every 4 hours in lieu of continuous monitoring, but for no more than five working days following the failure of equipment. Systems serving less than 10,000 population shall have no more than 14 days to conduct grab samples in lieu of continuous monitoring in order to correct any failing equipment. All surface water systems shall monitor the turbidity results of individual filters at a frequency no greater than every 15 minutes.

.....

(5) Additional reporting and recordkeeping requirements for surface water systems serving less than 10,000 population.

In addition to the reporting and recordkeeping requirements sub-sections (1), (2) and (3) above, a surface water system that provides conventional filtration treatment or direct filtration shall report monthly to the Division the information specified in paragraphs (a) and (b) of this section. In addition to the reporting and recordkeeping requirements above, a public water system subject to the requirements of this subpart that provides filtration approved under R309-530-8 or R309-530-9 shall report monthly to the Division the information specified in paragraphs (a) of this section. The reporting in paragraph (a) of this section is in lieu of the reporting specified above.

(a) Turbidity measurements, as required in R309-200-5(5)(a), shall be reported within 10 days after the end of each month the system serves water to the public. Information that shall be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to 0.3 NTU or those levels established under R309-200-5(5)(a)(ii).

(iii) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9.

(b) Systems shall maintain the results of individual filter monitoring taken under R309-215-9(1)(b) for at least three years. Systems shall record the results of individual filter monitoring every 15 minutes. Systems shall report that they have conducted individual filter turbidity monitoring within 10 days after the end of

each month the system serves water to the public. Systems shall report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(i) through (iv) of this section. Systems that use lime softening may apply to the Executive Secretary for alternative exceedance levels for the levels specified in paragraphs (b)(i) through (iv) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(i) For any individual filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters) that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system shall report the filter number(s), the corresponding date(s), the turbidity values which exceeded 1.0 NTU, and the cause (if known) for the exceedance(s), to the Executive Secretary by the 10th of the following month.

(ii) If a system was required to report to the Executive Secretary for three months in a row and turbidity exceeded 1.0 NTU in two consecutive recordings taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall conduct a self-assessment of the filter within 14 days of the day the filter exceeded 1.0 NTU in two consecutive measurements for the third straight month unless a CPE as specified in paragraph (iii) of this section was required. Systems with 2 filters that monitor CFE in lieu of individual filters must conduct a self assessment on both filters. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. If a self-assessment is required, the date that it was triggered and the date that it was completed.

(iii) If a system was required to report to the Executive Secretary for two months in a row and turbidity exceeded 2.0 NTU in two consecutive measurements taken 15 minutes apart at the same filter (or CFE for systems with 2 filters that monitor CFE in lieu of individual filters), the system shall arrange to have a comprehensive performance evaluation (CPE) conducted by the Division or a third party approved by the Executive Secretary no later than 60 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month. If a CPE is required, the system must report a CPE required and the date it was triggered. If a CPE has been completed by the Division or a third party approved by the Executive Secretary within the 12 prior months or the system and Division are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system, a new CPE is not required. If conducted, a CPE must be completed and submitted to the Division no later than 120 days following the day the filter exceeded 2.0 NTU in two consecutive measurements for the second straight month.

(6) Additional reporting requirements.

(a) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

(b) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the Executive Secretary under R309-530-8 or R309-530-9 for filtration

technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system shall inform the Division as soon as possible, but no later than the end of the next business day.

R309-215-15. Enhanced Treatment for Cryptosporidium (Federal Subpart W).

(1) General requirements.

(a) The rule requirements of this section establish or extend treatment technique requirements in lieu of maximum contaminant levels for Cryptosporidium. These requirements are in addition to requirements for filtration and disinfection in R309-200 and other parts of R309-215.

.....

(2) Source Water Monitoring Requirements.

.....

(d) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this sub-section if the system will provide a total of at least 5.5-log of treatment for Cryptosporidium, equivalent to meeting the treatment requirements of Bin 4 in R309-215-15(12).

(ii) If a system chooses to provide the level of treatment in paragraph (d)(i) of this section rather than start source monitoring, the system must notify the Executive Secretary in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under R309-215-15(3). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the Executive Secretary in writing that it will provide this level of treatment. Systems must install ~~and~~ operate technologies to provide this level of treatment by the applicable compliance dates in R309-215-15(13).

(e) Plants operating only part of the year. Systems with surface water plants that operate for only part of the year must conduct source water monitoring in accordance with this subpart, but with the following modifications:

(i) Systems must sample their source water only during the months that the plant operates unless the Executive Secretary specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for Cryptosporidium must collect at least six Cryptosporidium samples per year during each of two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(f)(i) New sources. A system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring under paragraph (c) of this section must monitor the new source on a schedule the Executive Secretary approves. Source water monitoring must meet the requirements of this sub-section. The system must also meet the bin classification and Cryptosporidium treatment requirements of R309-215-15(11) and (12) for the new source on a schedule the Executive Secretary approves.

(ii) The requirements of R309-215-15(2)(f) apply to surface water systems that begin operation after the monitoring start date applicable to the system's size under paragraph (c) of this section.

(iii) The system must begin a second round of source water monitoring no later than 6 years following initial bin classification under R309-215-15(11).

(g) Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory, and reporting requirements of R309-215-15(3) through R309-215-15(7) is a monitoring violation.

(h) Grandfathering monitoring data. Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in paragraph (c) of this section to meet the initial source water monitoring requirements in paragraph (a) of this section. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in R309-215-15(8).

(3) Sampling schedules.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(i) Systems must submit sampling schedules no later than 3 months prior to the applicable date listed in R309-215-15(2)(c) for each round of required monitoring.

(ii) (A) Systems serving at least 10,000 people must submit their sampling schedule for the initial round of source water monitoring under R309-215-15(2)(a) to EPA electronically at <https://intranet.epa.gov/lt2/>.

(B) If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that EPA approves.

(iii) Systems serving fewer than 10,000 people must submit their sampling schedules for the initial round of source water monitoring R309-215-15(2)(a) to the Executive Secretary.

(iv) Systems must submit sampling schedules for the second round of source water monitoring R309-215-15(2)(b) to the Executive Secretary.

(v) If EPA or the Executive Secretary does not respond to a system regarding its sampling schedule, the system must sample at the reported schedule.

(b) Systems must collect samples within two days before or two days after the dates indicated in their sampling schedule (i.e., within a five-day period around the schedule date) unless one of the conditions of paragraph (b)(i) or (ii) [(b)(1) or (2)] of this section applies.

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the Executive Secretary approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(ii)(A) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in R309-215-15(5), or the failure of an approved laboratory to analyze the sample, then the system must collect a replacement sample.

(B) The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system

demonstrates that collecting a replacement sample within this time frame is not feasible or the Executive Secretary approves an alternative resampling date. The system must submit an explanation for the delayed sampling date to the Executive Secretary concurrent with the shipment of the sample to the laboratory.

(c) Systems that fail to meet the criteria of paragraph (b) of this section for any source water sample required under R309-215-15(2) must revise their sampling schedules to add dates for collecting all missed samples. Systems must submit the revised schedule to the Executive Secretary for approval prior to when the system begins collecting the missed samples.

(4) Sampling locations.

(a) Systems required to conduct source water monitoring under R309-215-15(2) must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the Executive Secretary may approve one set of monitoring results to be used to satisfy the requirements of R309-215-15(2) for all plants.

(b) (i) Systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the condition of paragraph (b)(ii) of this section.

(ii) The Executive Secretary may approve a system to collect a source water sample after chemical treatment. To grant this approval, the Executive Secretary must determine that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(c) Systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water addition.

(d) Bank filtration.

(i) Systems that receive *Cryptosporidium* treatment credit for bank filtration under R309-200-5(5)(a)(ii) must collect source water samples in the surface water prior to bank filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under R309-215-15(16)(c).

(e) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, must collect samples as specified in paragraph (e)(i) or (ii) of this section. The use of multiple sources during monitoring must be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems must collect samples from the tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must follow either paragraph (e)(i)(A) or (B) of this section for sample analysis.

(A) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(B) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by

multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(f) Additional Requirements. Systems must submit a description of their sampling location(s) to the Executive Secretary at the same time as the sampling schedule required under R309-215-15(3). This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the Executive Secretary does not respond to a system regarding sampling location(s), the system must sample at the reported location(s).

(5) Analytical methods.

(a) Cryptosporidium. Systems must analyze for Cryptosporidium using Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002 or Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001, which are incorporated by reference. You may obtain a copy of these methods online from <http://www.epa.gov/safewater/disinfection/lt2> or from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave., NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(i) Systems must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL as generated by the methods listed in paragraph (a) of this section. Systems unable to process a 10 L sample must analyze as much sample volume as can be filtered by two filters approved by EPA for the methods listed in paragraph (a) of this section, up to a packed pellet volume of at least 2 mL.

(ii) (A) Matrix spike (MS) samples, as required by the methods in paragraph (a) of this section, must be spiked and filtered by a laboratory approved for Cryptosporidium analysis under R309-215-15(6).

(B) If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field, and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

(iii) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery (OPR) samples.

(b) E. coli. Systems must use methods for enumeration of E. coli in source water approved in R309-200-4(3) and (4).

(i) The time from sample collection to initiation of analysis may not exceed 30 hours unless the system meets the condition of paragraph (b)(2)(ii) of this section.

(ii) The Executive Secretary may approve on a case-by-case basis the holding of an E. coli sample for up to 48 hours between sample collection and initiation of analysis if the Executive Secretary determines that analyzing an E. coli sample within 30 hours is not feasible. E. coli samples held between 30 to 48 hours

must be analyzed by the Colilert reagent version of Standard Method 9223B as listed in R309-200-4(3) and (4).

(iii) Systems must maintain samples between 0 deg.C and 10 deg. C during storage and transit to the laboratory.

(c) Turbidity. Systems must use methods for turbidity measurement approved in R309-200-4(3) and (4).

(6) Approved laboratories.

(a) Cryptosporidium. Systems must have Cryptosporidium samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory that has been certified for Cryptosporidium analysis by an equivalent State laboratory certification program.

(b) E. coli. Any laboratory certified by the EPA, the National Environmental Laboratory Accreditation Conference or the State for total coliform or fecal coliform analysis under R309-200-4(3) and (4) is approved for E. coli analysis under this subpart when the laboratory uses the same technique for E. coli that the laboratory uses for R309-200-4(3), (4) and in R444-14-4(1), ~~and (4).~~

(c) Turbidity. Measurements of turbidity must be made by a party approved by the State.

(7) Reporting source water monitoring results.

(a) Systems must report results from the source water monitoring required under R309-215-15(2) no later than 10 days after the end of the first month following the month when the sample is collected.

(b) (i) All systems serving at least 10,000 people must report the results from the initial source water monitoring required under R309-215-15(2)(a) to EPA electronically at <https://intranet.epa.gov/lt2/>.

(ii) If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results that EPA approves.

(c) Systems serving fewer than 10,000 people must report results from the initial source water monitoring required under R309-215-15(2)(a) to the Executive Secretary.

(d) All systems must report results from the second round of source water monitoring required under R309-215-15(2)(b) to the Executive Secretary.

(e) Systems must report the applicable information in paragraphs (e)(1)(i) and (2)(ii) of this section for the source water monitoring required under R309-215-15(2).

(i) Systems must report the following data elements for each Cryptosporidium analysis:

(A) PWS ID.

(B) Facility ID.

(C) Sample collection date.

(D) Sample type (field or matrix spike).

(E) Sample volume filtered (L), to nearest 1/4 L.

(F) Was 100% of filtered volume examined.

(G) ~~and the~~ Number of oocysts counted.

(H) ~~(G)~~ For matrix spike samples, systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(I) ~~(H)~~ For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(J) ~~(I)~~ For samples in which less than 100% of sample volume is examined, systems must also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems must report the following data elements for each E. coli analysis:

- (A) PWS ID.
- (B) Facility ID.
- (C) Sample collection date.
- (D) Analytical method number.
- (E) Method type.
- (F) Source type (flowing stream, lake/reservoir, GWUDI).
- (G) E. coli/100 mL.
- (H) Turbidity.[

—(H) (Systems serving fewer than 10,000 people that are not required to monitor for turbidity under R309-215-15(2) are not required to report turbidity with their E. coli results.)

(8) Grandfathering previously collected data.

(a) (i) Systems may comply with the initial source water monitoring requirements of R309-215-15(2)(a) by grandfathering sample results collected before the system is required to begin monitoring (i.e., previously collected data). To be grandfathered, the sample results and analysis must meet the criteria in this section and the Executive Secretary must approve.

(ii) A filtered system may grandfather Cryptosporidium samples to meet the requirements of R309-215-15(2)(a) when the system does not have corresponding E. coli and turbidity samples. A system that grandfathers Cryptosporidium samples without E. coli and turbidity samples is not required to collect E. coli and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under R309-215-15(2)(a).

(b) E. coli sample analysis. The analysis of E. coli samples must meet the analytical method and approved laboratory requirements of R309-215-15(5) through R309-215-15(6)[441.705].

(c) Cryptosporidium sample analysis. The analysis of Cryptosporidium samples must meet the criteria in this paragraph.

(i) Laboratories analyzed Cryptosporidium samples using one of the analytical methods in paragraphs (c)(i)(A) through (D) of this section, which are incorporated by reference. You may obtain a copy of these methods on-line from the United States Environmental Protection Agency, Office of Ground Water and Drinking Water, 1201 Constitution Ave, NW, Washington, DC 20460 (Telephone: 800-426-4791). You may inspect a copy at the Water Docket in the EPA Docket Center, 1301 Constitution Ave., NW, Washington, DC, (Telephone: 202-566-2426) or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. You may also obtain a copy of these methods by contacting the Division of Drinking Water at 801-536-4200.

(A) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-002.

(B) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2005, United States Environmental Protection Agency, EPA-815-R-05-001.

(C) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-025.

(D) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 2001, United States Environmental Protection Agency, EPA-821-R-01-026.

(E) Method 1623: Cryptosporidium and Giardia in Water by Filtration/IMS/ FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-006.

(F) Method 1622: Cryptosporidium in Water by Filtration/IMS/FA, 1999, United States Environmental Protection Agency, EPA-821-R-99-001.

(ii) For each Cryptosporidium sample, the laboratory analyzed at least 10 L of sample or at least 2 mL of packed pellet or as much volume as could be filtered by 2 filters that EPA approved for the methods listed in paragraph (c)(1) of this section.

(d) Sampling location. The sampling location must meet the conditions in R309-215-15(4).

(e) Sampling frequency. Cryptosporidium samples were collected no less frequently than each calendar month on a regular schedule, beginning no earlier than January 1999. Sample collection intervals may vary for the conditions specified in R309-215-15(3)(b)(i) and (ii) if the system provides documentation of the condition when reporting monitoring results.

(i) The Executive Secretary may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the system conducts additional monitoring the Executive Secretary specifies to ensure that the data used to comply with the initial source water monitoring requirements of R309-215-15(2)(a) are seasonally representative and unbiased.

(ii) Systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, systems must follow the monthly averaging procedure in R309-215-15(11)(b)(v) when calculating the bin classification for filtered systems.

(f) Reporting monitoring results for grandfathering. Systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph. Systems serving at least 10,000 people must report this information to EPA unless the Executive Secretary approves reporting to the Executive Secretary rather than EPA. Systems serving fewer than 10,000 people must report this information to the Executive Secretary.

(i) Systems must report that they intend to submit previously collected monitoring results for grandfathering. This report must specify the number of previously collected results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of R309-215-15(2)(a). Systems must report this information no later than the date the sampling schedule under R309-215-15(3) is required.

(ii) Systems must report previously collected monitoring results for grandfathering, along with the associated documentation listed in paragraphs (f)(ii)(A) through (D) of this section, no later than two months after the applicable date listed in R309-215-15(2)(c).

(A) For each sample result, systems must report the applicable data elements in R309-215-15(7).

(B) Systems must certify that the reported monitoring results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this subpart, not spiked, and analyzed using the laboratory's routine process for the analytical methods listed in this section.

(C) Systems must certify that the samples were representative of a plant's source water(s) and the source water(s) have not changed. Systems must report a description of the sampling location(s), which must address the position of the sampling location

in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(D) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria specified in the methods listed in paragraph (c)(1) of this section were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(g) If the Executive Secretary determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the Executive Secretary may disapprove the data. Alternatively, the Executive Secretary may approve the previously collected data if the system reports additional source water monitoring data, as determined by the Executive Secretary, to ensure that the data set used under R309-215-15(11) represents average source water conditions for the system.

(h) If a system submits previously collected data that fully meet the number of samples required for initial source water monitoring under R309-215-15(2)(a) and some of the data are rejected due to not meeting the requirements of this section, systems must conduct additional monitoring to replace rejected data on a schedule the Executive Secretary approves. Systems are not required to begin this additional monitoring until two months after notification that data have been rejected and additional monitoring is necessary.

(9) Disinfection Profiling and Benchmarking Requirements - Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under R309-215-15(2)(a), a system that plans to make a significant change to its disinfection practice, as defined in paragraph (b) of this section, must develop disinfection profiles and calculate disinfection benchmarks for *Giardia lamblia* and viruses as described in R309-215-15(10). Prior to changing the disinfection practice, the system must notify the Executive Secretary and must include in this notice the information in paragraphs (a)(i) through (iii) of this section.

(i) A completed disinfection profile and disinfection benchmark for *Giardia lamblia* and viruses as described in R309-215-15(10).

(ii) A description of the proposed change in disinfection practice.

(iii) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined as follows:

- (i) Changes to the point of disinfection;
- (ii) Changes to the disinfectant(s) used in the treatment plant;
- (iii) Changes to the disinfection process; or
- (iv) Any other modification identified by the Executive Secretary as a significant change to disinfection practice.

(10) Developing the disinfection profile and benchmark.

(a) Systems required to develop disinfection profiles under R309-215-15(9) must follow the requirements of this section. Systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for *Giardia lamblia* and viruses. If systems monitor more frequently, the monitoring frequency must be evenly spaced. Systems that operate for fewer than 12 months per year must monitor weekly during the period of

operation. Systems must determine log inactivation for *Giardia lamblia* through the entire plant, based on CT_{99.9} values in Tables 1.1 through 1.6, 2.1 and 3.1 of Section 141.74(b) in the code of Federal Regulations as applicable (available from the Division). Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the Executive Secretary.

(b) Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring in paragraphs (b)(i) through (iv) of this section. Systems with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(i) through (iv) of this section for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in R309-200-4(3) and (4).

(i) For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(ii) For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow or at an alternative location approved by the Executive Secretary.

(iii) The disinfectant contact time(s) (t) must be determined during peak hourly flow.

(iv) The residual disinfectant concentration(s) (C) of the water before or at the first customer and prior to each additional point of disinfectant application must be measured during peak hourly flow.

(c) In lieu of conducting new monitoring under paragraph (b) of this section, systems may elect to meet the requirements of paragraphs (c)(1) or (2) of this section.

(i) Systems that have at least one year of existing data that are substantially equivalent to data collected under the provisions of paragraph (b) of this section may use these data to develop disinfection profiles as specified in this section if the system has neither made a significant change to its treatment practice nor changed sources since the data were collected. Systems may develop disinfection profiles using up to three years of existing data.

(ii) Systems may use disinfection profile(s) developed under R309-215-14 in lieu of developing a new profile if the system has neither made a significant change to its treatment practice nor changed sources since the profile was developed. Systems that have not developed a virus profile under R309-251-14 must develop a virus profile using the same monitoring data on which the *Giardia lamblia* profile is based.

(d) Systems must calculate the total inactivation ratio for *Giardia lamblia* as specified in paragraphs (d)(i) through (iii) of this section.

(i) Systems using only one point of disinfectant application may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (d)(1)(i) or (ii) of this section.

(A) Determine one inactivation ratio (CT_{calc}/CT_{99.9}) before or at the first customer during peak hourly flow.

(B) Determine successive CT_{calc}/CT_{99.9} values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The system must calculate the total inactivation ratio by determining (CT_{calc}/CT_{99.9}) for each sequence and then adding

the $(CT_{calc}/CT_{99.9})$ values together to determine the sum of $(\frac{CT_{calc}}{CT_{99.9}})$.

(ii) Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The $(CT_{calc}/CT_{99.9})$ value of each segment and the sum of $(\frac{CT_{calc}}{CT_{99.9}})$ must be calculated using the method in paragraph (d)(i)(B) of this section.

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (d)(i) or (d)(ii) of this section by 3.0.

(iv) Systems must calculate the log of inactivation for viruses using a protocol approved by the Executive Secretary.

(e) Systems must use the procedures specified in paragraphs (e)(i) and (ii) of this section to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated under paragraphs (a) through (d) of this section, systems must determine the lowest mean monthly level of both *Giardia lamblia* and virus inactivation. Systems must determine the mean *Giardia lamblia* and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly *Giardia lamblia* and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for systems with one year of profiling data) or the mean of the lowest monthly mean values (for systems with more than one year of profiling data) of *Giardia lamblia* and virus log inactivation in each year of profiling data.

(11) Treatment Technique Requirements - Bin classification for filtered systems.

(a) Following completion of the initial round of source water monitoring required under R309-215-15(2)(a), filtered systems must calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the *Cryptosporidium* results reported under R309-215-15(2)(a) and must follow the procedures in paragraphs (b)(i) through (v) of this section.

(b)(i) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(ii) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(iii) For systems that serve fewer than 10,000 people and monitor for *Cryptosporidium* for only one year (i.e., collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(iv) For systems with plants operating only part of the year that monitor fewer than 12 months per year under R309-215-15(2)(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(v) If the monthly *Cryptosporidium* sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (b)(i) through (iv) of this section.

(c) Filtered systems must determine their initial bin classification from the following ~~table~~ and using the *Cryptosporidium* bin concentration calculated under paragraphs (a) and (b) of this section:

(i) Systems that are required to monitor for *Cryptosporidium* under R309-215-15(2):

(A) with a *cryptosporidium* concentration of less than 0.075 oocyst/L, the bin classification is Bin 1.

(B) with a *cryptosporidium* concentration of 0.075 oocysts/L to less than 1.0 oocysts/L, the bin classification is Bin 2.

(C) with a *cryptosporidium* concentration of 1.0 oocysts/L to less than 3.0 oocysts/L, the bin classification is Bin 3.

(D) with a *cryptosporidium* concentration of equal to or greater than 3.0 oocysts/L, the bin classification is Bin 4.

(ii) Systems serving fewer than 10,000 people and not required to monitor for *Cryptosporidium* under R309-215-15(2)(a)(iii), the concentration of *cryptosporidium* is not applicable and their bin classification is Bin 1.

(iii) Based on calculations in paragraph (a) or (d) of this section, as applicable.

(d) Following completion of the second round of source water monitoring required under R309-215-15(2)(b), filtered systems must recalculate their *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under R309-215-15(2)(b) and following the procedures in paragraphs (b)(i) through (iv) of this section. Systems must then redetermine their bin classification using this bin concentration and the table in paragraph (c) of this section.

(e)(i) Filtered systems must report their initial bin classification under paragraph (c) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in R309-215-15(2)(c).

(ii) Systems must report their bin classification under paragraph (d) of this section to the Executive Secretary for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule in R309-215-15(2)(c).

(iii) The bin classification report to the Executive Secretary must include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(f) Failure to comply with the conditions of paragraph (e) of this section is a violation of the treatment technique requirement.

(12) Filtered system additional *Cryptosporidium* treatment requirements.

(a) Filtered systems must provide the level of additional treatment for *Cryptosporidium* specified in this paragraph based on their bin classification as determined under R309-215-15(11) and according to the schedule in R309-215-15(13). The filtration treatment used by the system in this paragraph must be utilized in full compliance with the requirements of R309-200-5(5), R309-200-7, R309-215-8 and 9.

(i) If the system bin classification is Bin 1 and the system uses:
(A) Conventional filtration treatment including softening there is no additional *cryptosporidium* treatment required.

(B) Direct filtration there is no additional *cryptosporidium* treatment required.

(C) Slow sand or diatomaceous earth filtration there is no additional *cryptosporidium* treatment required.

(D) Alternative filtration technologies there is no additional *cryptosporidium* treatment required.

(ii) If the system bin classification is Bin 2 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 1-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 1.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 1-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 4.0-log.

(iii) If the system bin classification is Bin 3 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 2.5-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.0-log.

(iv) If the system bin classification is Bin 4 and the system uses:

(A) Conventional filtration treatment including softening there is an additional 2.5-log cryptosporidium treatment required.

(B) Direct filtration there is an additional 3-log cryptosporidium treatment required.

(C) Slow sand or diatomaceous earth filtration there is an additional 2.5-log cryptosporidium treatment required.

(D) Alternative filtration technologies there is an additional cryptosporidium treatment required as determined by the Executive Secretary such that the total Cryptosporidium removal an inactivation is at least 5.5-log.

(b)(i) Filtered systems must use one or more of the treatment and management options listed in R309-215-15(14), termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required in paragraph (a) of this section.

(ii) Systems classified in Bin 3 and Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment required under paragraph (a) of this section using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in R309-215-15(15) through R309-215-15(19).

(c) Failure by a system in any month to achieve treatment credit by meeting criteria in R309-215-15(15) through R309-215-15(19) for microbial toolbox options that is at least equal to the level of treatment required in paragraph (a) of this section is a violation of the treatment technique requirement.

(d) If the Executive Secretary determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under R309-215-15(2)(a) or R309-215-15(2)(b), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take actions specified by the Executive Secretary to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options listed in R309-215-15(14).

(13) Schedule for compliance with Cryptosporidium treatment requirements.

(a) Following initial bin classification under R309-215-15(11)(c), filtered systems must provide the level of treatment for Cryptosporidium required under R309-215-15(12) according to the schedule in paragraph (c) of this section.

(b) Cryptosporidium treatment compliance dates.

(i) Systems that serve at least 100,000 people must comply with Cryptosporidium treatment requirements no later than April 1, 2012.

(ii) Systems that serve from 50,000 to 99,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2012.

(iii) Systems that serve from 10,000 to 49,999 people must comply with Cryptosporidium treatment requirements no later than October 1, 2013.

(iv) Systems that serve less than 10,000 people must comply with Cryptosporidium treatment requirements no later than October 1, 2014.

(v) The Executive Secretary may allow up to an additional two years for complying with the treatment requirement for systems making capital improvements.

(c) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under R309-215-15(11)(d), the system must provide the level of treatment for Cryptosporidium required under R309-215-15(12) on a schedule the Executive Secretary approves.

(14) Microbial toolbox options for meeting Cryptosporidium treatment requirements.

(a) Systems receive the treatment credits listed in the table in paragraph (b) of this section by meeting the conditions for microbial toolbox options described in R309-215-15(15) through R309-215-15(19). Systems apply these treatment credits to meet the treatment requirements in R309-215-15(12).

(b) The following sub-section summarizes options in the microbial toolbox and the Cryptosporidium treatment credit with design and implementation criteria.

(i) Source Protection and Management Toolbox Options:

(A) Watershed control program: 0.5-log credit for Executive Secretary-approved program comprising required elements, annual program status report to Executive Secretary, and regular watershed survey. [~~Unfiltered systems are not eligible for credit.~~] Specific criteria are in R309-215-15(15) (a).

(B) Alternative source/intake management: No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies. Specific criteria are in R309-215-15(15) (b).

(ii) Pre Filtration Toolbox Options:

(A) Presedimentation basin with coagulation: 0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative Executive Secretary-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through basins. Specific criteria are in R309-215-15(16) (a).

(B) Two-stage lime softening: 0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment. Specific criteria are in R309-215-15(16) (b).

(C) Bank filtration: 0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. Systems using wells followed by filtration when conducting source water monitoring must sample the well to determine bin classification and are not eligible for additional credit. Specific criteria are in R309-215-15(16) (c).

(iii) Treatment Performance Toolbox Options:

(A) Combined filter performance: 0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU in at least 95 percent of measurements each month. Specific criteria are in R309-215-15(17) (a).

(B) Individual filter performance: 0.5-log credit (in addition to 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter. Specific criteria are in R309-215-15(17) (b).

(C) Demonstration of performance: Credit awarded to unit process or treatment train based on a demonstration to the Executive Secretary with a Executive Secretary-approved protocol. Specific criteria are in R309-215-15(17) (c).

(iv) Additional Filtration Toolbox Options:

(A) Bag or cartridge filters (individual filters): Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(B) Bag or cartridge filters (in series): Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety. Specific criteria are in R309-215-15(18) (a).

(C) Membrane filtration: Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing. Specific criteria are in R309-215-15(18) (b).

(D) Second stage filtration: 0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter. Specific criteria are in R309-215-15(18) (c).

(E) Slow sand filters: 2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option. Specific criteria are in R309-215-15(18) (d).

(v) Inactivation Toolbox Options:

(A) Chlorine dioxide: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(B) Ozone: Log credit based on measured CT in relation to CT table. Specific criteria in R309-215-15(19) (b).

(C) UV: Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions. Specific criteria in R309-215-15(19) (d).

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(18) Additional filtration toolbox components.

(a) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in paragraphs (a)(i) through (x) of this section. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of paragraphs (a)(ii)

through (ix) of this section to the Executive Secretary. The filters must treat the entire plant flow taken from a surface water source.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in paragraphs (a)(ii) through (a)(ix) of this section. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria specified in paragraphs (a)(ii) through (ix) of this section.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(iv) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation: Maximum Feed Concentration = $1 \times 10^4 \times (\text{Filtrate Detection Limit})$.

(v) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this subpart.

(vii) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation: $LRV = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ Where: LRV = log removal value demonstrated during challenge testing; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term C_p must be set equal to the detection limit.

(viii) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRV_{filter}) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest LRV_{filter} among the filters tested. If 20 or more filters are tested, the

overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of LRV_{filter} values for the various filters tested. The percentile is defined by $(i/(n+1))$ where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Executive Secretary.

(b) Membrane filtration.

(i) Systems receive Cryptosporidium treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in R309-110 are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under paragraph (b)(i)(A) and (B) of this section.

(A) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (b)(ii) of this section.

(B) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in paragraph (b)(iii) of this section.

(ii) Challenge Testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the Executive Secretary. Challenge testing must be conducted according to the criteria in paragraphs (b)(ii)(A) through (G) of this section. Systems may use data from challenge testing conducted prior to January 5, 2006 if the prior testing was consistent with the criteria in paragraphs (b)(ii)(A) through (G) of this section.

(A) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(B) Challenge testing must be conducted using Cryptosporidium oocysts or a surrogate that is removed no more efficiently than Cryptosporidium oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(C) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation: Maximum Feed Concentration = $3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$.

(D) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle

uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(E) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation: $LRV = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$ Where: LRV = log removal value demonstrated during the challenge test; C_f = the feed concentration measured during the challenge test; and C_p = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term C_p is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(F) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ($LRV_{C\text{-Test}}$). If fewer than 20 modules are tested, then $LRV_{C\text{-Test}}$ is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then $LRV_{C\text{-Test}}$ is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by $(i/(n+1))$ where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(G) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the Cryptosporidium removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the system that was not directly challenge tested in order to verify Cryptosporidium removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(H) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Executive Secretary.

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(19) Inactivation toolbox components.

(a) Calculation of CT values. (i) CT is the product of the disinfectant contact time (T , in minutes) and disinfectant concentration (C , in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under paragraph (b) or (c) of this section must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in R309-200-4(3) and (4).

(ii) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, systems must add the Cryptosporidium CT values in each segment to determine the total CT for the treatment plant.

(b) CT values for chlorine dioxide and ozone. (i) Systems receive the Cryptosporidium treatment credit listed in this paragraph by meeting the corresponding chlorine dioxide CT value for the

applicable water temperature, as described in paragraph (a) of this section.

(i) CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Chlorine Dioxide listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:

(I) less than or equal to 0.5 degrees: 159;

(II) 1 degree: 153;

(III) 2 degrees: 140;

(IV) 3 degrees: 128;

(V) 5 degrees: 107;

(VI) 7 degrees: 90;

(VII) 10 degrees: 69;

(VIII) 15 degrees: 45;

(IX) 20 degrees: 29;

(X) 25 degrees: 19; and

(XI) 30 degrees: 12.

(B) 0.5 Log Credit:

(I) less than or equal to 0.5 degrees: 319;

(II) 1 degree: 305;

(III) 2 degrees: 279;

(IV) 3 degrees: 256;

(V) 5 degrees: 214;

(VI) 7 degrees: 180;

(VII) 10 degrees: 138;

(VIII) 15 degrees: 89;

(IX) 20 degrees: 58;

(X) 25 degrees: 38; and

(XI) 30 degrees: 24.

(C) 1.0 Log Credit:

(I) less than or equal to 0.5 degrees: 637;

(II) 1 degree: 610;

(III) 2 degrees: 558;

(IV) 3 degrees: 511;

(V) 5 degrees: 429;

(VI) 7 degrees: 360;

(VII) 10 degrees: 277;

(VIII) 15 degrees: 179;

(IX) 20 degrees: 116;

(X) 25 degrees: 75; and

(XI) 30 degrees: 49.

(D) 1.5 Log Credit:

(I) less than or equal to 0.5 degrees: 956;

(II) 1 degree: 915;

(III) 2 degrees: 838;

(IV) 3 degrees: 767;

(V) 5 degrees: 643;

(VI) 7 degrees: 539;

(VII) 10 degrees: 415;

(VIII) 15 degrees: 268;

(IX) 20 degrees: 174;

(X) 25 degrees: 113; and

(XI) 30 degrees: 73.

(E) 2.0 Log Credit:

(I) less than or equal to 0.5 degrees: 1275;

(II) 1 degree: 1220;

(III) 2 degrees: 1117;

(IV) 3 degrees: 1023;

(V) 5 degrees: 858;

(VI) 7 degrees: 719;

(VII) 10 degrees: 553;

(VIII) 15 degrees: 357;

(IX) 20 degrees: 232;

(X) 25 degrees: 150; and

(XI) 30 degrees: 98.

(F) 2.5 Log Credit:

(I) less than or equal to 0.5 degrees: 1594;

(II) 1 degree: 1525;

(III) 2 degrees: 1396;

(IV) 3 degrees: 1278;

(V) 5 degrees: 1072;

(VI) 7 degrees: 899;

(VII) 10 degrees: 691;

(VIII) 15 degrees: 447;

(IX) 20 degrees: 289;

(X) 25 degrees: 188; and

(XI) 30 degrees: 122.

(G) 3.0 Log Credit:

(I) less than or equal to 0.5 degrees: 1912;

(II) 1 degree: 1830;

(III) 2 degrees: 1675;

(IV) 3 degrees: 1534;

(V) 5 degrees: 1286;

(VI) 7 degrees: 1079;

(VII) 10 degrees: 830;

(VIII) 15 degrees: 536;

(IX) 20 degrees: 347;

(X) 25 degrees: 226; and

(XI) 30 degrees: 147.

(F) Systems may use this equation to determine log credit between the indicated values above: $\text{Log credit} = (0.001506 \times (1.09116)^{\text{Temp}}) \times \text{CT}$.

(ii) Systems receive the Cryptosporidium treatment credit listed in this ~~paragraph~~ ~~table~~ by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (a) of this section. CT values ((MG)(MIN)/L) for Cryptosporidium inactivation by Ozone listed by the log credit with inactivation listed by water temperature in degrees Celsius.

(A) 0.25 Log Credit:

(I) less than or equal to 0.5 degrees: 6.0;

(II) 1 degree: 5.8;

(III) 2 degrees: 5.2;

(IV) 3 degrees: 4.8;

(V) 5 degrees: 4.0;

(VI) 7 degrees: 3.3;

(VII) 10 degrees: 2.5;

(VIII) 15 degrees: 1.6;

(IX) 20 degrees: 1.0;

(X) 25 degrees: 0.6~~[0.3]~~; and

(XI) 30 degrees: 0.39.

(B) 0.5 Log Credit:

(I) less than or equal to 0.5 degrees: 12;

(II) 1 degree: 12;

(III) 2 degrees: 10;

(IV) 3 degrees: 9.5;

(V) 5 degrees: 7.9;

(VI) 7 degrees: 6.5;

(VII) 10 degrees: 4.9;

(VIII) 15 degrees: 3.1;

(IX) 20 degrees: 2.0;

(X) 25 degrees: 1.2; and

(XI) 30 degrees: 0.78.

- (C) 1.0 Log Credit:
 - (I) less than or equal to 0.5 degrees: 24;
 - (II) 1 degree: 23;
 - (III) 2 degrees: 21;
 - (IV) 3 degrees: 19;
 - (V) 5 degrees: 16;
 - (VI) 7 degrees: 13;
 - (VII) 10 degrees: 9.9;
 - (VIII) 15 degrees: 6.2;
 - (IX) 20 degrees: 3.9;
 - (X) 25 degrees: 2.5; and
 - (XI) 30 degrees: 1.6.
- (D) 1.5 Log Credit:
 - (I) less than or equal to 0.5 degrees: 36;
 - (II) 1 degree: 35;
 - (III) 2 degrees: 31;
 - (IV) 3 degrees: 29;
 - (V) 5 degrees: 24;
 - (VI) 7 degrees: 20;
 - (VII) 10 degrees: 15;
 - (VIII) 15 degrees: 9.3;
 - (IX) 20 degrees: 5.9;
 - (X) 25 degrees: 3.7; and
 - (XI) 30 degrees: 2.4.
- (E) 2.0 Log Credit:
 - (I) less than or equal to 0.5 degrees: 48;
 - (II) 1 degree: 46;
 - (III) 2 degrees: 42;
 - (IV) 3 degrees: 38;
 - (V) 5 degrees: 32;
 - (VI) 7 degrees: 26;
 - (VII) 10 degrees: 20;
 - (VIII) 15 degrees: 12;
 - (IX) 20 degrees: 7.8;
 - (X) 25 degrees: 4.9; and
 - (XI) 30 degrees: 3.1.
- (F) 2.5 Log Credit:
 - (I) less than or equal to 0.5 degrees: 60;
 - (II) 1 degree: 58;
 - (III) 2 degrees: 52;
 - (IV) 3 degrees: 48;
 - (V) 5 degrees: 40;
 - (VI) 7 degrees: 33;
 - (VII) 10 degrees: 25;
 - (VIII) 15 degrees: 16;
 - (IX) 20 degrees: 9.8;
 - (X) 25 degrees: 6.2; and
 - (XI) 30 degrees: 3.9.
- (G) 3.0 Log Credit:
 - (I) less than or equal to 0.5 degrees: 72;
 - (II) 1 degree: 69;
 - (III) 2 degrees: 63;
 - (IV) 3 degrees: 57;
 - (V) 5 degrees: 47;
 - (VI) 7 degrees: 39;
 - (VII) 10 degrees: 30;
 - (VIII) 15 degrees: 19;
 - (IX) 20 degrees: 12;
 - (X) 25 degrees: 7.4; and
 - (XI) 30 degrees: 4.7.
- (F) Systems may use this equation to determine log credit

between the indicated values: $\text{Log credit} = (0.0397 \left[\frac{x}{1.09757} \right]^{\text{Temp}}) \times \text{CT}$.

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(21) Recordkeeping requirements.

(a) Systems must keep results from the initial round of source water monitoring under R309-215-15(2)(a) and the second round of source water monitoring under R309-215-15(2)(b) until 3 years after bin classification under R309-215-15(11) for filtered systems ~~or determination of the mean Cryptosporidium level under R309-215-15(11) for unfiltered systems~~ for the particular round of monitoring.

(b) Systems must keep any notification to the Executive Secretary that they will not conduct source water monitoring due to meeting the criteria of R309-215-15(2)(d) for 3 years.

(c) Systems must keep the results of treatment monitoring associated with microbial toolbox options under R309-215-15(15) through R309-215-15(19) for 3 years.

(22) Requirements for Sanitary Surveys Performed by EPA. Requirements to respond to significant deficiencies identified in sanitary surveys performed by EPA.

(a) A sanitary survey is an onsite review of the water source (identifying sources of contamination by using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a PWS to evaluate the adequacy of the PWS, its sources and operations, and the distribution of safe drinking water.

(b) For the purposes of this section, a significant deficiency includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that EPA determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

(c) For sanitary surveys performed by EPA, systems must respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(d) Systems must correct significant deficiencies identified in sanitary survey reports according to the schedule approved by EPA, or if there is no approved schedule, according to the schedule reported under paragraph (c) of this section if such deficiencies are within the control of the system.

KEY: drinking water, surface water treatment plant monitoring, disinfection monitoring, compliance determinations
Date of Enactment or Last Substantive Amendment: May 21~~March 6~~, 2007

Notice of Continuation: May 16, 2005

Authorizing, and Implemented or Interpreted Law: 19-4-104; 63-46b-4

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Environmental Quality, Drinking Water
R309-220-15
Standard Health Effects Language

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29648

FILED: 03/14/2007, 10:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is in response to comments from Region 8 of the United States Environmental Protection Agency. This clarification is needed to retain state primacy.

SUMMARY OF THE RULE OR CHANGE: This amendment adds a federal rule name to the standard health effects language for turbidity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-4-104 and 63-46b-4, and 40 CFR 141 and 142

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget as the change simply clarifies existing language.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government as the change simply clarifies existing language.
- ❖ OTHER PERSONS: There is no impact to other persons as the change simply clarifies existing language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to the compliance costs for affected persons as the change simply clarifies existing language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees with the comments in the cost and compliance summaries above. Dianne R. Nielson, Executive Director

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ken Bousfield, Acting Director

R309. Environmental Quality, Drinking Water.**R309-220. Monitoring and Water Quality: Public Notification Requirements.****R309-220-15. Standard Health Effects Language.**

Microbiological Contaminants:

(1) Total Coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

(2) Fecal coliform/E.Coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(3) Total organic carbon. Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(4) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1) and Filter Backwash Recycling Rule (FBRR) violations.

(5) Giardia lamblia. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(6) Viruses. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(7) Heterotrophic plate count (HPC) bacteria. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(8) Legionella. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(9) Cryptosporidium. Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

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KEY: drinking water, public notification, health effects
Date of Enactment or Last Substantive Amendment: May 21 ~~March 6~~, 2007
Notice of Continuation: May 16, 2005
Authorizing, and Implemented or Interpreted Law: 19-4-104; 63-46b-4

◆ ————— ◆

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-10A

Transplant Services Standards

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29629
FILED: 03/12/2007, 09:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is necessary to continue the provision of medically necessary and cost effective transplant services for Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This change clarifies and amends transplant service coverage and prior authorization criteria. It also clarifies and amends criteria for transplantation centers or facilities, criteria for cornea transplantation, criteria for bone marrow transplantation, criteria for heart transplantation, criteria for intestine transplantation, criteria for kidney transplantation, criteria for liver transplantation, criteria for lung transplantation, criteria for pancreas transplantation, criteria for small bowel transplantation, criteria for heart and lung transplantation, criteria for intestine and liver transplantation, criteria for kidney-pancreas transplantation, criteria for liver-kidney transplantation, criteria for multivisceral transplantation, and criteria for liver and small bowel transplantation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is an estimated annual cost of \$89,100 to the General Fund and \$210,900 in federal funds to pay for transplant services.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not fund transplant services and remain unaffected by the transplant rule changes.

❖ **OTHER PERSONS:** There is estimated revenue of \$300,000 to hospitals and transplant centers based on an estimate of two organ transplants per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is estimated revenue of \$150,000 to a single hospital or transplant center based on an average of one organ transplant per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on regulated businesses and Medicaid recipients should be positive. Liver and heart transplant centers in Utah that have Medicare certification will not have to individually justify proposed transplants. Medicaid recipients will see faster approval of transplants and the resulting improvement in quality of life. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-10A. Transplant Services Standards.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance by the client with random monthly drug screen tests.

(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:

- (a) Birth through 12 months;
- (b) One through 12 years;
- (c) 13 through 20 years;
- (d) 21 through 30 years;
- (e) 31 through 40 years; or
- (f) 41 through 54 years.

(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.

(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed

and taken under the direction of a physician or is not medically indicated.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the client bone marrow.

(7)8 "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

(8)9 "Department" means the Utah Department of Health.

(10) "Donor lymphocyte infusion" means infusion of allogenic lymphocytes into the client.

(11) "Drug screen" means random testing for tobacco, marijuana, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, and barbiturates.

(9)12 "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10)3 [~~"Increase in life expectancy" means the difference in the average number of years of life between the life expectancy of the control group of patients compared to the life expectancy of the transplantation group.~~

~~—(11)"Intestine transplantation" means transplantation of both the small bowel and colon.]~~

~~—(12) "Life expectancy" means the average number of years of life remaining for the age group of the client at the time the Department receives the prior authorization request.]~~

(13)4 "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

(14)5 "Medically necessary" means a client's medical condition which meets all the criteria and none of the contraindications for the type of transplantation requested.

(15)6 "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

(16)7 "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

(17)8 "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(18)9 "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

(19)20 "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

(20)1 "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency/substance abuse specialty hospital specified in Sections R432-102-4[-] and 5.

(21)2 "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(22)3 "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(23)4 "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

R414-10A-3. Client Eligibility Requirements for Coverage for Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet criteria listed in Sections R414-10A-6 through 22 at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for those eligible clients who meet the criteria listed in Sections R414-10A-6 through 22 for services covered under the Utah Medicaid program.

(2) Transplantation services for the organ needed by the client may be provided only in a transplant center approved by the United States Department of Health and Human Services as a Medicare designated center or by the Department in accordance with criteria in Section R414-10A-7.

(3) Transplantation services may be provided out-of-state only when the authorized service is not available in an approved facility in the state of Utah.

(4) Criteria listed in Rule R414-10A applicable to transplantation services and transplant centers in the state of Utah also apply to out-of-state transplant services and facilities.

(5) Post transplant authorization for transplantation services provided under ~~[unusual,]~~ emergency circumstances may be given only when:

(a) all Utah Medicaid criteria listed in Sections R414-10A-6 through 22 are met; and

(b) both the transplant center and the board-certified or board-eligible specialist evaluation required by Subsection R414-10A-6(3)(f), (p), (q), and (r) are submitted with the recommendation that the tissue or organ transplantation be authorized.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when criteria listed in Sections R414-10A-6 through 22 are met.

(2) Transplantations which are experimental or investigational or which are performed on an experimental or investigational basis are not covered.

(3) Multiple transplantation services may be provided only when the criteria for the specific multiple transplantations are met.

(4) Staff shall not consider criteria for single tissue or organ transplantation in reviewing requests for multiple transplantations.

(5) Transplantation of additional tissues or organs, different from prior transplantations, may be provided only when the criteria for multiple transplantations of all provided or scheduled multiple tissue or organ transplantations are met.

(6) The Utah Medicaid program covers [R]repeat transplantations of the same tissues or organs [may be provided] only when [documentation reviewed by Department staff and medical consultants shows that criteria for transplantation of the specific tissues or organs are met]the Department approves a new prior authorization under criteria found in Sections R414-10A-6 through 22.

(7) ~~Payment for [E]emergency~~ transplantations may be provided only when the service is provided for a transplantation with criteria approved in Sections R414-10A-6 through 22. Payment will not be made until Department staff has reviewed all of the information required by Sections R414-10A-6 through 22 and determined that the patient and the transplant center met criteria for approval and provision of the service at the time of the transplantation.

(8) The Utah Medicaid program does not cover the following transplantation services:

(a) Beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(b) Cells or tissues transplanted into the coronary arteries, myocardium, central nervous system, or spinal cord.

(c) Stem cells other than hematological stem cells.

(d) Donor lymphocyte infusions for clients who have not had a prior bone marrow transplantation.

(9) The Utah Medicaid program does not cover the following procedures:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices.

(b) Temporary or implanted biventricular assist devices.

(c) Temporary or implanted mechanical heart.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for ~~[cornea and kidney transplantation.]~~ the following transplants:

(a) cornea transplantation.

(b) kidney, heart and liver transplantation performed in a Utah transplant center, which has been Medicare-approved for the last five or more years.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except cornea or kidney, must contain all of the following:

~~(a) [A request for Prior Authorization Form 24-06-37, completed and signed by the physician.~~

~~(b) [A description of the medical condition which necessitates a transplantation.]~~

~~(c) Medical literature from the transplant center documenting the client's life expectancy, with and without a transplant. The transplant center staff must complete and submit to the Department for staff review and evaluation, a medical literature review documenting a probability of successful clinical outcome for patients receiving transplantation for the specific age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. This review of the medical literature must document an increase in life expectancy between control group(s) and transplantation group(s). The Department shall use independent research by medical consultant(s) to evaluate the documentation submitted by the transplant center.]~~

~~(d) Transplantation treatment alternatives utilized previous to the transplantation request.~~

~~(e) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.~~

~~(f) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which~~

necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

~~(g) Comprehensive psycho-social evaluation of the client [by a board-certified or board-eligible psychiatrist. The evaluation] must include a comprehensive history regarding substance abuse and compliance with medical treatment.~~

~~(h) Psycho-social evaluation of parent(s) or guardian(s) of the client, [by a board-certified or board-eligible psychiatrist.] if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.~~

~~(i) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.~~

~~(j) Comprehensive psychological or developmental testing, as requested by the Department.~~

~~(k) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.~~

~~(l) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.~~

(k) At least two negative drug screens within three months of the request date for prior authorization. The Utah Medicaid program requires monthly drug screens until the transplant date or until the transplant is denied if either of the two random drug screens are positive for drug use, past drug screens have been positive for drug use, or the Department requests the monthly screens. If the client has a history of substance abuse that does not include the drugs listed in Subsection R414-10A-2(11), then the drug screens must include the other substance(s) upon drug testing availability.

~~(m) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.~~

(m) Pretransplant evaluation for a client diagnosed with cancer that includes staging of the cancer, laboratory tests, and imaging studies. A letter documenting that the transplant evaluation has been completed and that all medical records documentation from the evaluation have been transmitted to the Department.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the

Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. *Journal of American Statistical Association* 53:457-481, 1958. Cox, D.R., Oakes, D. *Analysis of survival data*. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in Sections R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

(u) If incomplete documentation is received by the Department, the client's case is pended until the requested documentation has been received.

(4) Prior authorization for each donor lymphocyte must contain all of the following:

(a) A description of the medical condition that necessitates a donor lymphocyte infusion.

(b) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition that necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist. The evaluation must document that the proposed donor lymphocyte infusion for the client is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

(c) Hospital and outpatient records for at least the last six months. If the patient is less than six months of age, the Department requires all case records.

(d) The transplant center must document by a current medical literature review that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b) for the age group, specific diagnosis(es), condition, and type of transplantation the client has previously received.

R414-10A-7. Criteria for Transplantation Centers or Facilities.

Transplantation services are covered only in a transplant center or facility which demonstrates the following qualifications to the Department:

(1) Compliance with criteria listed in Sections R414-10A-6 through 22.

(2) The transplant center must document cost effectiveness and quality of service. The transplant center must complete, and submit to the Department for evaluation, documentation specific to the surgical experience of the requesting transplant center, showing applicable one and three year survival rates for all patients receiving transplantation in the last three years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Out-of-state transplant centers must meet all of the criteria and requirements listed by the Department in Sections R414-10A-6 through 22.

(4) Transplantation services are covered in out-of-state transplant centers only when the service is not available in an approved facility in Utah, and agreement is reached between the Department and the requesting physician that service out-of-state is essential to the individual case.

(5) Reimbursement to out-of-state transplant centers is provided only when the transplant center and the Department can agree upon arrangements which conform to the Department payment methodology.

(6) Corneal transplant facilities must document:

(a) certification or licensure by the Department as an ambulatory surgical center or an acute care general hospital; and

(b) that the surgeon is board-certified or board-eligible in ophthalmology.

(7) Heart, heart lung, intestine, lung, pancreas, kidney, and liver transplant centers must document all of the following:

(a) Current approval by the U.S. Department of Health and Human Services as a Medicare-[designated]approved center for transplantation of the organ(s) [needed by]requested for the client.

(b) Current full membership in the United Network for Organ Sharing for the specific organ transplantation [needed by]requested for the client.

(8) Bone marrow transplant centers must document approval by the National Marrow Donor Program as a bone marrow transplantation center [the following:

(a) Approval to provide autologous or allogenic bone marrow transplantation from at least one of the following:

(i) Children's Cancer Study Group approval as a bone marrow transplantation center for autologous or allogenic bone marrow.

(ii) Southwest Oncology Group approval as a bone marrow transplantation center for autologous or allogenic bone marrow.

(iii) National Marrow Donor Program approval as a bone marrow transplantation center for allogenic bone marrow.

(b) Payment will be made for autologous bone marrow transplantation services only if the transplantation center can document approval by at least one of the agencies named in R414-10A-7(1)through (7), and (8)(a)(i) or (ii) of this rule as an approved autologous bone marrow transplantation center.

(c) Payment will be made for allogenic bone marrow transplantation services only if the transplantation center can document approval by at least one of the agencies named in R414-10A-7(1)through (7), and (8)(a)(i) through (iii) of this rule as an approved allogenic bone marrow transplant center.

(9) Lung transplant centers must have a current full membership in the United Network for Organ Sharing for lung transplantation.]

R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of Subsections R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) ~~[A search of related family members, for a suitable donor, is authorized for payment only after a written prior authorization request has been received by the Department.]~~ The Department authorizes payment for a search of related family members, unrelated persons or both to find a suitable donor.

(ii) ~~[A search of unrelated persons by HLA type, for a suitable donor, will not be authorized for payment by the Department until the client has been documented to meet all other criteria in this rule for bone marrow transplantation except an HLA-matched donor.~~

~~—(iii)—~~ The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow ~~[or peripheral blood stem cell]~~ transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) ~~[In addition to meeting the requirements of R414-10A-9(2)(a) or (b), the client for bone marrow transplantation must meet the requirements of at least R414-10A-9(3)(a) or (b):~~

~~—(a) The client must have irreversible, progressive bone marrow disease with a life expectancy of one year or less without transplantation or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end-organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature~~

~~must also document that the bone marrow transplantation will prevent irreversible, progressive disease to the client's vital end-organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(4) In addition to meeting the requirements listed in R414-10A-9, (1) through (3),~~ † The client for bone marrow transplantation must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

~~(5)~~ 4 Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

~~(e) [Human Immunodeficiency Virus (HIV) antibody positive.~~

~~—(f)—~~ Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

~~(g)~~ f Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

~~(h)~~ g Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year

survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~f~~h) Cardiovascular diseases:

(i) Intractable cardiac arrhythmias.

(ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iii) Severe generalized arteriosclerosis.

(~~j~~i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(~~k~~j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(~~6~~5) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-9(5)(~~k~~j)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

(6) The client for donor lymphocyte infusion must produce documentation by current medical literature review and the client's referring physician that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet ~~requirements of at least R414-10A-10(2)(a) or (b):~~

~~—(a) The client must have irreversible, progressive heart disease, with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting at least one of the requirements listed in R414-10A-10(2), the client must meet all of the following requirements:~~

(a) The client must have irreversible, progressive heart disease with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension and no other reasonable medical or surgical alternative to transplantation available.

(~~a~~b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~b~~c) Severe cardiac dysfunction.

(~~e~~d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(~~d~~e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(~~e~~f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(~~f~~g) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.

(~~g~~h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(~~h~~i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate.

The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~4~~3) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

~~—(f) [Human Immunodeficiency Virus (HIV) antibody positive. (f)]~~Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(~~g~~f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(~~h~~g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~i~~h) Cardiovascular diseases:

(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.

(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(~~j~~i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(~~k~~j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(~~5~~4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in Subsections R414-10A-10(~~4~~3)(~~k~~j)(i) through (iv).

R414-10A-11. Criteria and Contraindications for Intestine Transplantation.

(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine transplantation must meet ~~the requirements of at least R414-10A-11(2)(a) or (b).~~

~~(a) The client must have irreversible, progressive small bowel and large bowel disease, with a life expectancy of one year or less without transplantation, or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.~~

~~(b) The client must have short bowel syndrome that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.~~

~~(3) In addition to meeting at least one of the requirements listed in R414-10A-11(2), the client must meet~~ all of the following requirements:

~~(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.~~

~~(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.~~

~~(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.~~

~~(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.~~

~~(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.~~

~~(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.~~

~~(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.~~

~~(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(4)3) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:~~

~~(a) Active infection.~~

~~(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.~~

~~(c) Active substance abuse.~~

~~(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.~~

(e) ~~[Human Immunodeficiency Virus (HIV) antibody positive. —(f)—]~~Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(~~(g)~~^(f)) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(~~(h)~~^(g)) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~(i)~~^(h)) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(~~(j)~~⁽ⁱ⁾) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(~~(k)~~^(j)) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(~~(5)~~⁽⁴⁾) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-11(~~(4)~~⁽³⁾)(~~(k)~~^(j))(i) through (iv).

R414-10A-12. Criteria and Contraindications for Kidney Transplantation.

(1) Kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for kidney transplantation listed below must be met by each client.

(a) The client must have irreversible, progressive end-stage renal disease.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by

having a greater than or equal to 75 percent one-year successful renal graft function rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original renal disease will not recur and limit graft function to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for kidney transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-renal end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) ~~[Human Immunodeficiency Virus (HIV) antibody positive. —(f)—]~~Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(~~(g)~~^(f)) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

~~(h)g~~ Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

~~(i)h~~ Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

~~(j)i~~ Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

~~(k)l~~ Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-12(3)(k)l(i) through (iv).

R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet ~~requirements of at least R414-10A-13(2)(a) or (b):~~

~~(a) The client must have irreversible, progressive liver disease with a life expectancy of one year or less without transplantation, with no other reasonable medical or surgical alternative to transplantation available.~~

~~(b) The transplant center staff must complete, and submit to the Department for review and evaluation, a medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver transplantation will prevent the irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(3) In addition to meeting the requirements listed in R414-10A-13(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature

review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

~~(4)3~~ Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

~~(g) [Human Immunodeficiency Virus (HIV) antibody positive. (h)]~~Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

~~(i)h~~ Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

~~(j)i~~ Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year

survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~(k)~~) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(~~(h)~~) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(~~(m)~~) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(~~(s)~~) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-13(~~(4)~~)(~~(m)~~)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet ~~requirements of at least R414-10A-14(2)(a) or (b).~~

~~—(a) The client must have end stage lung disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the lung transplantation will prevent the irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting the requirements listed in R414-10A-14(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate.

The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(~~(4)~~) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) ~~[Human Immunodeficiency Virus (HIV) antibody positive.~~

~~—(f)—]Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.~~

(~~(g)~~) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

- (ii) Intractable cardiac arrhythmias;
- (iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.
- (iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.
- (v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;
- (vi) Severe generalized arteriosclerosis.
- (~~h~~) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.
- (~~j~~) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:
 - (i) Non-compliance with medications or therapy.
 - (ii) Failure to keep scheduled appointments.
 - (iii) Leaving the hospital against medical advice.
 - (iv) Active substance abuse.
- (~~4~~) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-14(~~4~~)(~~j~~)(i) through (iv).

R414-10A-15. Criteria and Contraindications for Pancreas Transplantation.

- (1) Pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.
- (2) All indications for pancreas transplantation listed below must be met by each client.
 - (a) The client must have type I diabetes mellitus.
 - (b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a pancreas graft function rate greater than or equal to 75 percent at one-year for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.
 - (c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.
 - (d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.
 - (e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that he and his parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required
 - (f) Psycho-social assessment by a Board certified psychiatrist that the client has sufficient mental, emotional and social stability and

support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

- (g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.
- (h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.
- (i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original pancreas disease will not recur and limit graft function rate to less than 75% at one-year. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.
- (3) Any single contraindication listed below precludes approval for Medicaid payment for pancreas transplantation:
 - (a) Active infection.
 - (b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more end-organs.
 - (c) Active peptic ulcer.
 - (d) Active substance abuse.
 - (e) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.
 - (f) ~~Human Immunodeficiency Virus (HIV) antibody positive.~~
 - ~~(g)~~ Irreversible musculoskeletal disease resulting in progressive weakness or in confinement to bed.
 - (~~h~~) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.
 - (~~j~~) Pulmonary diseases:
 - (i) Cystic fibrosis.
 - (ii) Obstructive pulmonary disease (FEV1 less than 50% of predictable).
 - (iii) Restrictive pulmonary disease (FVC less than 50% of predictable).
 - (iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.
 - (v) Recent pulmonary infarction.
 - (~~j~~) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.
 - (~~k~~) Cardiovascular diseases:
 - (i) Myocardial infarction within six months.
 - (ii) Intractable cardiac arrhythmias.
 - (iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.
 - (iv) Severe general arteriosclerosis.
 - (~~k~~) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.
 - (~~m~~) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined

medical regimen. An indication of non-compliance by the client is documented by any of the following:

- (i) Non-compliance with medications or therapy.
- (ii) Failure to keep scheduled appointments.
- (iii) Leaving the hospital against medical advice.
- (iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-15(3)(m)](i) through (iv).

R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet ~~requirements of at least R414-10A-16(2)(a) or (b).~~

~~—(a) The client must have irreversible, progressive small bowel disease, with a life expectancy of one year or less without transplantation, or must have greater than a five year increase in life expectancy with transplantation, with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The client must have short bowel syndrome that requires daily total parenteral nutrition with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(3) In addition to meeting one of the requirements listed in R414-10A-16(2), the client must meet]all of the following requirements:~~

~~(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.~~

~~(a)]b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(b)]c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c)]d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.~~

~~(d)]e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.~~

~~(e)]f) Psycho-social assessment by a board-certified or board-eligible psychiatrist that the client has sufficient mental, emotional, and~~

social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

~~(f)]g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.~~

~~(g)]h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.~~

~~(h)]i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.~~

~~(i)]j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(j)]k) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:~~

~~(a) Active infection.~~

~~(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.~~

~~(c) Active substance abuse.~~

~~(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.~~

~~(e) [Human Immunodeficiency Virus (HIV) antibody positive.~~

~~—(f)—]Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.~~

~~(g)]f) Pulmonary diseases:~~

~~(i) Cystic fibrosis.~~

~~(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).~~

~~(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).~~

~~(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.~~

~~(v) Recent or unresolved pulmonary infarction.~~

~~(h)]g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(i)]h) Cardiovascular diseases:~~

~~(i) Myocardial infarction within six months.~~

~~(ii) Intractable cardiac arrhythmias.~~

~~(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.~~

~~(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.~~

~~(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.~~

~~(vi) Severe generalized arteriosclerosis.~~

~~(j)]i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.~~

(~~h~~i) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

- (i) Non-compliance with medications or therapy.
- (ii) Failure to keep scheduled appointments.
- (iii) Leaving the hospital against medical advice.
- (iv) Active substance abuse.

(~~5~~4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-16(4)(k)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet ~~requirements of at least R414-10A-17(2)(a) or (b)~~:

~~—(a) The client must have irreversible, progressive heart and lung disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting that the client's condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the heart lung transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting the requirements listed in R414-10A-17(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

- (i) Subsections R414-10A-10(3)(b) through (~~h~~i).
- (ii) Subsections R414-10A-10(~~4~~3)(a) through (~~h~~g), and (~~j~~i) through (~~k~~i).
- (iii) Subsection R414-10A-10(~~5~~4).

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet ~~requirements of at least R414-10A-18(2)(a) or (b)~~:

~~—(a) The client must have irreversible, progressive liver and intestinal disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the intestine liver transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting one of the requirements listed in R414-10A-18(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) Subsections R414-10A-13(~~3~~2)(b) through (g).
- (ii) Subsections R414-10A-13(~~4~~3)(a) through (~~m~~l).
- (iii) Subsection R414-10A-13(~~5~~4).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet ~~requirements of at least R414-10A-19(2)(a) or (b)~~:

~~—(a) The client must have irreversible, progressive end-stage renal disease and type I diabetes mellitus, with a life expectancy of one year~~

or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.

~~— (b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the kidney-pancreas transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~— (3) In addition to meeting one of the requirements listed in R414-10A-19(2), the client must meet all of the following requirements:~~

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) Subsections R414-10A-12(2)(d) through (i).
- (ii) Subsections R414-10A-12(3)(a) through (k)(j).
- (iii) Subsection R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet ~~requirements of at least R414-10A-20(2)(a) or (b).~~

~~— (a) The client must have irreversible, progressive liver kidney disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~— (b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a medical literature review, specific to the client's diagnosis and condition, documenting that the condition will cause irreversible, progressive disease to vital end organs within the next two years following the application for transplant and have no other reasonable medical or surgical alternative to~~

~~transplantation available. The medical literature review must also document that the liver-kidney transplantation will prevent the irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~— (3) In addition to meeting the requirements listed in R414-10A-20(2), the client must meet all of the following requirements:~~

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) Subsections R414-10A-13([3]2)(b) through (g).
- (ii) Subsections R414-10A-13([4]3)(a) through ([m]l).
- (iii) Subsection R414-10A-13([5]4).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for multivisceral transplantation must meet ~~requirements of at least R414-10A-21(2)(a) or (b).~~

~~— (a) The client must have irreversible, progressive liver, pancreas and small bowel disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~— (b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the multivisceral transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting one of the requirements listed in R414-10A-21(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) Subsections R414-10A-13([3]2)(b) through (g).
- (ii) Subsections R414-10A-13([4]3)(a) through ([m]l).
- (iii) Subsection R414-10A-13([5]4).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet ~~requirements of at least R414-10A-22(2)(a) or (b).~~

~~—(a) The client must have irreversible, progressive liver and small bowel disease, with a life expectancy of one year or less without transplantation, and with no other reasonable medical or surgical alternative to transplantation available.~~

~~—(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting that the client's condition will cause irreversible, progressive disease to vital end organs within two years following the application for transplant and have no other reasonable medical or surgical alternative to transplantation available. The medical literature must also document that the liver small bowel transplantation will prevent irreversible, progressive disease to the client's vital end organs and must document that it will increase the life expectancy of the client by greater than five years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~—(3) In addition to meeting one of the requirements listed in R414-10A-22(2), the client must meet~~ all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by

having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

- (i) Subsections R414-10A-13([3]2)(b) through (g).
- (ii) Subsections R414-10A-13([4]3)(a) through ([m]l).
- (iii) Subsection R414-10A-13([5]4).

~~[R414-10A-23. Criteria and Contraindications for Other Tissues, Organs, and Multiple Organ Transplantations for Clients Not Specifically Set Forth in This Rule.~~

~~—(1) The Department acknowledges that based on the changing aspect of health care research, numerous individual, combination, multiple tissue or organ transplantations which do not have criteria and contraindications specifically set forth in R414-10A-8 through 22 could conceivably be requested. However, any attempt to set forth all possible tissue and organ transplantation combinations is impractical.~~

~~—(2) The Department shall develop criteria and contraindications for such other individual or combination of nonexperimental or noninvestigational tissue or organ transplantations not specifically set forth in R414-10A-8 through 22, when a request is made on behalf of a client.~~

~~—(3) Development of such new criteria and contraindications shall be based upon existing criteria and contraindication for comparable individual tissue or organ transplantations as set forth in R414-10A-8 through 22 and shall be applied to all clients requesting the new service.~~

~~—(4) Criteria and contraindications for such individual, combination, multiple tissue, or organ transplantations, once established, shall be incorporated into the Utah Administrative Code at R414-10A.~~

]

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[March 19, 1998]~~2007

Notice of Continuation: February 2, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-1

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-61-2
Incorporation by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29674

FILED: 03/15/2007, 09:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with Subsection 26-18-3(2), this rule implements current versions of home and community-based services waivers. The rule incorporates these waivers by reference.

SUMMARY OF THE RULE OR CHANGE: For clarification, the word "services" is added to the title of this rule, which is now "Home and Community-Based Services Waivers". Language that incorporates the State Plan by reference is removed because Section R414-1-5 already accomplishes this purpose. The effective date for the "Waiver for Individuals Age 65 or Older" is updated to 07/01/2005. This waiver eliminates financial management as a service and includes it as an administrative function. The effective date for the "Waiver for Individuals with Physical Disabilities" is updated to 07/01/2006. This waiver adds financial management services, incident reporting requirements, and individual risk analysis requirements. The title, "Waiver for Individuals with Developmental Disabilities or Retardation" is changed to "Waiver for Individuals with Mental Retardation and Other Related Conditions". The effective date for this waiver is updated to 07/01/2005. This waiver eliminates senior support services, educational support services, and specialized support services. It adds behavior consultation services, extended living support services, companion services, family training and preparation services, financial management services, living start up costs, massage therapy, and professional medication monitoring and personal budget assistance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5, and Section 1915(c) of the Social Security Act

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Medicaid 1915(c) Home and Community-Based Services Waiver for Individuals Age 65 or Older, effective 07/01/2005; Medicaid 1915(c) Home and Community-Based Services Waiver for Individuals with Physical Disabilities, effective 07/01/2006; and Medicaid 1915(c) Home and Community-Based Services Waiver for Individuals with Mental Retardation and Other Related Conditions, effective 07/01/2005

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is no budget impact because discontinued waiver services are offset by new waiver services.

❖LOCAL GOVERNMENTS: There is no budget impact because local governments do not provide home and community-based services.

❖OTHER PERSONS: There is no budget impact because discontinued waiver services are offset by new waiver services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because discontinued waiver services are offset by new waiver services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business is anticipated as new waiver services offset discontinued waiver services. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-61. Home and Community[-]Based Services Waivers.

R414-61-2. Incorporation by Reference.

~~[The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114 3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:]~~ The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, ~~[dated]~~ Effective July 1, 2003;

(2) Waiver for Individuals Age 65 ~~and~~ or Older, ~~dated~~ Effective July 1, 200~~4~~~~5~~;

(3) Waiver for Individuals with Acquired Brain Injuries, ~~dated~~ Effective July 1, 2004;

(4) Waiver for Individuals with Physical Disabilities, ~~dated~~ Effective July 1, 200~~3~~~~6~~;

(5) Waiver for Individuals with ~~Developmental Disabilities or~~ Mental Retardation and Other Related Conditions, ~~dated~~ Effective July 1, 200~~3~~~~5~~;

(6) New Choices Waiver, Effective April 1, 2007.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Health Care Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~February 1, 2005~~~~2007~~

Notice of Continuation: March 11, 2005

Authorizing, and Implemented or Interpreted Law: 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy **R414-61-2** Incorporation by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29673

FILED: 03/15/2007, 08:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Centers for Medicare and Medicaid Services requires the Division of Health Care Financing (DHCF) to convert its Long-Term Care (LTC) Managed Care program to a 1915(c) home and community-based services waiver. DHCF therefore implements by rule the New Choices Waiver that allows LTC managed care to operate under the proper waiver authority. This amendment is refiled because federal approval was not obtained for the New Choices Waiver before the previous amendment lapsed. The rule text now lists 04/01/2007 as the effective date for the New Choices Waiver. (DAR NOTE: The previous amendment to Section R414-61-2 was under DAR No. 29148 in the November 15, 2006, issue of the Bulletin, and it lapsed on 03/15/2007.)

SUMMARY OF THE RULE OR CHANGE: This rule incorporates by reference the New Choices Waiver that provides services to individuals who meet Medicaid eligibility criteria, nursing facility level of care criteria, and special targeting criteria. Waiver services include case management, homemaker services, adult day care, habilitation services, respite care, adult residential services, attendant care services, caregiver training, chore services, environmental accessibility adaptations, home delivered meals, institutional transition

services, medication assistance services, personal emergency response system, specialized medical equipment and supplies, nonmedical transportation, personal budget assistance, assistive technology devices, specialized behavioral health services, home health aide services, consumer preparation services, and financial management services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: New Choices Waiver, effective 04/01/2007

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

❖ LOCAL GOVERNMENTS: There is no budget impact because no local funds are used to provide home and community-based services and local governments are not LTC providers.

❖ OTHER PERSONS: There is no budget impact because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this amendment only transfers existing LTC managed care funds to the New Choices Waiver.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change incorporates by reference the New Choices Waiver that allows LTC managed care to operate under the proper waiver authority. This is a requirement of federal law. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-61. Home and Community Based Waivers.****R414-61-2. Incorporation by Reference.**

The Department adopts the document entitled "Utah State Plan under Title XIX of the Social Security Act" 1999 edition, and the document entitled "Home and Community Based Waiver Implementation Plan", 1999 edition, which are incorporated by reference within this rule. These documents are available for public inspection during normal working hours, at the State Health Department Building, located at 288 North, 1460 West, Salt Lake City, UT, 84114-3102, at the office of the Division of Health Care Financing. These documents will be used by the Division for the provision of services under the following waivers:

- (1) Waiver for Technology Dependent/Medically Fragile Individuals, dated July 1, 2003;
- (2) Waiver for Individuals Age 65 and Older, dated July 1, 2004;
- (3) Waiver for Individuals with Acquired Brain Injuries, dated July 1, 2004;
- (4) Waiver for Individuals with Physical Disabilities, dated July 1, 2003;
- (5) Waiver for Individuals with Developmental Disabilities or Mental Retardation, dated July 1, 2003;
- (6) New Choices Waiver, Effective April 1, 2007.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~February 1, 2005~~ **2007**

Notice of Continuation: **March 11, 2005**

Authorizing, and Implemented or Interpreted Law: **26-18-3**

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-307

Eligibility for Home and Community- Based Services Waivers

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 29676

FILED: 03/15/2007, 09:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed new rule is necessary to outline general eligibility requirements for home and community-based services waivers. It also specifies New Choices Waiver eligibility criteria. This rule is refiled because federal approval was not obtained for the New Choices Waiver before the previous filing lapsed. (DAR NOTE: The previous proposed new Rule R414-307 was under DAR No. 29174 in the November 15, 2006, issue of the Bulletin, and it lapsed on 03/15/2007.)

SUMMARY OF THE RULE OR CHANGE: This proposed new rule outlines general eligibility requirements for home and community-based services waivers, specifies requirements that apply to individuals who qualify for a waiver under the special income group, specifies requirements that apply to individuals who qualify for a waiver under the medically needy waiver group, describes New Choices Waiver eligibility criteria, and states other provisions that apply to all applicants and recipients of home and community-based services waivers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-3, and 42 CFR 435.217 and 435.726

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no budget impact because this rule only specifies eligibility criteria for home and community-based services waivers.

❖ **LOCAL GOVERNMENTS:** There is no budget impact because local governments do not provide home and community-based services.

❖ **OTHER PERSONS:** There is no budget impact because this rule only specifies eligibility criteria for home and community-based services waivers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this rule only specifies eligibility criteria for home and community-based services waivers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule outlines eligibility criteria for home and community-based services and the New Choices Waiver. There should be no fiscal impact on business. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: **05/09/2007**

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-307. Eligibility for Home and Community-Based Services Waivers.

R414-307-1. Introduction and Authority.

Section 26-18-3 authorizes this rule. It establishes general eligibility requirements for home and community based service waivers. It also specifies eligibility criteria that applies to the New Choices Home and the Community-Based Services Waiver.

R414-307-2. Definitions.

The definitions found in R414-301 apply to this rule.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

(1) To qualify under a home and community based services waiver, an individual must meet:

(a) the medical eligibility criteria defined in the waiver implementation plan adopted in R414-61 applicable to the specific waiver under which the individual is seeking services, as verified by the referring agency case manager;

(b) the eligibility criteria for one of the Medicaid coverage groups selected for coverage in the specific waiver implementation plan under which the individual is seeking services; and

(c) the non-financial Medicaid criteria defined in R414-302.

(2) An individual must apply for and provide required verifications pursuant to R414-308 relating to the application and verification process.

R414-307-4. Special Income Group.

The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution:

(1) If the individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the Department counts one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the transfer of asset provisions of Section 1917 of the Social Security Act, as amended by Pub. L. 109-171.

(7) The individual's cost-of-care contribution is the income amount remaining after post-eligibility deductions for the applicable waiver. The individual must pay the cost-of-care contribution to the department for Medicaid waiver eligibility.

(8) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(9) The Department determines special income group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-5. Medically Needy Waiver Group.

The following requirements apply to individuals who meet the eligibility criteria for a medically needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver:

(1) If an individual's spouse meets the definition of a community spouse, the Department applies the income and resource provisions defined in Section 1924 of the Social Security Act and R414-305-3.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the Department counts only the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the Department counts one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The Department counts only income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The Department does not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the Department does not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The Department counts actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The Department applies the income deductions allowed by the non-institutional Medicaid category under which the individual qualifies. The Department compares countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual must pay the spenddown to the Department for Medicaid waiver eligibility.

(7) The Department deducts medical expenses incurred by the individual in accordance with R414-304-9.

(8) The Department determines medically needy group eligibility for an individual starting the month that waiver services begin. The Department determines eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-6. New Choices Waiver Eligibility Criteria.

The following eligibility requirements apply to the New Choices Waiver:

(1) An individual must be age 65 or older, or age 21 through age 64 and disabled as defined in Section 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is 21 years of age beginning the first month after the month of the individual's 21st birthday.

(2) Under post-eligibility income rules defined in Section 1924 of the Social Security Act for individuals with a community spouse, and in 42 CFR 435.726 for individuals without a community spouse, the Department deducts the following amounts from the income of an individual who meets the eligibility criteria for the special income group:

(a) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one.

(b) For individuals with earned income, up to \$125 of gross-earned income.

(c) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses.

(d) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly.

(e) An allowance for a community spouse and dependent family members living with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act.

(f) In the case of an individual who does not have a community spouse or whose spouse is also eligible for waiver services, an allowance for dependent family members is equal to one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income. If more than one individual contributes income to the dependent family member, the combined income deductions cannot exceed one-third of the difference.

(g) Medical and remedial care expenses incurred by the individual in accordance with R414-304-9.

R414-307-7. Other Provisions.

The following provisions apply to all applicants and recipients of home and community based-services waivers:

(1) Applicants and recipients of home and community-based services waivers receive the same rights and have the same responsibilities as all other medical assistance applicants and recipients.

(2) For individuals claiming a disability, the disability provisions of R414-303 apply.

(3) Except where otherwise stated in this rule, the income provisions of R414-304 apply to waiver applicants and recipients.

(4) Except where otherwise stated in this rule, the resource provisions of R414-305 apply to waiver applicants and recipients.

(5) The benefit provisions of R414-306 apply to waiver applicants and recipients.

(6) The provisions found in R414-308 that apply to eligibility determinations, redeterminations, change reporting, and improper medical assistance also apply to waiver applicants and recipients.

(7) The Department limits the number of individuals covered by a home and community based-services waiver as provided in the adopted waiver implementation plan.

(8) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by Pub. L. 109-171.

(a) The state sets that limit at the minimum level allowed under Pub. L. 109-171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver services.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group. This is in accordance with institutional deeming rules found in Section 1924 of the Social Security Act.

KEY: eligibility, waivers, special income group

Date of Enactment or Last Substantive Amendment: 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

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**Health, Health Care Financing,
Coverage and Reimbursement Policy**
R414-507
**Medicaid Long Term Care Managed
Care**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 29675

FILED: 03/15/2007, 09:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Centers for Medicare and Medicaid Services requires the Division of Health Care Financing (DHCF) to convert its Long-Term Care (LTC) Managed Care program to a 1915(c) home and community-based services waiver. Therefore, DHCF proposes to repeal Rule R414-507 which implemented the LTC Managed Care program. This rule states the purpose of the LTC Managed Care program and outlines its contractual authority, client eligibility requirements, program access requirements, service coverage, freedom of choice provisions, nursing facility level of care criteria, reimbursement for services, cost neutrality provisions, and criteria for new projects and project expansion proposals. In addition to the repeal of this rule, DHCF also implements the New Choices Waiver in Section R414-61-2 that allows LTC managed care to operate under proper waiver authority. This rule is refiled because federal approval was not obtained for the New Choices Waiver before the previous proposed repeal lapsed. (DAR NOTES: The previous proposed repeal of Rule R414-507 was under DAR No. 29149 in the November 15, 2006, issue of the Bulletin, and it lapsed on 03/15/2007. The proposed amendment to Section R414-61-2 which adds the "New Choices Waiver" incorporation is under DAR No. 29673 in this issue, April 1, 2007, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety. The replacement program under the 1915(c) home and community-based services waiver is implemented in a separate, companion rule filing. (DAR NOTE: The proposed new Rule R414-307 that is the "Eligibility for Home and Community-Based Services Waivers" is under DAR No. 29676 in this issue, April 1, 2007, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-1-5

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no budget impact because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.
- ❖ **LOCAL GOVERNMENTS:** There is no budget impact because no local funds are used to provide LTC managed care and local governments are not LTC providers.
- ❖ **OTHER PERSONS:** There is no budget impact because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the repeal of this rule only transfers existing LTC managed care funds to the New Choices Waiver.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule repeal is necessary to stay in compliance with federal law. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: David N. Sundwall, Executive Director

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

~~[R414-507. Medicaid Long Term Care Managed Care.~~

~~R414-507-1. Introduction and Authority.~~

~~—(1) The Medicaid LTC Managed Care program is designed to enable an adult Medicaid recipient who needs a level of care consistent with the need for services provided in a nursing facility to receive an individualized package of services to maintain health and safety in a variety of appropriate service settings.~~

~~—(2) This rule is authorized by Utah Code Section 26-18-3. This program is authorized by 42 USC 1396n(a) and is a component of the Utah Medicaid State Plan. As provided in 42 USC 1396n(a), the state is not out of compliance with the requirements of paragraphs (1), (10) or (23) of 42 USC 1396a solely because the state has entered into a contract with an organization that has agreed to provide care and services in addition to those offered under the State Plan to individuals eligible for medical assistance. The Department may enter into one or more contracts with Medicaid managed care organizations for the operation of projects under the LTC Managed Care program.~~

~~R414-507-2. Definitions.~~

~~—The definitions in R414-1 apply to this rule. In addition:~~

~~—(1) "Care Coordination" is a process where representatives of Medicaid programs serving an individual, and the individual's attending physician when possible, participate in the exchange of information and service planning to assure that the individual's health and welfare needs are identified, develop a comprehensive service plan, and implement the service plan to achieve integration of care across programs.~~

~~—(2) "Long Term Care" (LTC) means a comprehensive array of services provided to persons of all ages who are experiencing chronic functional limitations due to illness, disability or injury.~~

~~—(3) "LTC Managed Care Project Contractor" is a Medicaid Primary Inpatient Health Plan or a Medicaid Prepaid Mental Health Plan that has contracted with the Medicaid agency to provide a long term care service package as part of its array of covered services.~~

~~—(4) "Minimum Data Set HOME CARE (MDS HC)" is a trademark standardized assessment instrument developed by the nonprofit consortium known as interRAI.~~

~~R414-507-3. Client Eligibility Requirements.~~

~~—(1) Participation in the LTC Managed Care program is limited to individuals who:~~

~~—(a) have been in a medical institution for at least 30 consecutive days as a Medicare or Medicaid patient; or~~

~~—(b) have been in a Medicaid 1915(c) Home and Community-Based Services waiver for at least 30 consecutive days.~~

~~—(2) A client must meet all financial eligibility requirements for institutional care.~~

~~—(3) Consistent with the provisions of 42 USC 1396n(a), individuals enrolled in the LTC Managed Care program remain eligible under 42 USC 1396a(10)(A), regardless of the setting in which the services of the program are delivered.~~

~~R414-507-4. Program Access Requirements.~~

~~—(1) Participation in the LTC Managed Care program is limited to Medicaid recipients who:~~

- (a) require the level of care provided in a nursing facility as determined under in R414-502 of the Utah Administrative Code;
 - (b) are age 18 or older; and
 - (c)(i) reside in a Medicaid certified nursing facility on an extended stay basis;
 - (ii) are on an inpatient status in a licensed Utah medical institution other than a Medicaid certified nursing facility and have been designated by the attending physician for discharge to a nursing facility for an extended stay of 30 days or more; or
 - (iii) are enrolled in a Medicaid 1915c Home and Community-Based Services waiver as an alternative to nursing facility placement and have been determined by the state to require disenrollment from the 1915c Home and Community-Based Services waiver due to health and welfare concerns.
- (2) In the case of acute care hospitals, specialty hospitals, and Medicare skilled nursing facilities, participation is limited to persons who are admitted for the purpose of receiving a medical, non-psychiatric level of care more acute than the Medicaid nursing facility level of care provided in R414-502.
- (3) Persons who meet the intensive skilled level of care as provided in R414-502 are not eligible for participation in the LTC Managed Care program.
- (4) Persons who meet the level of care criteria for admission to an Intermediate Care Facility for the Mentally Retarded as provided in R414-502 are not eligible for participation in the LTC Managed Care program.
- (5) Residents of a nursing facility who have selected the Medicare or Medicaid hospice benefit are eligible to participate in the LTC Managed Care program only if enrollment in the LTC Managed Care program results in the individual's receiving continued hospice care in his or her own home or the home of a family member or personal caregiver.

R414-507-5. Service Coverage.

- (1) An enrollee in the LTC Managed Care program receives medical, mental health, and institutional and home and community-based LTC services to address the individual's health and safety needs.
- (2) The LTC Managed Care program provides the Medicaid State Plan nursing facility service, care coordination, and home and community based long term care services.
- (3) The LTC Managed Care Project Contractor must:
- (i) use the InterRAI Minimum Data Set HOME CARE assessment instrument and other clinical assessments necessary to identify the individual's needs;
 - (ii) develop, in consultation with the individual and the individual's attending physician when possible, a comprehensive written service plan that:
 - (A) addresses identified needs in an appropriate setting;
 - (B) coordinates LTC Managed Care program benefits between all service providers; and
 - (iii) assure implementation of the comprehensive written service plan.
- (4) The LTC Managed Care Project Contractor may not pay for LTC services provided by persons who otherwise have a legal responsibility for providing the care, such as a spouse or legally appointed guardian.
- (5) A resident of a nursing facility who is admitted from a home or community setting is not eligible for the LTC Managed Care program until a 90-day continuous stay has been completed in a Utah nursing facility or a Utah Medicaid enrolled nursing facility in an adjoining state.

- (6) A participant in a Medicaid 1915c Home and Community-Based Services Waiver who is eligible for the LTC Managed Care program in accordance with R414-507-4(1)(c) may enroll in the LTC Managed care program without completing a stay in a Utah nursing facility if the state determines the LTC Managed care program can meet the health and safety needs of the individual in a community setting at the time of enrollment.
- (7) An individual residing in a Medicare skilled unit is not eligible to enroll in the LTC Managed Care program until the full available Medicare Part A benefit for skilled nursing care is exhausted.
- (8) An individual enrolled in the LTC Managed Care program must exhaust all available Medicare Part B benefits and other third party benefits before utilizing comparable services through the LTC Managed care program.

R414-507-6. Freedom of Choice.

- (1) Upon enrollment in the LTC Managed Care program, the individual may choose among the LTC Managed Care Project Contractors serving in the individual's desired service area.
- (2) Upon selecting the LTC Managed Care Project Contractor, the individual is bound by the requirements of the LTC Managed Care program and the Department approved policies and procedures adopted by the LTC Managed Care Project Contractor for operation of the program.
- (3) A LTC Managed Care program enrollee may disenroll from the program at any time with or without cause. A voluntary disenrollment is effective when the enrollee has notified the Department and the Department issues a new Medicaid card that indicates disenrollment on the eligibility transmission.
- (4) An enrollee of the LTC Managed Care program who desires to change LTC Managed Care Project Contractors is subject to the provisions of R414-140.

R414-507-7. Evaluation and Reevaluation of Nursing Facility Level of Care.

- The Department Director, or designee, may initially evaluate, or periodically reevaluate at least annually each LTC Managed Care enrollee to determine whether the individual meets the admission criteria of R414-502.

R414-507-8. Reimbursement for Services.

- (1) Each LTC Managed Care Project Contractor receives a monthly pre-payment per enrollee in an amount established by the Department at the beginning of each state fiscal year.
- (2) The LTC Managed Care Project Contractor must submit a financial report on a Department approved form for the fiscal year reporting period, in accordance with the particular project contract requirements.
- (3) After the conclusion of each fiscal year, the Department conducts a cost settlement with each LTC Managed Care Project Contractor. To conduct the cost settlement, the Department first reviews LTC Managed Care Project Contractor expense records and documentation to determine the amount of allowable program expenses. The Department then compares the allowable program expense amount with the aggregate amount of the prepayments the Department paid the LTC Managed Care Project Contractor during the prior fiscal year. The Department also calculates any financial incentives for which the LTC Managed Care Project Contractor qualifies. Based on these calculations, the Department determines an amount due to or owed by the LTC Managed Care Project Contractor.

R414-507-9. Cost Neutrality.

— (1) Cost effectiveness of the LTC Managed Care program is measured as an aggregate of all enrollees over time. The Department's total expenditures for the LTC Managed Care program and other Medicaid services provided to individuals enrolled in the LTC Managed Care program, shall in any given year, not exceed the amount that would be incurred by the Medicaid program for a comparable population in a nursing facility.

— (2) The LTC Project Contractor must meet each enrollee's assessed needs regardless of the individual's cost or complexity of care. The LTC Project Contractor cannot place an expenditure cap on any enrollee.

R414-507-10. New Project and Project Expansion Proposals.

— (1) Organizations interested in partnering with the Department of Health in a new LTC Managed Care project or to expand the geographical area served by an existing LTC Managed Care project must submit a written project proposal demonstrating the feasibility of the project for consideration by the Department.

— (2) The written project proposal must include as a minimum the following topics to demonstrate the added value that the project will contribute to the LTC Managed Care program and the long term viability of the project for the specific geographical area to be served:

- (a) project purpose, goals and objectives;
- (b) project organizational structure;
- (c) a description of services and supports to be provided and the general sequence in which the various elements of the long term care array will be developed;
- (d) a description of the residential and work settings where services will be delivered;
- (e) a description of the geographical area to be covered;
- (f) a project development and implementation schedule;
- (g) project quarterly growth projections and estimated maximum capacity;
- (h) a description of the target populations;
- (i) a description of the referral network to be accessed to identify potential project participants and the outreach approaches to be utilized to educate the referral network about the project;
- (j) a description of the specific performance indicators to guide the progress of the project and to measure the level of achievement of stated goals and objectives;
- (k) a description of long term care best practices incorporated into the project, that includes a self directed approach to service planning and budgeting for enrollees who have the ability to be actively involved in their health care decisions;
- (l) a financial pro forma statement for the project; and
- (m) a description of other publicly financed programs that the project contractor or partners are involved with that present opportunities to integrate multiple program activities and strengthen common priorities or that pose potential conflicting priorities between programs and how the contributing and conflicting issues will be managed.

— (3) Each proposal must include sufficient information to allow the Department to evaluate the project's ability to operate in accordance with R414-507, to protect the health and safety of persons served through an alternative delivery approach to nursing facility care, and to maintain financial stability.

— (4) The Department will issue a written notice authorizing or denying a proposed project within 90 days of receipt of the written proposal. If the Department issues a written request for additional information, the additional information must be submitted within 30

days of the date of the Department's request and the maximum review time frame is extended to 120 days.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: July 20, 2005
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3]



Human Services, Services for People with Disabilities

R539-5

Self-Administered Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29625

FILED: 03/08/2007, 13:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide standards to make exceptions so spouses can provide services, under limited circumstances, to a spouse who is eligible for services from the Division.

SUMMARY OF THE RULE OR CHANGE: Spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to 05/17/2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one of the spouses die. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of \$15,000 during the State Fiscal year, which begins July 1st and ends the following year on June 30th.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-5-102 and 62A-5-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no cost savings under this rule because the number of individuals who are granted an exception by this rule will never increase because only those spouses who are currently granted this exception may continue to be reimbursed for services. No new individuals shall be granted this exception.

❖ LOCAL GOVERNMENTS: Local governments do not provide this or similar services and will not have their budgets impacted.

❖ OTHER PERSONS: Other persons may be affected because a spouse providing services to a spouse eligible for services from the Division may do so in place of services provided by a private contractor. However, since no new individuals will be granted this exception, the impact should be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons under this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses should be minimal since no new individuals will be granted this exception and spouses providing services to a spouse eligible for Division services should remain at the current level. Lisa-Michelle Church, Executive Director

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:
Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: George Kelner, Director

R539. Human Services, Services for People with Disabilities.

R539-5. Self-Administered Services.

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Employee" means any individual hired to provide services to a Person receiving Self-Administered Services.

(b) "Fiscal Agent" means an individual or entity contracted by the Division to perform fiscal, legal, and management duties.

(c) "Grant" means a budget allocated by the Division to the Person through which Self-Administered Services are purchased.

(d) "Grant Agreement" means a written agreement between the Person and the Division that outlines requirements the Person must follow while receiving Self-Administered Services.

(e) "Self-Administered Services" means a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the current State of Utah Home and Community Based Services Waivers (Medicaid 1915C) [~~dated July 1, 2003 for mental retardation and related conditions and July 1, 2004 for acquired brain injury~~]. Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of \$15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

(a) Complete and sign Form W-4;

(b) Complete and sign Form I-9 (including supporting documentation);

(c) Complete and sign the Employee Agreement Form;

(d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and

(e) Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, UCA 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4-412 prohibiting abuse.

(f) Review the Person's Support Book.

(g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).

(h) If applicable, be trained on the Person's Behavior Support Plan.

(i) Complete and sign the Application for Certification Form.

KEY: disabilities, self administered services

Date of Enactment or Last Substantive Amendment: ~~May 17, 2005~~ **2007**

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103



Insurance, Administration

R590-157

Surplus Lines Insurance Premium Tax and Stamping Fee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29684

FILED: 03/15/2007, 14:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to clarify that a fee charged for "courtesy

filings" of a surplus lines policy is not included in the definition of surplus lines policy premium.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule are being made to clarify that a fee charged for "courtesy filings" of a surplus lines policy is not to be included in the definition of surplus lines policy premium.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-3-303, and 31A-15-103

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The changes to this rule clarify that the courtesy filing fee is not to be included in the policy premium when calculating the premium tax, which is .0425, and stamping fee, which is .0025. Few producers have been including their courtesy filing fee in the policy provision so any impact on the general fund will be minimal. These changes to the rule will have no impact on filings, fees to, or workload of the department.

❖ **LOCAL GOVERNMENTS:** This rule will have no impact on local city and county governmental entities. It will have minimal impact on the premium tax that goes into the state's general fund.

❖ **OTHER PERSONS:** The changes to this rule clarify that the courtesy filing fee is not to be included in the surplus lines premium when calculating the premium tax and stamping fee. Neither the department nor the Surplus Lines Association know how often the courtesy fee was charged last year nor how often it was included in the premium when the premium tax and stamping fees were calculated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule clarify that the courtesy filing fee is not to be included in the surplus lines premium when calculating the premium tax and stamping fee. Neither the department nor the Surplus Lines Association know how often the courtesy fee was charged last year nor how often it was included in the premium when the premium tax and stamping fees were calculated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have minimal impact on insurance producers and insurers.

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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-157. Surplus Lines Insurance Premium Tax and Stamping Fee.

R590-157-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions set forth in Section 31A-1-301, and the following:

A. "Courtesy filing" means a surplus lines policy filing done by a resident surplus lines producer on behalf of a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

B. "Courtesy filing fee" means a fee charged by the resident surplus lines producer for doing a courtesy filing for a resident or non-resident producer whose licensure does not include a surplus lines line of authority.

C. "Stamping fee" means a percentage of policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11).

~~B.]D.~~ "Surplus Line Association" or "Association" means the Surplus Lines Association of Utah.

~~C.]E.~~ "Surplus lines producer" means a person licensed under Subsection 31A-23a-106(1)(i) to place insurance with eligible unauthorized insurers in accordance with Section 31A-15-103.

~~D.]F.~~ "Surplus lines insurer" means an unauthorized foreign or alien insurer subject to the limitations and requirements of Section 31A-15-103, doing business in this state through surplus lines producers, and included on the commissioner's "recognized" list.

~~E.]G.~~ "Surplus lines premium" means the monetary consideration for an insurance policy procured from an unauthorized insurer, and includes policy fees, membership fees, required contributions, or monetary consideration, however designated.

~~F.]H.~~ "Surplus lines premium tax" means, as prescribed by Section 31A-3-301, a tax of 4-1/4% of gross surplus lines premiums, less 4-1/4% of return premiums paid to insureds by reason of policy cancellations or premium reductions.

~~G.]I.~~ "Surplus lines transaction" means the placement with a surplus lines insurer of an insurance policy or certificate of insurance. It also means any cancellation, endorsement, audit, or other adjustment to the insurance policy that affects the premium.

R590-157-4. Stamping Fee Amounts.

A. The surplus lines stamping fee is 1/4 of 1% of the policy premium payable for the examination of a surplus lines transaction as required in Subsection 31A-15-103(11)(d).

B. Late surplus lines stamping fee payments may be subject to late fees of 25% of the stamping fee due plus 1 1/2% per month from the time of default until full payment of the fee.

C. A courtesy filing fee is not included as surplus lines premium for the purpose of computing taxes and stamping fees.

KEY: insurance fee, taxes

Date of Enactment or Last Substantive Amendment: ~~October 23, 2003~~ **2007**

Notice of Continuation: February 10, 2003

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-3-303; 31A-15-103



Natural Resources, Wildlife Resources **R657-12** Hunting and Fishing Accommodations for Disabled People

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29637

FILED: 03/13/2007, 12:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended due to amendments made four years ago in the 2003 General Session to Section 23-19-1 in H.B. 198. (DAR NOTE: H.B. 198 (2003) is found at Chapter 189, Laws of Utah 2003, and was effective 05/05/2003.)

SUMMARY OF THE RULE OR CHANGE: Provisions are being amended to this rule to bring the rule in line with amendments the legislature made four years ago to Section 23-19-1 that expanded companion hunting to all protected wildlife and defined the requisite disability necessary to qualify for companion hunting. H.B. 198 (2003) made those changes and the specific change was made to Subsection 23-19-1(2)(b)(ii). Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12, and 63-46a-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This amendment allows more accommodations or opportunity for disabled people to participate in small and big game hunting, and makes clarifications. The Division of Wildlife Resources (DWR) has determined that this amendment does not create a cost or savings impact to DWR's budget or the state budget.

❖ **LOCAL GOVERNMENTS:** This amendment allows more accommodations or opportunity for disabled people to participate in small and big game hunting, and makes clarifications. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** This amendment allows more accommodations or opportunity for disabled people to participate in small and big game hunting, and makes

clarification. The amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment allows more accommodations or opportunity for disabled people to participate in small and big game hunting, and makes clarifications. There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-12. Hunting and Fishing Accommodations for ~~Disabled~~ People With Disabilities.

R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63-46a-3, this rule provides the standards and procedures for a ~~disabled~~ person with disabilities to:

- (1) obtain a certificate of registration for taking wildlife from a vehicle;
- (2) obtain a fishing license as authorized under Section 23-19-36(1);
- (3) obtain a certificate of registration to participate in companion hunting;
- (4) obtain a certificate of registration to receive a limited entry season extension;
- (5) obtain a certificate of registration to receive a general deer or elk season extension; or
- (6) obtain a certificate of registration to hunt with a crossbow.

R657-12-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(d) ~~"Quadriplegic"~~ "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to ~~utilize~~ use a legal hunting weapon or fishing device.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must ~~appear in person at a division office and~~ provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take ~~a deer or elk~~ protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take ~~a deer or elk~~ protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-~~2(a)~~ 2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The ~~blind or quadriplegic person~~ hunting or fishing companion must be accompanied by the ~~companion~~ blind, upper extremity disabled or quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the ~~deer or elk~~ protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-~~2(b)~~ 2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-~~2(a)~~ 2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-~~2(b)~~2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-~~2(a)~~2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

KEY: wildlife, wildlife law, disabled persons

Date of Enactment or last Substantive Amendment: ~~April 15, 2005~~2007

Notice of Continuation: September 20, 2002

Authorizing, and Implemented or Interpreted Law: 23-20-12; 63-46a-3



Natural Resources, Wildlife Resources

R657-22-3

Application for a Certificate of Registration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29635

FILED: 03/13/2007, 12:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to clarify Section R657-22-3 that Commercial Hunting Area Certificate of Registration fees must be paid annually.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that Commercial Hunting Area Certificate of Registration fees must be paid annually.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-5 and 23-17-6

ANTICIPATED COST OR SAVINGS TO:

❖**THE STATE BUDGET:** The amendment only clarifies an existing requirement. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since changes will not increase workload and can be carried out with existing budget.

❖**LOCAL GOVERNMENTS:** The amendment only clarifies an existing requirement. The filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

❖**OTHER PERSONS:** The amendment only clarifies an existing requirement. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment only clarifies an existing requirement. The Division determines that there are no additional compliance costs associated with the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-22. Commercial Hunting Areas.

R657-22-3. Application for a Certificate of Registration.

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located by May 1.

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) County Recorder Plat maps, or equivalent maps, dated by receipt of purchase within 30 days of submitting the CHA application, depicting boundaries and ownership of all property within the CHA; and

(ii) U.S. Geological Survey topographical maps, no smaller scale than 7 1/2 minutes, with the proposed boundaries clearly marked;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to 45 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

KEY: game birds, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: ~~December 22, 2006~~ 2007

Notice of Continuation: June 3, 2002

Authorizing, and Implemented or Interpreted Law: 63-46b-5; 23-17-6

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Natural Resources, Wildlife Resources R657-27 License Agent Procedures

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 29636

FILED: 03/13/2007, 12:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add provisions allowing the division to consider providing hardware assistance for locations it determines will help serve the public. The amendment removes the distinction between electronic license agent and manual license agent, and makes technical corrections.

SUMMARY OF THE RULE OR CHANGE: Section R657-27-4 is being amended to allow some flexibility in providing hardware assistance for locations the division determines will help serve the public. The amendment removes the distinction between electronic license agent and manual license agent, and makes technical corrections throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-15

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The amendment gives the division greater flexibility in dealing with license agents. The Division of Wildlife Resources (DWR) determines that there is not a cost or savings impact to the state budget or DWR's budget associated with this amendment.

❖ **LOCAL GOVERNMENTS:** The amendment only allows for greater flexibility in dealing with the agents. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** The amendment allows the division greater flexibility in dealing with license agents. DWR determines that there are no compliance costs associated with this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the amendment only allows greater flexibility in dealing with license agents, DWR determines that there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-27. License Agent Procedures.

R657-27-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
 - (a) "Agent hunting and fishing licenses online" means the web application that allows an ~~online~~ license agent to print wildlife documents on license paper.
 - (b) "Bond" means a surety bond to remain in full force and effect continuously and indefinitely, until canceled.
 - (c) "Computer hardware" means electronic equipment the division deems necessary to perform the minimum required functions of the division's online license sales application system that may include a central processing unit, cables, or router.
 - (d) "Deactivated license agent or deactivated" means a license agent that holds license agent status but is temporarily precluded from selling wildlife documents for failure to comply with this rule or any other laws or agreements regulating license agent activity.
 - (e) "License agent" means a person authorized by the division to sell wildlife documents.
 - (f) "License Agent Application" means a written request to be authorized by the division to sell wildlife documents.
 - (g) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.
 - (h) "License paper" means paper designated ~~[paper issued]~~ by the division for the sole purpose of printing specified licenses or permits through the agent hunting and fishing licenses online sales system.
 - (i) "Location" means the building or structure from which a license agent is authorized to sell wildlife documents.
 - (j) ~~"Online license agent" means a person authorized by the division to sell wildlife documents through the agent hunting and fishing licenses online sales system.~~
 - ~~(k)~~ "Presiding officer" means the hearing officer designated by the director of the division.

~~(k)~~ "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

~~(m)~~ (l) "Wildlife documents" means licenses, permits and tags preprinted by the division or printed by the ~~online~~ license agent on license paper.

R657-27-3. License Agent Application.

- (1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office or downloaded from the division's website.
- (2) License agent applications shall be considered from any person located within Utah or in close proximity to Utah.
- (3) Applications shall be processed within 30 business days.
- (4) The applicant must:
 - (a) complete and return the application to the Licensing Section in the Salt Lake Office; and
 - (b) pay a non refundable application fee.
- (5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.
- ~~(6)(a) All new license agent applicants, and existing license agents must become online license agents by December 1, 2005.~~
- ~~(b)~~ The division may provide assistance to new and existing ~~[license agents in becoming online]~~ license agents as provided in Subsection R657-27-4(1)(b),(1)(c) or (1)(d).

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

- (1) A new license agent must meet the criteria provided in Subsection (a), except as provided in Subsection (b) or (c).
 - (a) A license agent must:
 - (i) successfully complete a division-sponsored training session;
 - (ii) provide and maintain approved computer hardware capable of processing and printing licenses and permits in a permanent, clear, and a legible manner; and
 - (iii) sign a supplemental wildlife documents sales agreement as provided in Section R657-27-16.
 - (b) The division may provide a printer as required in Subsection (a)(ii) provided the license agent's projected sales is estimated to be at least one-thousand dollars per year or a satisfactory volume per year as determined by the division.
 - (c) The division may provide assistance up to one-thousand dollars for computer hardware required in Subsection (a)(ii) provided:
 - (i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and
 - (ii) the estimated sales revenue from the proposed location will recover the cost of the computer hardware within six months of providing the computer hardware.
 - (d) The division may provide assistance for a data line connection and the associated ongoing expense of the data line connection provided:
 - (i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and
 - (ii) the division anticipates the monthly cost for the data line connection to be less than 20[%] percent of the estimated monthly collection from the license agent.

(e) The division shall annually review the ongoing expenses for a data line connection to ensure the license agent is eligible for the assistance allowed in Subsection (d).

(f) A license agent must remain a license agent for the division for at least six months to retain the computer hardware or printer as provided in Subsections (b) or (c).

(2) Use of the agent hunting and fishing licenses online system must be used in compliance with the users manual provided by the division.

(3) The division shall send the applicant a written notice stating the reason for denial.

(4) If the division approves the license agent application, a license agent authorization shall be sent to the applicant.

(5) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(6)(a) The license agent authorization must be received by the Licensing Section in the [] Salt Lake Office within 30 business days of being mailed to the applicant.

(b) A separate application, application fee, and license agent authorization is required for each location where wildlife documents will be sold.

(7) Each license agent authorization shall be established for a term of five years.

(8) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;

(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was deactivated or revoked by the division as a license agent;

(d) The applicant provided false information on the license agent application;

(e) The applicant has been convicted of a wildlife related violation; or

(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

R657-27-5. Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable bond payable to the division in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable bond in an amount determined by the division after providing the license agent 30 business days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent 30 business days written notice.

R657-27-6. License Agent Obligations.

(1) Each license agent must:

(a) comply with the requirement and provisions provided in Section 23-19-15;

(b) keep wildlife documents or license paper secure and out of the public view during business hours;

(c) keep wildlife documents or license paper in a safe or locked cabinet after business hours;

(d) display all signs and distribute proclamations provided by the division;

(e) have all sales clerks and management staff available for sales training;

(f) maintain a License Agent Manual provided by the division and make it available to the license agent's staff, including supplemental manuals and addendums; and

(g) retain agent copies of licenses and permits for 12 months following the month of sale, at which time agent copies of licenses and permits must be destroyed by burning, shredding or submitting to the division.

(2) If a license agent becomes delinquent on reporting or remission of proceeds Subsection (2)(a), (2)(b) or (2)(c) shall apply.

(a) The license agent must immediately submit all reports when due along with the remission of required proceeds.

(b) If the license sales report is submitted in accordance with Subsection (1)(a) but funds are not submitted with the report then the following applies:

(i) A repayment plan may be structured in an agreement that will allow repayment in equal monthly installments for up to six months at a payment level that will provide repayment of the principal along with an annual percentage interest rate (APR) of 12[%] percent. This APR shall be calculated back to the date that the payment should have been received in accordance with Subsection (1)(a);

(ii) If the ongoing monthly report and proceed submissions are not received for the future months, from the month of the agreement in accordance with Subsection (1)(a), then any agreement made in Subsection (2)(b)(i) may be terminated and all outstanding balances and accrued interest shall become due immediately, along with a penalty of 20[%] percent of the unpaid balance. Interest shall continue to accumulate on any unpaid balance, including the penalty, at the APR;

(iii) Activate the bond and collect all remaining funds in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent; or

(iv) If the license agent enters into an agreement with the division as provided in Subsection (2)(b)(i), and then violates the terms of that agreement, the division may begin the revocation process in accordance with Section R657-27-11.

(c) Nothing in this rule shall be construed as requiring the division to offer a repayment agreement to a license agent delinquent on report submissions or proceeds remissions before taking action to revoke license agent status.

(d) If the license agent does not submit a monthly report as provided in Subsection (1)(a), or if the license agent does not immediately pay the delinquent funds or fails to execute and abide by the terms of a repayment agreement as provided in Subsection (2)(b), the division may:

(i) change the license agent's status to deactivated;

- (ii) withhold issuing additional wildlife document inventory;
 - (iii) withhold access to the agent hunting and fishing licenses online sales system;
 - (iv) collect the license agent's inventory of wildlife documents and license paper, and determine unaccounted inventory of wildlife documents and license paper;
 - (v) assess a monetary penalty for each wildlife document and piece of license paper unaccounted for as provided in Subsection R657-27-7(2);
 - (vi) take action to revoke license agent status;
 - (vii) create a receivable from the license agent that equals the amount due as determined in Subsection (1)(a) and charge a 20[~~%~~] percent late penalty on the entire balance, and accumulate the unpaid balance, included penalties, at a 12[~~%~~] percent APR from the due date of the earliest date in which a license agent failed to submit a report in accordance with Subsection (1)(a); or
 - (viii) activate the bond and collect all available funds remaining in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent.
- (e) A deactivated license agent that has not been revoked may regain active status by paying all due balances in full, and providing a bond, provided the license agent is otherwise in compliance with this rule or any other laws or agreements regulating license agent activity.

R657-27-7. Lost or Stolen Wildlife Documents or License Paper.

- (1) The license agent must act as bailee for purposes of safeguarding all wildlife documents or license paper issued to the license agent by the division.
- (2)(a) The license agent must remit full payment, less remuneration, to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.
- (b) The [~~online~~] license agent must remit full payment for lost, stolen, or unaccounted license paper in the amount of \$10 per sheet of license paper.
- (c) Payments made to the division for any wildlife documents or license paper that are lost or unaccounted may be refunded if the wildlife documents or license paper are returned to the Licensing Section in the Salt Lake office by June 30 of the current state fiscal year.

R657-27-10. Change of Business Ownership.

- (1) License agent authorizations are nontransferable.
- (2) The license agent must notify the division of any anticipated change of ownership of the license agent's business at least 30 business days prior to the change of ownership.
- (3) Prior to change of ownership, unless otherwise directed by the division in writing, the license agent must:
 - (a) remit payment for all wildlife documents sold minus remuneration; and
 - (b) return all unsold wildlife documents or license paper to the division.

R657-27-13. Renewal Application of a License Agent Authorization.

- (1) At the end of the five-year term of authorization to sell wildlife documents, the division shall provide a renewal notice and renewal application to the license agent.

- (2)(a) The license agent must complete and return the renewal application to the Licensing Section in the Salt Lake Office within 30 business days of being mailed to the license agent.
- (b) The division will not charge a renewal application fee.
- (3) If the license agent fails to return the renewal application within 30 business days of being mailed, the division may:
 - (a) confiscate wildlife document inventories;
 - (b) not provide new wildlife document inventories; or
 - (c) interrupt use of the agent hunting and fishing licenses online system.
- (2) The division may deny a license agent renewal application for any of the reasons provided in Section R657-27-4(1).

R657-27-15. Distribution of Preprinted Licenses and Permits.

- (1) The division shall determine, in its sole discretion, the types and numbers of preprinted licenses and permits issued to a license agent.
- (2) Certain licenses or permits may not be available for sale by a license agent [~~, unless a license agent becomes an online license agent in accordance with Section R657-27-16].~~

KEY: licensing, wildlife, wildlife law, rules and procedures
Date of Enactment or Last Substantive Amendment: ~~July 2, 2004~~ 2007
Notice of Continuation: April 10, 2002
Authorizing, and Implemented or Interpreted Law: 23-19-15

◆ ————— ◆

Natural Resources, Wildlife Resources
R657-44-6
Damage to Livestock Forage on Private Land

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 29638
 FILED: 03/13/2007, 12:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Provisions are being amended in this rule to allow an increase of mitigation permits issued to landowners.

SUMMARY OF THE RULE OR CHANGE: Section R657-44-6 is being amended to allow for more than 20 mitigation permits per landowner on management units where estimated populations are significantly over objective.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-16-2, 23-16-3, 13-16-3.1, 23-16-3.2, and 23-16-4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Since the amendment increases the amount of mitigation permits available to a landowner only on management units where populations are significantly over objective the Division of Wildlife Resources (DWR) determines

that the amendment does not create a cost or savings impact to the state budget or DWR's budget.

❖LOCAL GOVERNMENTS: The amendment increases the amount of mitigation permits available to a landowner only on management units where populations are significantly over objective. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖OTHER PERSONS: The amendment increases the amount of mitigation permits available to a landowner only on management units where populations are significantly over objective. These amendments do not impose any requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the amendment increases the amount of mitigation permits available to a landowner only on management units where populations are significantly over objective, DWR determines that there are no compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-44. Big Game Depredation.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, or the Wildlife Resources Code.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

KEY: wildlife, big game, depredation

Date of Enactment or Last Substantive Amendment: July 2, 2003

Notice of Continuation: July 3, 2002

Authorizing, and Implemented or Interpreted Law: 23-16-2; 23-16-3; 23-16-3.5

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Public Safety, Fire Marshal

R710-1

Concerns Servicing Portable Fire Extinguishers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29677

FILED: 03/15/2007, 11:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board authorized by majority vote on 01/09/2007 to amend Rule R710-1 by updating an incorporated reference and making certain corrections to the rule.

SUMMARY OF THE RULE OR CHANGE: The summary of the rule changes are as follows: 1) in Subsection R710-1-1(1.1), the Board proposes to update NFPA, Standard 10, Standard for Portable Fire Extinguishers, from the currently adopted 2002 edition to the 2007 edition; and 2) in Section R710-1-8, several deletions are proposed to make the rule consistent with the newly adopted incorporated reference.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA) Standard 10, Standard for Portable Fire Extinguishers, 2007 edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There would be an aggregate anticipated cost of approximately \$165 to purchase the newly adopted regulatory standard.

❖LOCAL GOVERNMENTS: There would be no aggregate anticipated cost or savings to local government because this rule change does not affect the functioning of local government.

❖OTHER PERSONS: There would be an aggregate anticipated cost to other persons of approximately \$3,300 to purchase the needed standard. There are approximately 100 portable fire extinguisher servicing companies in the state that would need to purchase at least one updated standard for each company. There could be further purchases of the standard per company if the company desires to do so.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost for affected persons would be approximately \$33 per standard to purchase the 2007 edition of NFPA Standard 10.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact on businesses would be the cost to purchase the newly updated NFPA 10 at a cost of \$33 per standard. It is normally the consent of the industry to use the most up to date standard available. Scott T. Duncan, Commissioner

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-1. Concerns Servicing Portable Fire Extinguishers.

R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, [2002]2007 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

~~8.5 Class K Portable Fire Extinguishers
NFPA, Standard 10, Section 2-3.2 and Section 2-3.2.1, 1998 edition, is deleted and replaced with the following:~~

~~8.5.1 Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.~~

] 8.5[~~2~~] Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.[

~~8.6 NFPA, Standard 10, Section 6.3.1 is amended to add the following: Fire extinguishers that are connected to a supervised listed electronic monitoring system are allowed to have the maintenance intervals extended to three years.]~~

KEY: fire prevention, extinguishers

Date of Enactment or Last Substantive Amendment: [~~September 7, 2006~~] **May 8, 2007**

Notice of Continuation: June 10, 2002

Authorizing, and Implemented or Interpreted Law: 53-7-204

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Public Safety, Fire Marshal R710-4-3 Amendments and Additions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29683

FILED: 03/15/2007, 13:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 03/13/2007 in a regularly scheduled Board meeting and voted unanimously to make some rule amendments to the currently adopted rule.

SUMMARY OF THE RULE OR CHANGE: The proposed rule amendments are as follows: 1) in Subsection R710-4-3(3.3.3.3), the Board proposes to amend the currently adopted fire alarm wiring standards to be consistent with the newly adopted NFPA 72, Fire Alarm Code; and 2) in Subsection R710-4-3(3.3.3.4), the Board proposes to amend the fan shut down requirement and require what is required in the International Mechanical Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because these proposed amendments will not produce a monetary cost or savings to state government.

❖ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed amendments are not regulated by local government.

❖ **OTHER PERSONS:** There is no aggregate anticipated cost or savings to other persons because these proposed amendments will not produce a monetary cost or savings to other persons and provide needed clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons for the enactment of these proposed rule changes and are clarifying in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses for the enactment of these proposed rule amendments. Scott T. Duncan, Commissioner

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

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R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-3. Amendments and Additions.

3.1 Fire Drills

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have a fire drill conducted at least every two months, to a total of four fire drills during the nine-month school year. The first fire drill shall be conducted within 10 days of the beginning of classes.

f. A-3 occupancies in academic buildings of institutions of higher learning are required to have one fire drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

3.2 Door Closures

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.3 Fire Protection Systems

3.3.1 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.3.2 Water Supply Analysis

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

3.3.3 Fire Alarm Systems

3.3.3.1 Required Installations

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as ~~a Class A circuit in accordance with the following style classifications~~ follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed ~~Style D~~ Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed ~~Style Z~~ Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

3.3.3.4 Fan Shut Down

3.3.3.4.1 ~~The fan shut down [relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset]~~ shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

KEY: fire prevention, public buildings

Date of Enactment or Last Substantive Amendment: ~~January 9, 2007~~ May 8, 2007

Notice of Continuation: June 12, 2002

Authorizing, and Implemented or Interpreted Law: 53-7-204



Public Safety, Fire Marshal R710-9 Rules Pursuant to the Utah Fire Prevention Law

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 29702
FILED: 03/15/2007, 23:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on 03/13/2007 and voted unanimously to amend Rule R710-9. Two standards that are incorporated by reference were updated to newer editions and several amendments were adopted to amend the fire alarm code and make it consistent with the needs of the State of Utah.

SUMMARY OF THE RULE OR CHANGE: The summary of rule changes are as follows: 1) in Subsection R710-9-1(1.5.6), the Board proposes to adopt the 2007 edition of NFPA Standard

72, National Fire Alarm Code; 2) in Subsection R710-9-1(1.5.8), the Board proposes to adopt the 2006 edition of NFPA Standard 160, Standard for Flame Effects Before an Audience; 3) in Subsection R710-9-6(6.6.10), the Board proposes to correct the reference for parking garages and the addition of "accessory to" rather than beneath an R-3 occupancy; and 4) in Subsection R710-9-6(6.11), the Board proposes to make several amendments to NFPA Standard 72, National Fire Alarm Code, that makes the fire alarm code correct for the requirements of prompt notification in the event of fire.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA) Standard 72, National Fire Alarm Code, 2007 edition; and the National Fire Protection Association (NFPA) Standard 160, Standard for Flame Effects Before an Audience, 2006 edition

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The aggregate anticipated cost to State budget would be approximately \$600 to purchase the updated regulatory standards.

❖LOCAL GOVERNMENTS: The aggregate anticipated cost to local government would be approximately \$80 per set of the standards that are incorporated by reference. The compilation of an aggregate cost is impossible to calculate due to the unknown number of fire departments that would purchase the regulatory standards and the total amount each department would purchase.

❖OTHER PERSONS: There would be an anticipated cost to Other persons of approximately \$80 to purchase the regulatory standards. An aggregate cost of these purchases is unknown due to the total number of people who would purchase the standards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of approximately \$80 per set of the regulatory standards. There could be a compliance cost of approximately \$2,000 to \$4,000 for the fire alarm designers that are not National Institute for Certification in Engineering Technologies (NICET), Level II certified. This would be a very rare occurrence if the designer could not satisfy the other two stated requirements. In the previous edition, the designer was only required to be "qualified" rather than meet specific standards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses would be approximately \$80 to purchase the updated standards that are incorporated by reference. There would also be the rare occasion that a fire alarm designer would have to meet the NICET, Level II qualifications if not able to meet the other two requirements as stated in Compliance costs. Scott T. Duncan, Commissioner

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention Law.

R710-9-1. Title, Authority, and Adoption of Codes.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing amendments and additions to the adopted codes, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 International Fire Code (IFC), 2006 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2006 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2005 edition, as adopted by the Uniform Building Standards Act, Title 58. Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Code", that reference shall be replaced with "National Electric Code".

1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, [2002]2007 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2006 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, [2004]2006 edition, except as amended by provisions listed in R710-9-6, et seq.

1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 International Fire Code - Administration

6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 International Fire Code - Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 International Fire Code - General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".

6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 International Fire Code - Emergency Planning and Preparedness

6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

6.5 International Fire Code - Building Services and Systems

6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service.

6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 International Fire Code - Fire Protection Systems

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as built") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as built") that document all aspects of a fire protection system as installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following: The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be

provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.4.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m²) ~~located beneath~~ accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The

Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that

continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm) shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add the following at the end of the section: The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.9.2 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

6.9.3 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

6.10 International Fire Code - Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".

6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

6.11 National Fire Protection Association

6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.11.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm

systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

KEY: fire prevention, law

Date of Enactment or Last Substantive Amendment: ~~March 12, 2007~~ **May 8, 2007**

Notice of Continuation: June 12, 2002

Authorizing, and Implemented or Interpreted Law: 53-7-204

◆ ————— ◆

Public Safety, Fire Marshal

R710-11

Fire Alarm System Inspecting and Testing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29701

FILED: 03/15/2007, 22:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 03/13/2007 in a regularly scheduled Board meeting, and voted unanimously to amend Rule R710-11. Two standards that are incorporated by reference were updated to a newer edition and several amendments were adopted to amend the fire alarm code and make it consistent with the needs of the State of Utah.

SUMMARY OF THE RULE OR CHANGE: The summary of rule changes are as follows: 1) in Subsection R710-11-1(1.1), the Board proposes to adopt the 2007 edition of NFPA Standard 72, National Fire Alarm Code; 2) in Subsection R710-11-1(1.2), the Board proposes to adopt the 2006 edition of the International Fire Code; and 3) in Subsection R710-11-6(6.5), the Board proposes to make several amendments to NFPA Standard 72, National Fire Alarm Code, that makes the fire alarm code correct for the requirements of prompt notification in the event of fire. Some of the amendments involved the addition of items that were deleted from the 2002 edition. Other changes include redefined meanings and changes in skills and certifications to design and install fire alarm systems.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Fire Protection Association (NFPA) Standard 72, National Fire Alarm Code, 2007 edition; and the International Fire Code (IFC) as published by the International Code Council, 2006 edition

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The aggregate anticipated cost to the State budget would be approximately \$1,500 to purchase the updated regulatory standards.

❖ **LOCAL GOVERNMENTS:** There is an aggregate anticipated cost to local government of approximately \$120 to purchase both regulatory standards. The compilation of an aggregate cost for all local government agencies is impossible to calculate due to the unknown number of fire departments that would purchase the standards and the unknown number of copies each fire department would purchase.

❖ **OTHER PERSONS:** There would be an aggregate anticipated cost to other persons of approximately \$2,250 to purchase the fire alarm standard. Currently, there are approximately 45 individuals certified to inspect and test fire alarm systems. Very few certified individuals would purchase the International Fire Code for usage in the inspecting and testing of fire alarm systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of approximately \$120 for each person to purchase the above stated incorporated references. On a rare occasion, there could be a \$2,000 to \$4,000 cost for fire alarm designers if the designer would now have to become a National Institute for Certification in Engineering Technologies (NICET), Level II certified to design instead of the former "qualified" statement in the previous edition.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact to businesses would be approximately \$120 to purchase the updated incorporated references. As stated above, there could be a substantial investment required to have fire alarm designers meet the NICET, Level II certification level. Scott T. Duncan, Commissioner

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

PUBLIC SAFETY
FIRE MARSHAL
Room 302
5272 S COLLEGE DR
MURRAY UT 84123-2611, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Brent Halladay at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-11. Fire Alarm System Inspecting and Testing.****R710-11-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test fire alarm systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, ~~[2002]~~2007 edition, except as amended by provisions listed in R710-11-6, et seq.

1.2 International Fire Code (IFC), ~~[2003]~~2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-11-6, et seq.

1.3 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-11-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency.

Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section 3.1 of these rules.

~~[— 6.3 Accepted Forms.~~

~~— The form listed in NFPA, Standard 72, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.~~

] 6.[4]3 New Systems.

Newly installed fire alarm systems are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

6.[5]4 Retroactive Installation of Automatic Fire Alarm Systems.

IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.5 National Fire Protection Association

6.5.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.5.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

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6.5.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.5.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.5.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.5.6 NFPA 72, Chapter 4, Section 4.5.2.1, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.

6.5.7 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.5.8 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.5.9 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.5.10 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

KEY: fire alarm systems

Date of Enactment or Last Substantive Amendment:
~~[November 8, 2006]~~ **May 8, 2007**

Authorizing, and Implemented or Interpreted Law: 53-7-204

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**Workforce Services, Employment
Development
R986-100-114a
Determining When a Document is
Considered Received by the
Department**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 29700
FILED: 03/15/2007, 17:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change some policy and clarify and make uniform Department practice in determining when documents are filed.

SUMMARY OF THE RULE OR CHANGE: Department policy provides the post mark date will determine when some documents are filed with the Department. The Department is moving to a new computer and imaging system which makes keeping record of the post mark date difficult. Additionally, using the post mark date makes it impossible for the Department to issue expedited food stamps in a timely manner. This rule provides the date of receipt will be the day the document is received by the Department provided it is received before 5 p.m. Documents received after 5 p.m. will be considered received the following business day.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no anticipated costs of savings to the state budget as these proposed changes will not affect current funding levels.
- ❖ LOCAL GOVERNMENTS: These changes are made to programs funded primarily with federal money and some state money so there will be no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees or costs associated with this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this change. Clients will need to make sure documents are received by the Department in a timely manner not just post marked by the due date.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. Tani Downing, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

**R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-114a. Determining When a Document is Considered Received by the Department.**

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document received after 5 p.m., including documents received by Fax or email, will be considered received the next day Department offices are open.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment: ~~November 1, 2006~~ 2007

Notice of Continuation: September 13, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.



**Workforce Services, Unemployment
Insurance
R994-202
Employing Units**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE No.: 29678

FILED: 03/15/2007, 11:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to make sure the rule complies with current practices and law.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. Most changes are to bring the rule into compliance with changes in the law and Department procedure. Some of the language in the current rule is archaic and did not reflect the way the Department currently does business in the age of computers. The definitions of business entities were changed to mirror definitions found in the rules and laws for the Department of Commerce and federal regulations. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program and there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs of savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program as it is federally funded. These changes will not impact any employer's contribution rate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-202. Employing Units.

[R994-202-101. General Definition.

— The objective of this rule is to define when a legal entity is the employing unit and define wages specific to the employing unit. When the legal status of an employing unit is in question, the Department may use various sources to determine the status of the employing unit based upon Section 35A-4-313. These sources may include, but are not limited to income tax returns, financial and business records, regulatory licenses, legal documents, and information from the parties involved.

— (1) Proprietorship.

— A business which is owned by a person who has either the legal right and exclusive title, or dominion, or the ownership of that business is a proprietorship. The individual proprietor is the employing unit. The proprietor's services and the services of the proprietor's spouse, minor children under age 21, and parents are exempt from coverage and they are not entitled to receive unemployment benefits based upon proprietorship compensation (see also rule on wages 35A-4-208).

— (2) Partnership.

— The partners are the employing unit. The partners' services are exempt from unemployment coverage and they are not entitled to receive unemployment benefits based upon partnership compensation. If the partnership changes because partners are added or one or more of the partners leaves the partnership, that legal entity ceases to exist at the

point the change occurs, and any remaining entity becomes a different employing unit. (For rule on limited partnerships, see 35A-4-208(11). For rule on family employment, see 35A-4-205(1)(h).)

— (3) Corporation.

— The corporation is the employing unit. Corporations must be registered with the Utah Division of Corporations or similar agency in another state. In the absence of such registration or a dissolution, the department will determine the employing unit based upon the best available information. A change of ownership occurs when substantially all of the corporate assets are sold or transferred. The sale, transfer, or exchange of corporate stock is not a change of ownership. All individuals employed by the corporation, including officers, are employees. Compensation to officers who perform services necessary to the corporation is deemed to be wages. Payments to corporate employees such as dividends, loans and expenses in lieu of compensation for services may be reclassified as wages by the department. Reclassification will be based upon the extent and significance of the work performed and the documentation supporting such payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

— (a) directors fees which are uniform and reasonable;

— (b) reimbursement for expenses which are reasonable and/or documented by receipts;

— (c) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes which are payable upon demand, no payment schedule, are considered wages if the officer is performing necessary services for the corporation;

— (d) documented returns of investment where the officer has loaned or invested money in the corporation.

— (4) Limited Liability Company (LLC).

— A LLC is the employing unit if it is registered and in good standing with the Utah Department of Commerce. The department will consider a LLC that is not registered or in a canceled status to be a proprietorship or partnership, based upon the best information available.

— (a) Members of a LLC are not employees of the LLC and their remuneration is exempt from coverage provided both of the following criteria are met:

— (i) the Limited Liability Company is registered and in good standing with the Department of Commerce as a LLC and;

— (ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization or the operating agreement.

— (b) The department may look beyond the articles of organization or the operating agreement to the actual working relationship to determine the employment status of individuals in the LLC.

— (c) A nonmember manager is an employee of the LLC.

— (d) Legal actions, subpoenas, and court orders will be issued to the ownership of record.

— (e) Assessments and liens will be issued in the name of the LLC, and not against the ownership of record.

— (5) Trust.

— The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. In the absence of such document, the department will determine the employing unit based upon the best available information. A trustee is generally not an employee of the trust unless there is sufficient evidence to demonstrate that the trustee does not control the trust with respect to fiduciary and management responsibilities. A trustee controlled and directed by another party is an employee of the trust. A bankruptcy trustee is not an employee of the bankrupt entity. The trustee is an independent

contractor selected by the creditors and approved by the court. Corporate trustees are employees of the corporation. Their compensation, as that of corporate officers, is subject to unemployment contributions.

—(6) Association.

—An association is a collection or organization of persons or other legal entities who have joined together for a certain common objective.

—(7) Joint Venture.

—A joint venture is a one-time grouping of two or more persons or corporations in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners or corporate officers is not lost in the formation of the joint venture. Services of proprietors or partners are exempt. The services of a corporation's officers are subject.

—(8) Estate.

—An estate established to manage the business activities of a deceased proprietor or partner is the employing unit. The services of the executor or administrator of the estate are not subject to unemployment contributions.

—(9) Temporary Help Company.

—(a)(i) A temporary help company is the employing unit for those workers placed with a client company to fill assignments with a finite ending date in special, unusual, seasonal, or temporary skill shortage situations.

—(ii) A company that provides all or substantially all of the regular, full-time workers of a client company, with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company may be considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is licensed pursuant to the Employee Leasing Company Licensing Act, Section 58-59-101 et seq.

—(b) If the temporary help company implements an action taken by the client to remove a worker from employment, the temporary help company is responsible for that action, whether or not the action is authorized by a written contract, unless the worker continues to be paid by the temporary help company;

—(c) Rule R994-202-103, paragraphs 5(d), Exempt Employment, and 5(e), Benefit Charges, pertaining to employee-leasing companies also apply to temporary help companies.

—(10) Common Paymaster.

—(a) A common paymaster situation exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. Internal Revenue Service rules and determinations related to a common paymaster situation are not controlling but serve as guidelines in the department's determination as to which entity is the employing unit.

—(b) The department will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

—(i) each related company is a corporation;

—(ii) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;

—(iii) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and

—(iv) the employee(s) must be performing concurrent service for some or all of the related companies.

—(e) Employers who wish to report under a common paymaster will need to petition the department in writing for authorization. That authorization will stipulate to the requirements for reporting under a common paymaster, indicating that if at any time, the above criteria are not met, the department authorization is void.

—(d) Employers who have not received department authorization to report as a common paymaster and are reporting as such, may be granted such status for past and future application if the four criteria noted above are satisfied.

—(11) Payrolling.

—(a) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

—(i) who has the right to hire and fire the employee;

—(ii) who has the responsibility to control and direct the employee;

—(iii) for whom the employee performs the service.

—(b) For unemployment contributions purposes, payrolling is not allowed. Exceptions to this provision are noted in the rules pertaining to leasing and temporary service companies and common paymasters.

R994-202-102. Constructive Knowledge of Work Performed.

—(1) General Definition.

—The purpose of Subsection 35A-4-202(1)(d) is to establish who is liable for the employment of an individual hired to assist in performing the work of an employee. In a situation where an individual is employed to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

—(2) Constructive Knowledge.

—An employer is deemed to have constructive knowledge if he should have reasonably known or expected that his employee would engage another individual to assist in performing the work.

—(3) Examples of Actual or Constructive Knowledge.

—(a) The employer who operates a trucking business, employs A to drive a truck to a certain location, unload the truck and return. A hires B to help unload the truck. The following examples show whether the employer is considered to have actual or constructive knowledge of the work performed by B.

—(i) If the employer knows that B is helping A, the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

—(ii) If the employer does not know about B but knows that the unloading A is engaged to perform requires more than one person, the employer has constructive knowledge of the work performed by B and therefore, B is considered to be employed by the employer.

—(iii) The employer tells A to do the work himself, however, A still hires B and the employer finds out but takes no action to prevent B from helping A in the future. In this case the employer has actual knowledge of the work performed by B and therefore, B is considered to be employed by the employer both for past and future work performed. However, if the employer takes action to prevent A from hiring help in the future, then B would not be considered to be employed by the employer even for the work already performed.

—(iv) The employer tells A that he may do the work himself or hire someone to help him. A hires B but the employer is not told and does not know about B. The employer is considered to have constructive knowledge because he knows A might hire B.

~~— (4) Reporting Requirement.~~

~~The employer has a responsibility to report all employment for which he is liable, therefore, the employer in the examples above should require that A report B's employment to him in those situations where the employer had actual or constructive knowledge of B's employment. However, A's failure to report B to the employer does not relieve the employer of the liability for the employment.~~

R994-202-103. Employee Leasing Companies.~~— (1) General Definition.~~

~~Subsection 35A-4-202(1) outlines the procedures for determining when an employee leasing company will be an employer for purposes of the unemployment compensation program. Since all employee leasing companies provide workers to client companies, the following rules establish the criteria set forth for determining an employee leasing company's status as an employer. The rules also establish standards for assessment and collection of unemployment compensation contributions, security bonds to insure payment of contributions, and issues of liability for benefit charges.~~

~~— (2) Criteria for Determination of Status as an Employer.~~

~~(a) Before the employer may be defined by the Employment Security Act as a leasing employer, it must comply with the requirements of Sections 58-59-101 through 58-59-503 of the Utah Code. In the absence of such compliance, the department may choose to hold the "client employer" as the employing unit.~~

~~(3) Those workers who are not covered by a contract between the client company and leasing company remain the employees of the client company.~~

~~(4) If the employee leasing company implements an action taken by the client to remove a worker from employment, the leasing company is responsible for that action, whether or not the action is authorized by a written contract, unless the worker continues to be paid by the leasing company.~~

~~(5) Effect of Determination that Leasing Company is an Employer.~~

~~(a) When an employee leasing company qualifies as an employer under Subsection 35A-4-202(1), it will be subject to all provisions of the Act.~~

~~(b) Individuals excluded from coverage under Sections 35A-4-204 through 35A-4-206 of the Act will continue to be excluded from coverage even though they become "employees" of an employee leasing company. The following are some examples of those who are excluded:~~

~~(i) the proprietor, spouse, minor children, or parents of the proprietor;~~

~~(ii) partners in a business;~~

~~(iii) a patient of a hospital;~~

~~(iv) a student or student spouse at a school, college or university;~~

~~(v) a student as part of a school, college, or university certified training program; and~~

~~(vi) those participating in rehabilitation programs for governmental and non-profit organizations.~~

~~(c) If an employee leasing company does not otherwise qualify for treatment as a reimbursable employer or exempt employer, because it is not a governmental entity, nonprofit entity, or religious entity, it will be considered to be a contributing employer even if the client company could independently qualify for reimbursable or exempt status.~~

~~(d) Services otherwise exempt under the Act based on the nature of service or due to a specific exemption under Section 35A-4-204 through 35A-4-305 would continue to be exempt if such service is~~

~~rendered by an employee leasing company. The following are examples of such services:~~

~~(i) real estate agents, insurance agents and securities brokers but only if they are paid solely by way of commission;~~

~~(ii) certain outside sales people paid solely by way of commission;~~

~~(iii) news carriers;~~

~~(iv) domestic services until \$1000 in cash wages in a calendar quarter are paid to domestic employees supplied to any and all clients;~~

~~(v) agricultural services until \$20,000 in cash wages in a calendar quarter are paid to agricultural employees supplied to any and all clients or 10 or more agricultural employees are supplied in 20 weeks to any and all clients.~~

~~(e) Liability for benefit ratio charges:~~

~~(i) When a client company contracts with a leasing company and the leasing company becomes the employer pursuant to Sections 58-59-101 through 58-59-503 of the Utah Code, the separation of employees from the client company is considered a reduction of force. The client company is not eligible for relief of charges.~~

~~(ii) For purposes of the Utah Employment Security Act, when the contract between a leasing company and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the leasing company is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.~~

~~(6) An employee leasing company which fails to qualify as an employer under Sections 58-59-101 through 58-59-501 and Subsection 35A-4-202(1) will be considered to be the AGENT of the client company. The client company remains the employer of its workers for all purposes of the Employment Security Act.~~

~~(7) Reporting Requirements.~~

~~(a) Any entity which begins to conduct a business as an employee leasing company must register with the department. For general requirements for reporting, see Section R994-312-304. Licensing penalties for failure to file the following forms timely or in the manner prescribed are outlined in Section 58-59-501 et. seq. of the Employee Leasing Company Licensing Act:~~

~~(i) Form 1, Status Report;~~

~~(ii) Form 3, Employer's Contribution Report;~~

~~(iii) Form 3H, Employer's Quarterly Wage List;~~

~~(iv) Form BLS 3020, Multiple Worksite Report.~~

~~(b) Employee leasing companies must, within 30 days of the effective date of a contract with a client, advise the Department of the following information:~~

~~(i) the effective date of the contract; and~~

~~(ii) the client's name, address and employer registration number, if the client is registered with this Department;~~

~~(iii) the client's type of business activity.~~

~~(c) An employee leasing company must, within 30 days following the termination of a contract with a client, advise the Department of the following information:~~

~~(i) the effective date of contract termination;~~

~~(ii) the legal name, address and, if available, the prior employer registration number of the client.~~

~~(d) Each client of an employee leasing company will be assigned a work site account number which is part of the employee leasing company's account number. The employee leasing company is~~

~~required to file an addendum with each quarterly "Employer's Contribution Report." The addendum must include:~~

~~— (i) the client's name, site location address and work site account numbers;~~

~~— (ii) the total amount of payroll paid during the quarter for each site location; and~~

~~— (iii) the total number of employees working at each site location during the quarter.~~

~~— (8) The Department may directly contact employee leasing companies or their clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.~~

~~— (9) Bonding/Contribution Payment Requirements:~~

~~— (a) A licensed leasing company may be required to post a bond or make monthly contribution payments pursuant to R994-308-103.~~

~~— (b) A leasing company which is not properly licensed under Section 58-59-101 through 58-59-501 of the Employee Leasing Company Licensing Act but continues to operate as such will be required to post a bond or make monthly contribution payments until the Utah Department of Commerce issues a cease and desist order, at which time the leasing company will no longer be considered an employer.~~

~~— (c) The bond amount will be as prescribed by R994-308-104.~~

~~— (d) Monthly contribution payments will be due by the 6th day of the following month.~~

~~— (e) If an employer fails to post a bond or make monthly contribution payments, the department will petition the court to enjoin the leasing company from hiring employees.~~

~~— (10) The rules pertaining to "common paymaster," Section R994-202-101(10) and "payrolling," R994-202-101(11) do not apply to leasing companies who are in compliance with the Employee Leasing Company Licensing Act, Sections 58-59-101 through 58-59-501.]~~

R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

(1) Sole Proprietorship.

A sole proprietorship is a legal entity that is owned by one person. The sole proprietor is the employing unit. The sole proprietor's services are exempt from coverage pursuant to rule R994-208-103(1)(j). The services of the sole proprietor's spouse, children under age 21, and parents are also exempt from coverage and those individuals are not entitled to unemployment benefits based on the compensation received from the sole proprietorship.

(2)(a) Partnership.

A partnership is a legal entity composed of two or more persons or business entities that agree to contribute money, assets, labor, or skills to the business. Each partner shares the profits, losses, and management of the business and each partner is personally and wholly liable for debts of the partnership. The partners are the employing unit. The partners' services are exempt from unemployment coverage and the partners are not entitled to unemployment benefits based on compensation received from the partnership pursuant to rule R994-208-103(1)(k). The services of individuals working for partners who are also employing units, such as corporations and limited liability companies, are subject or

exempt as provided under this section. If partners are added or one or more of the partners leaves the partnership, the partnership ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. Rule R994-205-102(2) explains partnership family employment that is exempt from coverage.

(b) Limited Partnership (LP) and Limited Liability Partnership (LLP).

LPs and LLPs are partnerships composed of one or more general partners and one or more limited partners. The general partners manage the business and share fully in its profits and losses. Limited partners share in the profits of the business, but their losses are limited to the extent of their investment. The general partner's services are exempt from unemployment insurance coverage, but any payments to limited partners for services are wages subject to unemployment insurance contributions pursuant to rule R994-208-103(1)(k).

(3) Corporation.

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit. Corporations must be registered and in good standing with the Utah Department of Commerce. If a corporation is not registered or is in an expired status, it is treated as a proprietorship or partnership, based upon the best available information.

(a) A change of ownership occurs when the corporate assets are sold or transferred according to successorship rule R994-303-106. The sale, transfer, or exchange of corporate stock is not a change of ownership except as specified in rule R994-304-101.

(b) All individuals employed by the corporation, including officers, are employees of the corporation. Compensation to officers who perform services for the corporation is considered wages. Payments to corporate employees of dividends, loans, property distributions, and expenses in lieu of compensation for services may be reclassified as wages by the Department based on the extent and significance of the work performed and the documentation supporting the payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

(i) directors fees that are uniform and reasonable;

(ii) reimbursement for expenses that are reasonable and documented. The Department may require receipts to document questionable expenses. Section R994-208-103, Payments Not Considered to be Wages, contains additional information on expense reimbursements;

(iii) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; or

(iv) documented return of an investment where the officer has loaned money to, or invested money in, the corporation.

(4) Limited Liability Company (LLC).

A LLC is a legal entity that combines the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. The LLC is the employing unit and must be registered and in good standing with the Utah Department of Commerce. A LLC that is not registered or is in an expired status is treated as a proprietorship or partnership, based upon the best available information.

(a) Members of a LLC are not employees of the LLC and payments to them are exempt from coverage provided all of the following criteria are met:

(i) the LLC is registered and in good standing with the Utah Department of Commerce,

(ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization, the operating agreement, or federal income tax return, and

(iii) the LLC has not been approved by the IRS as an "eligible entity" which allows the LLC to file with the IRS as a corporation. Approval may be obtained by the IRS accepting a written application or form, or the IRS accepting the filing of a U.S. Corporation Income Tax Return or U.S. Income Tax Return for an S Corporation.

(b) A nonmember manager is an employee of the LLC.

(c) Legal actions, subpoenas, and court orders will be issued to a member or manager of record.

(d) Assessments and liens will be issued in the name of the LLC, and not against the members of record.

(5) Trust.

A trust is a legal entity created to transfer property to a trustee to hold and manage for the benefit and profit of designated persons. The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. If the trustee does not independently perform fiduciary and management responsibilities, the trustee is an employee of the trust.

(6) Association.

An association is an entity consisting of a collection or organization of persons or other legal entities that have joined together for a certain common objective. Payments to association members for business services such as accounting and maintenance are considered wages unless the member is exempt as an independent contractor as defined in Section R994-204-301, Independent Contractor. Documented expense reimbursements paid to members are not wages.

(7) Joint Venture.

A joint venture is a legal entity consisting of a one-time grouping of two or more persons or legal entities in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners, LLC members, or corporate officers is not lost in the formation of the joint venture.

(8) Estate.

An estate is a legal entity consisting of the property of a living, deceased, or bankrupt person. An estate established to manage a person's business is the employing unit. The executor or administrator of the estate is not considered to be an employee of the estate.

R994-202-102. Temporary Help Company.

(1) "Temporary help services" means services consisting of an organization:

(a) recruiting and hiring its own employees;

(b) finding other organizations that need the services of those employees;

(c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;

(d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to

perform special assignments or projects with a definite ending date; and

(e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is registered as a Professional Employer Organization (PEO) pursuant to the provisions of Section 58-59-101 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

R994-202-103. Common Paymaster.

(1) A common paymaster relationship exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. The Internal Revenue Service will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

(a) each related company is a corporation;

(b) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;

(c) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and

(d) the employee(s) must be performing concurrent service for some or all of the related companies.

(2) The Department does not allow or recognize common paymaster reporting as of March 1, 2005, even if the relationship is approved by the Internal Revenue Service. Each corporation is required to register with the Department and obtain a Utah Employer Registration Number.

R994-202-104. Payrolling.

(1) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

(a) who has the right to hire and fire the employee;

(b) who has the responsibility to control and direct the employee; and

(c) for whom the employee performs the service.

(2) Payrolling is not allowed. Exceptions to this provision are contained in the Professional Employer rule R994-202-106 and the Temporary Help Services rule R994-202-102.

R994-202-105. Constructive Knowledge of Work Performed.

(1) If an individual is hired to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) The employer must report and pay contributions for all actual and constructive employment.

(3) An employer has actual or constructive knowledge if:

(a) The employer knows or should have known the employee hires an assistant;

(b) The employer knows or should have known that the employee's duties require an assistant;

(c) The employer instructs the employee to perform duties without an assistant, but the employee disregards the instructions and hires an assistant. If the employer becomes aware of the situation and takes no action to discontinue the current or future working relationship between the employee and the assistant, the assistant is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent the employee from hiring an assistant in the future, then the assistant is not considered employed by the employer for the work already performed; or

(d) The employer gives the employee the option of hiring an assistant. The employee hires an assistant but does not inform the employer of the hire.

R994-202-106. Professional Employer Organizations (PEO).

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) "Employment agreement" means a written contract between the PEO and each individual hired to provide services to a client.

(d) "Organization" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity.

(e) "Professional employer agreement" means a written contract by and between a client and a PEO.

(f) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional employer services. "Employee leasing company" is a term also used to describe a PEO.

(g) "Professional employer services" means the service of entering into a relationship with a client as defined in the PEO Registration Act, Section 58-59-101 et seq.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of Sections 58-59-101 through 58-59-503 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections 58-59-101 through 58-59-501 of the PEO Registration Act and as an employing unit under 35A-4-202(1), is considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement or employment agreement remains the employee of the client company.

(4) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken

into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. Licensing penalties for failure to file reports or pay contributions are outlined in Section 58-59-501 et. seq. of the PEO Registration Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of the contract;

(ii) the client's name and address;

(iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of contract termination;

(ii) the client's name and address; and

(iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO Registration Act, Sections 58-59-101 through 58-59-501.

KEY: unemployment compensation, employment

Date of Enactment or Last Substantive Amendment: [~~February 2, 2000~~]2007

Notice of Continuation: May 23, 2003

Authorizing, and Implemented or Interpreted Law: 35A-4-102



Workforce Services, Unemployment Insurance **R994-204** Included Employment

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29680

FILED: 03/15/2007, 12:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this new proposed rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ❖ **OTHER PERSONS:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

~~[R994-204. Inclusion Employment.~~

~~R994-204-201. General Definition.~~

~~—The objective of Subsection 35A-4-204(2) is to explain when employment is covered under Utah law if an individual worked for one employer in more than one state. Unemployment insurance programs in all states use the parameters established in Section 35A-4-204.~~

~~R994-204-202. Service Is Localized in this State.~~

~~—The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah is incidental to the service in Utah. The service is incidental if it is temporary or transitory in nature or consists of isolated transactions. The intent of the employer and employee will be used to determine whether the service is incidental to the service performed in Utah.~~

~~R994-204-203. Service Is Not Localized in Any State.~~

~~(1) If the service is not localized in any state but some of the service is performed by the individual in Utah, the entire service is covered in Utah if one of the following conditions apply:~~

~~(a) The Base of Operations is in Utah.~~

~~—The individual's base of operations is in Utah. The "base of operations" is the place from which the employee starts work and to which he customarily returns for instructions from his employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in his trade or profession. The base of operations may be an individual's residence.~~

~~(b) The Place from Which Service is Controlled or Directed is in Utah.~~

~~—If the individual has no base of operations or he does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.~~

~~(c) The Place of Residence is in Utah.~~

~~—If the conditions in paragraphs a or b do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah provided the individual lives in Utah and performs some of his services in Utah.~~

~~(2) If the conditions listed above do not apply, the employer may elect to cover all of the individual's service in one state. This election must be made under the provisions for reciprocal coverage arrangements Section 35A-4-106.~~

~~R994-204-204. Outside Commissioned Salesmen Included.~~

~~(1) General Definition.~~

~~—Under certain conditions described in Subsection 35A-4-204(2)(a)(i), services performed by an individual are in covered employment, even though they would otherwise be excluded under Subsection 35A-4-204(2)(i)(B), the "outside commissioned salesman exclusion."~~

~~—(2) Traveling or City Salesmen.~~

~~Services performed by salesmen excluded under Subsection 35A-4-204(2)(i)(i)(B) are considered to be in covered employment if ALL of the following conditions apply:~~

~~—(a) The Salesman is Engaged on a Full-Time Basis.~~

~~A traveling or city salesman will be presumed to be engaged on a full-time basis in any quarter in which he devotes 80 percent or more of his working time and attention to the solicitation of orders for one principal. For example, an individual who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full-time basis.~~

~~—(b) The Salesman Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.~~

~~The salesman must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through a unit of the school's or hospital's organization such as a bookstore or gift shop WOULD BE included as a "retailer." The salesman must solicit orders from the following types of customers:~~

~~(i) Wholesalers. Those who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers, retailers, for the purpose of resale.~~

~~(ii) Retailers. Those who sell merchandise to the ultimate consumers.~~

~~(iii) Contractors. Those who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.~~

~~(iv) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food and/or lodging.~~

~~—(c) The Salesman Takes Orders for Merchandise for Resale or Supplies Used in Business.~~

~~The orders the salesman is soliciting must be for merchandise for resale or supplies for use in the customer's business.~~

~~(i) Merchandise for resale. This includes goods, wares and commodities which ordinarily are the objects of trade and commerce and which are purchased for resale. This term refers specifically to tangible materials which do not lose their identities between the time of purchase and the time of resale.~~

~~(ii) Supplies for use in the customer's business operations. This means principally articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items which are not "merchandise for resale" or capital items. Services such as radio time, advertising space, etc., are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."~~

~~—(d) The Salesman Meets the Following Additional Requirements.~~

~~(i) The contract of service contemplates that substantially all of the services are to be performed personally by the individual. This means that the services to which the contract relates will not be delegated to any other person by the individual who undertakes under the contract to perform such services; and~~

~~(ii) The individual does not have a substantial investment in facilities used in connection with the performance of his services. The~~

~~facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and~~

~~(iii) The services are part of a continuing relationship with the person for whom the services are performed.~~

~~**R994-204-205. Domestic Service Included in Employment.**~~~~—(1) General Definition.~~

~~Section 35A-4-204(2)(k) shows when domestic services, which are exempt under Subsection 35A-4-205(1)(f), become subject employment.~~

~~—(2) \$1000 in a Calendar Quarter.~~

~~Domestic service is in employment if performed after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid cash remuneration of \$1000 or more in a calendar quarter in the current calendar year or the preceding calendar year.~~

~~—(3) All Remuneration is Reportable.~~

~~Once the \$1000 cash test is met, all remuneration including cash and noncash payments such as board and room are reportable as wages.~~

~~**R994-204-301. Independent Contractor—General Definition.**~~

~~In order for a personal service to be excluded under Section 35A-4-204(3) of the Act, the service must be performed by an individual who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the control and direction of the employer with respect to that service. Those individuals who wish to be classified as independent contractors must clearly establish their status as independent contractors by taking affirmative steps that indicate an informed business decision has been made.~~

~~**R994-204-302. Procedure.**~~

~~(1) Section 35A-4-204(3) of the Act requires the employer to establish the excluded nature of the services "to the satisfaction of the Division".~~

~~(2) If the issue of an individual's status arises out of a claim for benefits, and there has been no prior status determination or declaratory order, a determination will be made on the basis of the best information available.~~

~~(3) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation. An individual who is found to be an independent contractor by reason of an audit or declaratory order is not permitted to waive any right to unemployment benefits by filing a written consent to the determination pursuant to Section 63-46b-21(3)(b) while the service relationship with the employer continues. Such written consent is in violation of Section 35A-4-103(1)(c)(ii) of the Employment Security Act.~~

~~(4) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining that the individual or class of workers to which the individual belongs to be independent contractors, the Department will issue a monetary determination excluding the claimant's earnings as an independent contractor. The claimant has ten (10) days to protest the determination.~~

R994-204-303. Factors for Determining Independent Contractor Status.

— (1) Services will be excluded under Section 35A-4-312 if the service arrangement meets the requirements of that section of the Act and this rule. Special scrutiny of the facts is required to assure that the form of a service arrangement does not obscure the substance of the arrangement; that is, whether the individual is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in subsections 303(2)(b) and 303(3)(b) of this section are exclusive, but are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the occupation and the factual context in which the service is performed. Some factors do not apply to certain occupations and, therefore, should not be given any weight.

— (2) Independently Established.

— (a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

— (b) The following factors, if applicable, will be used as aids in determining whether an individual is customarily engaged in an independently established trade or business:

— (i) Separate Place of Business. The individual has his own place of business separate from that of the employer.

— (ii) Tools and Equipment. The individual has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. "Tools of the trade" such as those used by carpenters, mechanics, and other trades or crafts, do not necessarily demonstrate independence.

— (iii) Other Clients. The individual regularly performs services of the same nature for other customers or clients and is not required to work full time for the employer.

— (iv) PROFIT OR LOSS. The individual is in a position to realize a profit or loss through his independently established business activity.

— (v) Advertising. The individual advertises his services in telephone directories, newspapers, magazines, or by other methods clearly demonstrating that he holds himself out to the public to perform the services.

— (vi) Licenses. The individual has obtained any required and customary business and trade or professional licenses.

— (vii) Business Tax Forms. The individual files self-employment and other business tax forms required by the Internal Revenue Service and other tax agencies.

— (c) If an employer proves to the satisfaction of the department that the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

— (3) Control and Direction.

— (a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the individual who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by

which that result is to be accomplished, the individual is an employee of the employer for the purposes of the Act.

— (b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of an individual:

— (i) Instructions. An individual who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

— (ii) Training. Training an individual by requiring an experienced person to work with the individual, by corresponding with the individual, by requiring the individual to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

— (iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction, but the coordinating and scheduling of the services of more than one service provider does not.

— (iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises generally indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

— (v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others generally indicates the right to control or direct the manner in which the work is performed.

— (vi) Continuous Relationship. A continuous service relationship between the individual and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship generally does not exist where the individual is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

— (vii) Set Hours of Work. The establishment of set hours of work by the employer, or a requirement that the individual must work full-time, indicates control.

— (viii) Method of Payment. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job.

R994-204-401. Safe Haven—General Definition.

— The Administrative Procedures Act, Section 63-46B-21, permits any person to request that the Department issue a declaratory order determining the applicability of the Employment Security Act, a Commission rule, or order, to specific circumstances. Specifically, an employer may request a declaratory order determining the status of workers; that is, are they employees or independent contractors. Declaratory orders and audit findings determine only whether the employer is liable to pay contributions on wages paid to the workers in question. The "safe haven" provision provides a means by which the employer may rely on official determination of the Department pertaining to the applicability of Section 35A-4-204(3) of the Act. The provision allows the employer to obtain an official determination for contributions purposes, while preserving the worker's right to challenge that determination at a more appropriate time, when the work relationship has ended and a claim for benefits has been filed.

R994-204-402. Procedure.

~~—(1) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation.~~

~~—(2) An individual whose status is determined as a result of an audit or declaratory order shall not be permitted to file a written consent to the determination pursuant to Section 63-46B-21(3)(b) while the service relationship with the employer continues, and the Department will consider such a consent to be in violation of Section 35A-4-103(1)(e)(ii) of the Employment Security Act.~~

~~—(3)(i) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the individual or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the individual's independent contractor earnings as wage credits for the base period, on the basis of the prior status determination. The individual may file a written protest of the determination within 10 days after the local office has notified him of the determination. Any protest will be referred to Central Office Claims for review.~~

~~—(ii) Upon receipt of a protest filed under Section 402(3)(i), the Department will review the status of the individual. On the basis of its review, the Department may affirm the original determination or issue a new determination if there has been a change of facts in the work relationship. Either the individual or the employer may appeal the Department's decision.~~

R994-204-403. Employer Reliance on Official Determination.

~~When an employer receives a declaratory order or other official determination concluding that a worker or class of workers appears to be customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of hire, and is free from the control and direction of the employer, the employer shall have no liability to pay unemployment contributions on compensation paid to the worker, except as provided in Section 404 of this rule.~~

R994-204-404. Effect of New Determination on Employer.

~~If a new determination by the Department, an Administrative Law Judge, or the Workforce Appeals Board holds that the status of an individual or class of workers to which the individual belonged is that of employee for purposes of the Employment Security Act, the employer shall be liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.]~~

R994-204. Covered Employment.**R994-204-201. Localization of Services.**

~~Employment is covered under the Act if all of a worker's service is performed within Utah. Workers who perform services for one employer in more than one state are covered in Utah under certain circumstances.~~

~~(1) Service Localized in this State.~~

~~The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but~~

the service outside of Utah consists of isolated transactions or is otherwise incidental or transitory to the service in Utah. Some of the factors which might indicate that the service is incidental or transitory are:

(a) the employer and the worker intend the service outside of Utah to be an isolated transaction, and not a regular part of the worker's duties;

(b) the worker intends to return to Utah upon completion of the work assignment, rather than move to the other state;

(c) the service performed outside the state is different in nature from the service performed within Utah;

(d) it is anticipated that the worker will be performing services outside the state for 12 months or less however this length of time is intended only as a yardstick and other variables, such as the terms of the contract of hire, whether written or oral, will be considered.

(2) Service Is Not Localized in Any State But Some Service is Performed in Utah.

If the service is not localized in any state but some of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive direction and instructions.

(b) The Place from Where Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The Place of Residence is in Utah.

If the conditions in paragraphs (a) or (b) of this subsection do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah if the worker lives in Utah and performs some of his or her services in Utah.

(3) Service Is Not Localized in Any State and No Service is Performed in Utah.

If the service is not localized in any state and none of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and customarily returns for instructions from the employer, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the worker's trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive his or her direction and instructions.

(b) The Place from Where the Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if the worker is controlled and directed from Utah. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(4) Reciprocal Coverage.

If after applying all of the above tests to a given set of circumstances, the worker's service is found not to be subject to any one state, the employer may elect to cover all of the worker's service in one state. This election must be made under the provisions for reciprocal coverage arrangements found in Section 35A-4-106. The Department will approve reciprocal coverage and allow an employer to cover a worker's entire service in Utah if:

(a) the employer petitions for coverage;

(b) part of the worker's service is in Utah, the worker lives in Utah, or the worker maintains a place of business in Utah; and

(c) the other state or states approve the election

R994-204-202. Outside Commissioned Salespersons in Covered Employment.

Outside commissioned salespersons are excluded from the Act under the outside commissioned salesperson exclusion contained in Section 35A-4-205(1)(t) unless all of the following "traveling or city salesperson" conditions apply:

(1) The Salesperson is Engaged on a Full-Time Basis.

Full-time under this section means the salesperson devotes at least 80% of his or her working time in any quarter to the solicitation of orders for one employer. This is true even if the salesperson works for the employer less than 40 hours per week. For example, a salesperson who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full-time basis.

(2) The Salesperson Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.

The salesperson must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through such a customer, such as a bookstore or gift shop would be included as a "retailer." The salesperson must solicit orders from the following types of customers:

(a) Wholesalers who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers and retailers for the purpose of resale.

(b) Retailers who sell merchandise to the ultimate consumers.

(c) Contractors who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(d) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food, lodging, or both food and lodging.

(3) The Salesperson Takes Orders for Merchandise for Resale or Supplies Used in Business.

(a) Merchandise for resale includes goods, wares and commodities that ordinarily are the objects of trade and commerce and that are purchased for resale. This term refers specifically to tangible materials that do not lose their identities between the time of purchase and the time of resale.

(b) Supplies for use in the customer's business operations means articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items that are not "merchandise for resale" or capital items. Services such as radio time and advertising space, are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(4) The contract of service contemplates that substantially all of the services are to be performed personally by the worker. This means that the services to which the contract relates will not be delegated to any other person by the worker who undertakes under the contract to perform such services; and

(5) The worker does not have a substantial investment in facilities used in connection with the performance of his or her services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(6) The services are part of a continuing relationship with the person for whom the services are performed.

R994-204-203. Domestic Service Included in Covered Employment.

Subsection 35A-4-204(2)(k) defines when domestic services, that are exempt under Subsection 35A-4-205(1)(f), become covered employment.

(1) \$1000 in a Calendar Quarter.

Domestic services performed in a private home, local college club or local chapter of a college fraternity or sorority are exempt unless the employer pays cash remuneration of \$1000 or more in one or more calendar quarter in the current calendar year or the preceding calendar year. Cash wages include wages paid by cash, check, or money order. Cash wages do not include the value of food, lodging, clothing, and other non-cash items. However, cash given to an employee in lieu of these items is considered to be cash wages.

(2) Services That Are Domestic Services.

Domestic services include services of a household nature in or about any of the places listed in subsection (1) of this section. Domestic services include work done by:

(a) baby-sitters

(b) cleaning people

(c) drivers

(d) housekeepers

(e) nannies

(f) health aids

(g) maids

(h) caretakers

(i) yard workers

(j) cooks

(k) butlers

(3) Services That are Not Domestic Services.

Services that are not of a household nature such as secretarial services performed in a private home or services related to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority are not domestic services.

(4) Private Home.

A private home is a fixed place of abode of an individual or family. This may include a dwelling unit in an apartment building or hotel.

(5) Local College Club or Local Chapter of a College Fraternity or Sorority Does Not Include an Alumni Club or Chapter.

(6) All Remuneration is Reportable.

Once the \$1000 cash threshold is met, all payments including cash and non-cash payments are reportable as wages.

R994-204-301. Independent Contractor Services.

(1) An independent contractor is a worker who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the employer's control and direction while performing services for the employer. A worker must clearly establish his or her status as an independent contractor by taking steps that demonstrate independence indicating an informed business decision has been made.

(2) Payments to or through another entity for personal services performed by a worker is exempt from employment if the personal services meet the provisions of Subsection 35A-4-204(3).

R994-204-302. Independent Contractor Determination.

(1) The Department will determine the status of a worker based upon information provided by the employer, the worker, and any other available source.

(2) If a worker files a claim for benefits and the Department, as the result of an audit, investigation, or declaratory ruling, has made a determination that the worker is an independent contractor and his or her services for an employer are exempt from coverage, any earnings from those services for that employer will be excluded from the claimant's monetary determination. The claimant may protest the monetary determination by filing an appeal as provided in Section R994-204-402.

R994-204-303. Factors for Determining Independent Contractor Status.

Services will be excluded under Section 35A-4-204 if the service meets the requirements of this rule. Special scrutiny of the facts is required to assure that the form of a service relationship does not obscure its substance, that is, whether the worker is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in Subsections R994-204-303(1)(b) and R994-204-303(2)(b) of this section are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed. Additionally, some factors do not apply to certain services and, therefore, should not be considered.

(1) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a

relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will determine whether a worker is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The worker has a place of business separate from that of the employer.

(ii) Tools and Equipment. The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, "tools of the trade" used by certain trades or crafts do not necessarily demonstrate independence.

(iii) Other Clients. The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.

(iv) Profit or Loss. The worker can realize a profit or risks a loss from expenses and debts incurred through an independently established business activity.

(v) Advertising. The worker advertises services in telephone directories, newspapers, magazines, the Internet, or by other methods clearly demonstrating an effort to generate business.

(vi) Licenses. The worker has obtained any required and customary business, trade, or professional licenses.

(vii) Business Records and Tax Forms. The worker maintains records or documents that validate expenses, business asset valuation or income earned so he or she may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(c) If an employer proves to the satisfaction of the Department that the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(2) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the worker who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the worker is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of a worker:

(i) Instructions. A worker who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and scheduling of the services of more than one worker does not indicate control and direction.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours or a specific number of hours of work by the employer indicates control.

(viii) Method of Payment. Payment by the hour, week, or month points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job. Control may also exist when the employer determines the method of payment.

R994-204-401. Safe Haven Created by Independent Contractor Determinations.

The "safe haven" provision of 35A-4-204(4) allows an employer to rely on a declaratory order, ruling, or final determination by the Department that determines the independent contractor status of a worker or class of workers. A determination can be made at the request of an employer or by the Department as the result of an audit or status investigation. The final determination will only determine whether the employer is liable to pay contributions on payments made to the workers in question and does not affect the worker's right to challenge the determination at a more appropriate time like when the work relationship has ended and a claim for benefits has been filed. The worker, or class of workers, are not bound by the determination in the event a worker later files a claim for unemployment benefits.

R994-204-402. Procedure for Issuing a Safe Haven Determination.

(1) If the issue of the status of a worker or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department will determine the status on the basis of the best information available at the time. A request for a declaratory order will be denied if there is a pending claim for benefits by a worker who would be affected by the order.

(2) A worker whose status is determined as a result of an audit or declaratory order is not required to file a written consent to the determination pursuant to Subsection 63-46B-21(3)(b). Any consent given by the worker is invalid and will be considered to be in violation of Subsection 35A-4-103(1)(c)(ii).

(3) If the issue of a worker's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the worker's

independent contractor earnings as wage credits for the base period on the basis of the prior status determination. The worker may protest the determination by filing an appeal within 15 days of the date of the notice. Upon receipt of a protest the Department will review the status of the worker. On the basis of its review, the Department will issue a new determination which will either affirm, reverse, or revise the original determination. The new determination will be mailed to the parties and can be appealed by the employer or the worker as though it were an "initial Department determination" as provided in rule Sections R994-508-101 through R994-508-104.

R994-204-403. Employer Reliance on Official Determination.

If a declaratory order or final audit finding has been issued concluding that a worker or class of workers are independent contractors, the employer will have no liability to pay unemployment contributions on payments made to the worker or workers, except as provided in Section R994-204-404.

R994-204-404. Effect of New Determination on Employer.

If a new determination by the Department, an administrative law judge, or the Workforce Appeals Board holds that the status of a worker or class of workers to which the individual belonged is that of employee for purposes of the Act, the employer is liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

KEY: unemployment compensation, employment tests, independent contractor

Date of Enactment or Last Substantive Amendment: ~~November 18, 1996~~ 2007

Notice of Continuation: April 1, 2005

Authorizing, and Implemented or Interpreted Law: 35A-4-204



Workforce Services, Unemployment Insurance

R994-205

Exempt Employment

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE No.: 29681

FILED: 03/15/2007, 12:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying

language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this new proposed rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-205. Exempt Employment.

~~**R994-205-101f. Domestic Service Excluded.**~~

~~— (1) General Definition.
 — Subsection R994-205-101f defines domestic services which are exempt under the Act, provided they are not included under Subsection 35A-4-204(2)(k).~~

~~— (2) Domestic Service.~~

~~— (a) Services Which Are Domestic Services.~~

~~— Domestic services include services of a household nature in or about a private home, local college club, or local chapter of a college fraternity or sorority, performed by individuals including: cooks, maids, baby sitters, handymen, gardeners, and chauffeurs of automobiles for family use. In order to be exempted, the domestic services must be performed by an individual in or about the private home, local college club, or local chapter of a college fraternity or sorority of the person employing him.~~

~~— (b) Services Which are Not Domestic Services.~~

~~— Some examples of services which are not domestic services are secretarial services performed in a private home and services in relation to remodeling or building a private home, local college club, or local chapter of a college fraternity or sorority.~~

~~— (3) Private Home.~~

~~— A private home is a fixed place of abode of an individual or family; this may include a dwelling unit in an apartment building or hotel.~~

~~— (4) Local College Club or Local Chapter of a College Fraternity or Sorority.~~

~~— A local college club does not include an alumni club or chapter.~~

~~— (5) Services Not Exempt.~~

~~— Services of a household nature if performed in or about rooming or boarding houses, hotels, hospitals, commercial offices or for homeowner's associations are not exempt. Services not of a household nature, regardless of where performed, are not exempt.~~

~~**R994-205-102h. Exempted Service: Family Service.**~~

~~— (1) General Definition.~~

~~— Family service is exempt under the Act only if a required family relationship exists between the employee and all partners. Services performed in the employ of a corporation are not exempt.~~

~~— (2) Family Relationship Requirement.~~

~~— (a) One of the following relationships must exist for family service to be exempt:~~

~~— (i) an individual employed by his or her spouse,~~

~~— (ii) a parent employed by his or her son or daughter,~~

~~— (iii) a child under the age of 21 employed by his or her parent regardless of his marital status.~~

~~— (b) In the parent-child employment situation, the exempt family relationship is met even if the child is an adopted child, stepchild, or foster child; the foster child, however, must be living with the foster parent.~~

~~— (3) Examples of Family Relationships Which Are or Are Not Exempt.~~

~~— A required family relationship, not necessarily the same relationship, must exist between the employee and each member of the employing unit. Examples are:~~

~~— (a) A woman who is employed by a partnership composed of her husband and her son is exempt from "employment."~~

— (b) A woman who is employed by a partnership composed of her husband and his brother is not exempt from "employment" because the required family relationship between the woman and her brother-in-law does not exist.

— (c) A man who is employed by a partnership composed of his wife and his son-in-law is not exempt from "employment" because the required family relationship between the man and his son-in-law does not exist.

R994-205-103j. Exempted Service: Casual Labor.

— (1) General Definition:

— Casual labor is exempt under the Act only if it is not in the course of the employing unit's trade or business. Casual labor does not apply to domestic service exempt under Subsection 35A-4-205(1)(f).

— (2) Casual Labor:

— Services performed by an individual for an employing unit is casual labor unless:

— (a) cash remuneration for such service is \$50 or more in a calendar quarter; and

— (b) the individual performs such service on each of 24 days during the calendar quarter or 24 days during the preceding calendar quarter.

— (3) Not in the Course of the Employing Unit's Trade or Business:

— Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business; for example, services performed in connection with the employer's hobby or repairs to the employer's private home. Casual labor performed by an individual for a property owner in regard to building or remodeling the owner's home is exempt under Subsection 35A-4-205(1)(j). Services for a corporation will always be in the course of business.

R994-205-104n. Exempted Service: Commission Insurance Agents.

— (1) General Definition:

— "Employment" does not include services performed as an insurance agent if remuneration for such services is solely by way of commission.

— (2) Services Performed as an Insurance Agent:

— Services performed by an individual as an insurance agent are exempt if ALL SUCH services are paid solely by way of commission. For example, if this individual works for an insurance company both as an insurance agent and an accountant, is paid for services as an insurance agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services including commissions and salary, is for the same pay period, the "included and excluded service" provision of Subsection 35A-4-205(2) must be applied.

— (3) Solely by Way of Commission:

— (a) If any part of the remuneration for services as an insurance agent is a salary, all of these services are considered to be employment and the total remuneration (salary and commission) is included.

— (b) If the individual performing services as an insurance agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, his earnings are included when he is paid the guaranteed salary. In any pay period in which his commissions equal or exceed the guaranteed salary, his earnings are considered to be solely by way of commission and are excluded.

— (c) If the individual performing services as an insurance agent is given advances against future commissions and he is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

R994-205-105r. Exempted Service: Real Estate Agents.

— (1) General Definition:

— "Employment" does not include services as a licensed real estate agent if remuneration for such services is solely by way of commission.

— (2) Services Performed as a Licensed Real Estate Agent:

— Services performed by an individual as a licensed real estate agent are exempt if ALL services performed are paid solely by way of commission. For example, if this individual works for a real estate company both as a real estate agent and an accountant, is paid for services as a real estate agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services including commissions and salary, is for the same pay period, the "included and excluded service" provision of Subsection 35A-4-205(2) must be applied.

— (3) Solely by Way of Commission:

— (a) If any part of the remuneration for services as a real estate agent is a salary, all of these services are considered to be employment and the total remuneration including salary and commission is included.

— (b) If the individual performing services as a real estate agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, his earnings are included when he is paid the guaranteed salary. In any pay period in which his commissions equal or exceed the guaranteed salary, his earnings are considered to be solely by way of commission and are excluded.

— (c) If the individual performing services as a real estate agent is given advances against future commissions and he is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

R994-205-201. Included and Excluded Service.

— (1) General Definition:

— When some of an individual's services performed for the person employing him during a pay period are included and some excluded from employment, all the services are considered to be included or excluded for that pay period. Whether all the services are considered to be included or excluded depends on the time spent in each activity.

— (2) Time Spent in a Pay Period:

— (a) If 50% or more of an individual's time in the employ of a particular person is spent in performing services which constitute employment, all the services are considered to be employment.

— (b) This 50% test must be applied to each pay period. An individual could have all services performed by him included in one period and excluded in another.

— (3) Employer Must Verify Time Spent:

— In order to have all services performed by an individual excluded, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services which constitute employment.

— (4) Pay Period:

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.]

R994-205-101. Exempt Domestic Service.

Domestic services are exempt under the Act, provided they are not included in covered employment under Subsection 35A-4-204(2)(k).

R994-205-102. Exempt Family Service.

Certain family service is exempt from coverage under the Act based upon the type of employing entity.

(1) Sole proprietorship exempt family service includes the following relationships:

- (a) A worker employed by his or her spouse.
- (b) A parent employed by his or her son or daughter. The exemption also applies to a stepparent employed by his or her stepchild.
- (c) A child under the age of 21 employed by his or her parent regardless of the child's marital status. The exempt relationship is met even if the child is an adopted child, stepchild, or foster child. The foster child must be living with the foster parent.

(2) Partnership family service is exempt from coverage if the worker has an exempt family relationship to all partners. Exempt family relationships are the same relationships as for sole proprietorships in subsection (1) of this section. However, it is not necessary for the same relationship to exist between the worker and each partner.

(a) Examples of partnership family relationships that are exempt include:

- (i) A child employed by a partnership composed of the child's parents.
- (ii) A woman employed by a partnership composed of her husband and her son.

(b) Examples of partnership family relationships that are not exempt include:

- (i) A woman employed by a partnership composed of her husband and his brother is not exempt because the required family relationship between the woman and her brother-in-law does not exist.
- (ii) A man employed by a partnership composed of his wife and his son-in-law is not exempt because the required family relationship between the man and his son-in-law does not exist.

(3) There are no exempt family relationships in corporations, limited liability companies, and any other entity types not discussed in this section.

R994-205-103. Exempt Employees Hired Temporarily for a Disaster.

The Act excludes the services of governmental entity or Indian tribe employees hired solely on a temporary basis for disaster-type emergencies.

(1) Temporary basis employment is not the same as intermittent or irregular employment. Intermittent or irregular employment involves an on-going relationship, such as workers with an "on-call" status.

(2) Disaster type emergencies are those that affect the community on a wide scale, such as a forest fire, storm, or flood. Incidents that affect a few individuals, such as a house fire or automobile accident are not disaster type emergencies.

R994-205-104. Exempt Casual Labor.

(1) Casual labor is exempt under the Act if:

- (a) The service is not in the course of the employing unit's trade or business;
- (b) The payment for such service is less than \$50 in a calendar quarter; and
- (c) The worker performs such service on some portion of a day for less than 24 days in a calendar quarter or less than 24 days during the preceding calendar quarter.

(2) Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business, such as services performed in connection with the employer's hobby or repairs to the employer's private home.

(3) Casual labor does not apply to domestic service exempt under subsection 35A-4-205(1)(f).

(4) Casual labor does not apply to any services performed for a corporation or limited liability company.

(5) Services performed by a worker for a property owner in regard to building or remodeling the owner's home are exempt if the requirements in subsection (1)(a) of this section are satisfied.

R994-205-105. Exempt Commission Insurance Sales.

Employment does not include services performed as an insurance agent or solicitor if payment for such services is solely by way of commission.

(1) An insurance solicitor is an employee of an insurance agent and is empowered to sell insurance on behalf of the agent. The solicitor usually does not have binding authority, and the business generated by the solicitor is usually owned by the agent, and not the solicitor.

(2) Services performed by a worker selling insurance are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for insurance sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

R994-205-106. Exempt Real Estate Sales.

Employment does not include services as a licensed real estate agent if payment for such services is solely by way of commission.

(1) The "licensed" requirement refers to the license issued by the Utah Division of Real Estate to principal real estate brokers, associate real estate brokers, and real estate sales agents.

(2) The services performed as a real estate agent are those activities generally associated with the sale of real property. Such

services include appraising property, advertising and showing property, closing sales, acquiring a lease to the property, and recruiting, training and supervising other salespersons. The services performed as a real estate agent do not include the management of property.

(3) Services performed by a worker as a licensed real estate agent are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for real estate sales services is a salary, all of the services are covered employment and the total payment, salary and commission is subject to contribution payments.

(b) If a worker performing real estate sales services is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If a worker performing real estate sales services is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances against future commissions are considered to be payment solely by way of commission.

(4) If a worker performs both commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. If the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

R994-205-107. Exempt Outside Sales.

The Act excludes the services of salespersons if the services are performed outside the employer's place of business, the salesperson is paid solely by way of commission, the services are not employment at common law, and the services are not employment as a traveling or city salesperson defined in Subsection 35A-4-204(2)(i).

(1) The employer's place of business is defined as an establishment where business is conducted, services are rendered, retail sales are made, or goods are manufactured, stored, or processed. This definition also includes temporary places of business such as booths or exhibits at trade shows, fairs and festivals.

(2) A commission is defined as a payment calculated as a percentage of the sales volume or value. Outside sales services are exempt if all such services are paid solely by way of commission.

(a) If any part of the payment for outside sales services is a salary, all of the services are covered employment and the total payment, salary and commission, is subject to contribution payments.

(b) If a worker is guaranteed a minimum salary for any pay period in which sales commissions are less than the guaranteed minimum, all earnings are subject to contribution payments when the worker is paid the guaranteed salary. In any pay period in which the commissions equal or exceed the guaranteed salary, the earnings are considered to be solely by way of commission and are not subject to contribution payments.

(c) If the worker is given advances against future commissions and is required to repay any advances that exceed the commissions, the advances are considered to be payment solely by way of commission.

(d) If a worker performs both outside commission sales services and other salaried services, such as an accountant, the sales are excluded from employment and the other services are included in covered employment. However, if the payment for all services is for the same pay period, the "included and excluded" provisions of Subsection 35A-4-205(2) are applied.

(3) Employment at common law is defined by the Internal Revenue Service's current common law rules.

(4) An outside salesperson may perform incidental activities at the employer's place of business, such as writing up and transmitting orders, replenishing sales supplies, or attending sales meetings, provided such activities are not routine, without losing the classification as an outside salesperson.

R994-205-201. Included and Excluded Service.

When a worker performs both included and excluded services for an employer during a pay period, all the services are considered to be included or excluded for that pay period, depending on the time spent in each activity.

(1) Time Spent in a Pay Period.

(a) If 50% or more of a worker's time is spent performing services that constitute employment, all the services are considered to be covered employment.

(b) This 50% test is applied to each pay period. A worker could have all services included in covered employment during one period and excluded in another.

(2) Employer Must Verify Time Spent.

In order to have all services performed by an worker excluded from covered employment, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services that constitute employment.

(3) Pay Period.

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.

KEY: unemployment compensation, employment tests

Date of Enactment or Last Substantive Amendment: [~~1990~~2007

Notice of Continuation: April 1, 2005

Authorizing, and Implemented or Interpreted Law: 35A-4-205



Workforce Services, Unemployment Insurance **R994-206** Agricultural Labor

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29682

FILED: 03/15/2007, 12:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language has been added throughout. Federal definitions have been added to assist the industry in determining

coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this new proposed rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-206. Agricultural Labor.

~~[R994-206-101. General Definition.~~

~~— (1) Subsection 35A-4-206 defines the term "agricultural labor." Generally, agricultural labor is exempt under Subsection 35A-4-205(1)(e) of the Act unless it is covered under Subsection 35A-4-204(2)(j). Subsection 35A-4-204(2)(j) covers larger agricultural employers based on wages paid or number of individuals employed.~~

~~— (2) Definition of Terms:~~

~~— The terms used in Section R994-206-101 are defined as follows:~~

~~— (a) Agricultural Commodities:~~

~~— Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.~~

~~— (b) Horticultural Commodities:~~

~~— Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.~~

~~— (c) Raising and Harvesting:~~

~~— Raising includes: planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes: caring for, feeding, shearing, breeding, training and management. Harvesting includes: picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are made available for sale.~~

~~— (d) Farm:~~

~~— A farm is any place used mainly for raising agricultural or horticultural commodities such as a ranch, orchard, nursery, greenhouse or other similar structure.~~

~~— (3) Agricultural Labor:~~

~~— "Agricultural labor" means any service performed in any one of the following:~~

~~— (a) On a farm, in the employ of any person in connection with:~~

~~— (i) cultivating the soil, which includes plowing, dragging and fertilizing, or~~

~~— (ii) raising or harvesting any agricultural or horticultural commodity.~~

~~— (b) In the employ of the owner or operation of a farm, if the major part of the service is performed on a farm, in connection with:~~

~~— (i) the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment (this includes clearing land, leveling land, selling agricultural commodities raised by the operator and services performed by painters, mechanics, farm supervisors and bookkeepers, provided the individual is not an employee of another firm hired by the farm operator.); or~~

~~— (ii) salvaging timber or clearing land of brush or other debris left by a hurricane, storm, flood or other natural disaster.~~

~~— (c) In the employ of any person in connection with:~~

~~— (i) the production or harvesting of agricultural commodities defined in the Federal Agricultural Marketing Act, Title 7 USC Section 1621 et seq. (These commodities are limited to crude gum also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum.); or~~

— (ii) the ginning of cotton; or
 — (iii) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

— (d) In the employ of the operator of a farm or group of operators of farms who produce more than one-half of the commodity and perform services with respect to such commodity in its unmanufactured state in:

— (i) handling, planting, drying, packing, packaging, processing, freezing, grading, or storing the commodity; however, services performed in connection with commercial canning or commercial freezing do not constitute agricultural labor; or

— (ii) delivery to storage or to market or to a carrier for transportation to market of the commodity. However, services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with the wholesaling and retailing of the commodity do not constitute agricultural labor. The selling activity, however, is agricultural when it is performed on the farm.

— (4) Examples of the Application of the Definition of Agricultural Labor.

— (a) Raising and Selling.

— Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

— (b) Agricultural Labor Included and Excluded Services.

— If the same individual performs both agricultural and nonagricultural labor, his entire service will be considered to be agricultural labor if 50% or more of his time in a pay period was spent in agricultural labor. For reference see Subsection 35A-4-205(2).

— (c) Poultry Hatchery.

— Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

— (d) Raising Livestock.

— Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is not agricultural labor. Services in connection with racing horses, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

— (e) Forestry, Lumbering and Landscaping.

— Services performed in forestry, lumbering and landscaping are not agricultural labor.]

R994-206-101. Definition of Agricultural Labor.

Agricultural labor is exempt under Subsection 35A-4-205(1)(e) of the Act unless it is covered under Subsection 35A-4-204(2)(j). Subsection 35A-4-204(2)(j) covers larger agricultural employers based on wages paid or number of workers employed.

(1) Definition of Agricultural Terms.

The terms used in Section R994-206-101 are defined as follows:

(a) Agricultural Commodities.

Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts,

vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

(b) Horticultural Commodities.

Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

(c) Raising and Harvesting.

Raising includes planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes caring for, feeding, shearing, breeding, training and management. Harvesting includes picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are made available for sale.

(d) Farm.

A farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes, such as display, storage, and fabrication of wreaths, corsages, and bouquets, do not constitute "farms".

(2) Agricultural Labor as Defined in Subsection 35A-4-206(1)(a).

(a) Agricultural labor includes services performed on a farm by a worker for any person in connection with any of the following activities:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) dThe raising or harvesting of any other agricultural or horticultural commodity.

(b) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

(3) Agricultural Labor as Defined in Subsection 35A-4-206(1)(b).

(a) Agricultural labor includes the following activities performed by a worker in the employ of the owner or tenant or other operator of one or more farms, provided the major part, defined as 50% or more, of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane, storm, flood, or other natural disaster.

(b) The services described in subparagraph (a)(i) of this section may include services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms operated by the person employing them. Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services

performed by workers of commercial concerns that contract with a farmer to repair, maintain, or renovate farm properties.

(4) Agricultural Labor as Defined in Subsection 35A-4-206(1)(c).

Agricultural labor includes the following activities performed by a worker in the employ of any person without regard to the place where such services are performed:

(a) the production or harvesting of agricultural commodities defined in the Federal Agricultural Marketing Act, 12 U.S.C. 1141j. These commodities are limited to crude gum, also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum; or

(b) the ginning of cotton; or

(c) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

(5) Agricultural Labor as defined in Section 35A-4-206(1)(d).

(a) Agricultural labor includes services performed by a worker in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity if:

(i) Such services are performed by the worker in the employ of an operator of a farm or in the employ of a group of operators of farms other than a cooperative organization; and

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(b) The term "operator of a farm" as used in this section means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(c) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701(a)(3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(d) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple syrup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

(e) The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a

single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in subparagraph (a)(iii) of this subsection has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular worker shall be determined on the basis of the pay period in which such services were performed by such worker.

(f) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (3) of this section.

(6) Examples of the Application of the Definition of Agricultural Labor.

(a) Raising and Selling.

Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Agricultural Labor Included and Excluded Services.

If the same worker performs both agricultural and nonagricultural labor, the entire service will be considered to be agricultural labor if 50% or more of the time in a pay period was spent in agricultural labor. For reference see Subsection 35A-4-205(2).

(c) Poultry Hatchery.

Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

(d) Raising Livestock.

Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is not agricultural labor. Services in connection with racing horses, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, Lumbering and Landscaping.

Services performed in forestry, lumbering and landscaping are not agricultural labor.

(f) Brine Shrimp Harvesting.

Services performed in harvesting brine shrimp are not agricultural labor unless the services are performed on a farm.

KEY: unemployment compensation, employment tests
Date of Enactment or Last Substantive Amendment: ~~[1999]~~2007
Notice of Continuation: April 1, 2005
Authorizing, and Implemented or Interpreted Law: 35A-4-206

◆ ————— ◆

Workforce Services, Unemployment Insurance **R994-208** Definition of Wages

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 29685
 FILED: 03/15/2007, 15:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ❖ **OTHER PERSONS:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any

business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

~~R994 208. Definition of Wages.~~

~~R994 208 101. General Definition.~~

~~Section 35A 4 208 defines "wages." Remuneration is wages only if it is for the performance of personal services. Wages are subject to the Act only if they are for services which are in "employment" as defined in Subsection 35A 4 204. Wages subject to the Act are taxable only to the extent of the yearly taxable wage base; wages in excess of the taxable wage base are reportable but not taxable. This taxable wage base applies to wages paid to an individual in any calendar year and is established pursuant to Subsection 35A 4 208(2)(a). The employer must report all wages subject to the Act and pay contributions on the taxable wages quarterly. To determine in which quarter wages are reportable, see the definition of "wages paid" in Section 994 401 204. A definition of the "wages" the claimant must report on his weekly claim is found in Subsection 35A 4 401(3) and Subsections R994 401 201 through R994 401 207.~~

~~R994 208 102. "Wages" Include.~~

- ~~(1) Wages include all remuneration for personal services and the following:~~
- ~~(a) Payments by the hour, by the job, piece rate, salary, commission; and~~
 - ~~(b) Meals, lodging and other payments in kind.~~
 - ~~(i) Meals, lodging and other payments in kind which are furnished to promote good will, to attract prospective employees or as part of remuneration for services are wages except as noted in Subsection R994 208 103. The value of these payments in kind shall be determined as follows:~~
 - ~~(A) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.~~

—(ii) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

—(c) ~~Tips and Gratuities.~~

—Tips or gratuities accounted for by the employee to the employer are wages whether paid directly to the employee by the customer or his employer. If an employee's only remuneration for services is tips or tips are used to supplement the employee's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the employee's wages. However, such wages will not be less than the applicable federal or state minimum wage.

—(d) ~~Remuneration for Services of Employee with Equipment.~~

—Where an employee is hired with equipment, the fair value of the remuneration for the employee's services, as distinguished from an allowance for use of his equipment, if specified in the contract of hire, will be considered "wages." The Department will determine the employee's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the employee's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

—(e) ~~Vacation Pay and Sick Pay Included as Wages.~~

—Vacation and sick payments made by the employer during the employment relationship or upon termination of employment are wages. However, sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer. Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

—(f) ~~Bonuses and Gifts.~~

—Bonuses and gifts to employees are wages unless they are of a nonmonetary nature and of nominal value which is less than \$25 per quarter.

—(g) ~~Stock Payments.~~

—Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

—(h) ~~Contributions to Deferred Compensation Plans.~~

—Contributions by either the employer or the employee to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

—(i) ~~Residual Payments.~~

—Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

—(i) Residual payments are reportable by the employer in the quarter they are paid.

—(ii) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

—(iii) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah

Employment Security Act only if the original work was performed subsequent to the disqualification.

~~R994-208-103. "Wages" Do Not Include.~~

—(1) "Wages" do not include the following:

—(a) ~~Meals and Lodging Furnished for Employer's Convenience.~~

—Meals and Lodging provided by an employer to an employee shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service as under the following conditions:

—(i) they are provided at the employer's place of business; and

—(ii) in the case of lodging, the employee must accept the lodging as a condition of his employment; and

—(iii) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

—(A) To have employees available at all times or for emergency calls.

—(B) Employees have a short meal period.

—(C) Adequate eating and lodging facilities are not otherwise available.

—(b) ~~Expense Reimbursement.~~

—Reimbursement and advances for bona fide, ordinary and necessary employment related expenses are not wages. The Department may require an accounting of the actual expenses or may determine whether the expenses are reasonable and necessary.

—(c) ~~Insurance Premiums Paid by the Employer.~~

—Insurance premiums for health or life insurance paid by the employer for his employees generally or a class of his employees are not wages under Subsection 35A-4-208(2)(b).

—(d) ~~Sick Pay Excluded as Wages.~~

—Sick pay is not wages if paid after the end of six months following the calendar month the employee last worked for the employer. Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments. Payments made to an employee which are received under a worker's compensation law are not wages. These provisions regarding sick pay are established to comply with the FUTA provisions. For reference, see Internal Revenue Code Section 3306(b).

—(e) ~~The Employer's Share of the Social Security Tax.~~

—(f) ~~Retirement Plan Payments Made by the Employer.~~

—Payments made by the employer to certain retirement plans are NOT included as wages. The retirement plans which are excluded are described in Section 3306(b)(5) of the Internal Revenue Code.

—(g) ~~Training Allowances.~~

—Employment related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

—(h) ~~Director's Fees.~~

—Remuneration paid to directors of a corporation for director services are not wages. Director services include attending Board of Director's meetings, reviewing and studying reports, establishing general company policies, etc. Director services DO NOT include managerial services or other services which are part of the routine activities of a corporation.

—(i) ~~Finder or Referral Fees.~~

—A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent

occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

~~(j) "S Corporation" Payments to Shareholders.
Distributions made to bona fide shareholders based solely on stock ownership and without regard to services performed are not wages.~~

~~(k) Remuneration to Sole Proprietors or Partners.
Payments to sole proprietors or partners whether draws or remuneration for services are not wages. Sole proprietors or partners are the employing unit rather than employees. Limited partners, however, do not have the same rights and responsibilities as general partners and remuneration for services paid to limited partners is wages.~~

~~(l) Supplemental Unemployment Benefits (SUB).
Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:~~

~~(i) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;~~

~~(ii) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;~~

~~(iii) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;~~

~~(iv) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;~~

~~(v) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and~~

~~(vi) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.]~~

R994-208. Wages.

R994-208-101. Definition of Wages.

Section 35A-4-208 defines "wages".

(1) Wages means all payments for employment including the cash value of all payments in any medium other than cash, except payments excluded under Subsection 35A-4-208(5) and Section R994-208-103. Wages are subject to the Act only if they are for services that are employment as defined in Section 35A-4-204.

(2) Wages are reportable by the employer in the quarter actually paid or constructively paid. Wages are constructively paid, as defined in 26 CFR 31.3301-4. Wages are constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time without any substantial limitation or restriction as to the time, manner, or condition upon which the payment is to be made. The payment must also be within the worker's control and disposition.

(3) Wages subject to the Act are taxable only to the extent of the yearly taxable wage base. Wages in excess of the taxable wage base are reportable but not taxable. The taxable wage base applies to wages paid to each worker in any calendar year and is established pursuant to Subsection 35A-4-208(2). The employer must report all wages subject to the Act and pay contributions on the taxable wages as specified in the contribution payment due date Section R994-302-102.

R994-208-102. Wages Include.

Wages include the following:

(1) Payments for Personal Services.

All payments by the hour, by the job, piece rate, salary, or commission are wages.

(2) Meals, Lodging and Other Payments in Kind.

Meals, lodging and payments in kind that are furnished to promote good will, to attract prospective workers, or as part of payment for services are wages except as noted in Section R994-208-103. The value of these payments in kind shall be determined as follows:

(a) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

(3) Tips and Gratuities.

(a) Tips or gratuities accounted for by the worker to the employer are wages whether paid directly to the worker by the customer or by the employer.

(b) If a worker's only payment for services is tips or tips are used to supplement the worker's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the worker's wages. However, such wages will not be less than the applicable federal or state minimum wage.

(c) Wages also include any allocated tips calculated by the employer.

(4) Payment for Services of Worker with Equipment.

When a worker is hired with equipment, the fair value of the payment for the worker's services, as distinguished from an allowance for use of equipment, if specified in the contract of hire, will be considered "wages". The Department will determine the worker's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the worker's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

(5) Vacation Pay

Vacation payments made by the employer during the employment relationship or upon termination of employment are wages.

(6) Sick Pay.

(a) Sick payments made by the employer during the employment relationship or upon termination of employment are wages.

(b) Sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer.

(c) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

(7) Bonuses and Gifts.

(a) Bonuses and gifts to employees are wages unless the value is so small that it would be unreasonable for the employer to account for it. The value of benefits such as store discounts, discounts at company cafeterias, and company picnics are not wages.

(b) The value of gifts such as a turkey, ham, or other item of nominal value at Christmas or other holidays are not wages. However, gifts of cash, gift certificates, or similar items that can easily be exchanged for cash, are wages.

(8) Stock Payments.

Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

(9) Stock options included as wages.

There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options. There are wage implications only with respect to non-qualified stock options.

(a) Non-qualified stock options are defined by the Internal Revenue Service as those that do not meet all of the requirements of the Internal Revenue Code to qualify as incentive stock options or employee stock purchase plan options.

(b) A worker may receive an option as payment for services. The granting of the option is not wages.

(c) A worker exercises an option when the worker takes an action to buy the stock.

(d) The difference between the exercise price, the value of stock at the time the option is issued, and the fair market value of the stock at the time of exercise is called the spread. The amount of a positive spread at the time the option is exercised is wages.

(10) Contributions to Deferred Compensation Plans.

Contributions by either the employer or the worker to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

(11) Residual Payments.

Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

(a) Residual payments are reportable by the employer in the quarter they are paid.

(b) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

(c) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah Employment Security Act only if the original work was performed subsequent to the disqualification.

R994-208-103. Wages Do Not Include.

Wages do not include any of the following:

(1) Meals and Lodging Furnished for Employer's Convenience.

Meals and Lodging provided by an employer to a worker shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service under the following conditions:

(a) they are provided at the employer's place of business; and

(b) in the case of lodging, the worker must accept the lodging as a condition of employment; and

(c) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

(i) To have workers available at all times or for emergency calls.

(ii) Workers have a short meal period.

(iii) Adequate eating and lodging facilities are not otherwise available.

(2) Expense Reimbursement.

Expense reimbursements are excluded from the definition of wages based upon the existence of an accountable plan as defined in Section 62 of the Internal Revenue Code.

(a) An accountable plan is any reimbursement or other expense allowance arrangement, including per diem allowances providing for ordinary and necessary expenses of traveling away from home, that meets all of the following requirements:

(i) There is a business connection. The expenses are paid or incurred by the worker in connection with the performance of services as an employee of the employer;

(ii) Information sufficient to substantiate the amount, time, and business purpose of the expenses must be submitted to the employer; and

(iii) Excess reimbursement amounts, as a result of advances, are returned to the employer.

(b) A nonaccountable plan is any plan that fails to meet any one or more of the requirements of an accountable plan. Reimbursements in a nonaccountable plan are wages.

(3) Insurance Premiums Paid by the Employer.

Insurance premiums for health or life insurance paid by the employer for workers generally or a class of workers are not wages under Subsection 35A-4-208(5)(a).

(4) Sick Pay Excluded as Wages.

The following provisions regarding sick pay are established to comply with the FUTA provisions contained in Section 3306(b) of the Internal Revenue Code.

(a) Sick pay is not wages if paid after the end of six months following the calendar month the worker last worked for the employer.

(b) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments.

(c) Payments made to a worker that are received under a workers' compensation law are not wages.

(5) The Employer's Share of the Social Security Tax and Medicare Tax.

(6) Retirement Plan Payments Made by the Employer.

Payments made by the employer to retirement plans described in Section 3306(b)(5) of the Internal Revenue Code are not wages.

(7) Training Allowances.

Employment-related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

(8) Corporate Payments Not Considered Wages.

(a) The following payments are not considered wages:

(i) Directors fees paid to directors of a corporation for attending Board of Directors' meetings, reviewing and studying reports, and establishing general company policies. Director services do not include managerial services or other services that are part of the routine activities of a corporation;

(ii) Distributions made to shareholders based on stock ownership;

(iii) Reimbursement for expenses that are reasonable and documented;

(iv) Loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; and

(v) Documented returns of investment where the officer has loaned or invested money in the corporation.

(b) If the amount of compensation, if any, paid to a corporate officer is inadequate given the nature, duration, frequency or significance of the service performed by that officer, other payments made to the officer may be reclassified as wages if there is a lack of documentation or insufficient document to support those other payments. This applies to all corporations regardless of income tax reporting status.

(9) Finder or Referral Fees.

A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

(10) Payments to Sole Proprietors.

Payments to sole proprietors, whether draws or payment for services, are not wages. The sole proprietor is the employing unit rather than an employee.

(11) Payments to Partners.

Payments to partners, including draws and payment for services, are not wages. The partners are the employing unit rather than employees. However, payments to limited partners are wages because they do not have the same rights and responsibilities as general partners.

(12) Supplemental Unemployment Benefits (SUB).

Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:

(a) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;

(b) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;

(c) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;

(d) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;

(e) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and

(f) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.

(13) Stock Options Excluded From Wages.

(a) There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options.

(b) Incentive Stock Options and Employee Stock Purchase Plan Options are defined by the Internal Revenue Code.

(c) Payments resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option are not wages.

(14) Stipends.

Stipend payments are not wages. Stipends are payments in lieu of actual expense reimbursements that help cover the costs of expenses such as transportation, meals, and supplies associated with training, schooling, meetings, and volunteer activities.

KEY: unemployment compensation, wages

Date of Enactment or Last Substantive Amendment: ~~1992~~2007

Notice of Continuation: May 23, 2003

Authorizing, and Implemented or Interpreted Law: 35A-4-208



Workforce Services, Unemployment Insurance **R994-302** Payment by Employer

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29686

FILED: 03/15/2007, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.**~~R994 302. Payment by Employer.~~****~~R994 302-101. General Definition.~~**

~~— An employer is responsible to advise the Department that he has entered into a business, to report wages paid and to make payments of contributions based on those wages and to comply with instructions on report forms issued by the Department. This rule establishes when contributions are due, how contributions are paid, and when contribution reports are due. Information regarding interest and penalties related to contribution reports are provided for in Section 35A-4-305. An employer is responsible to notify the Department of changes in the business which might affect filing reports or paying contributions.~~

~~R994 302-102. Due Dates for Contribution Payments.~~

~~— (1) Contributions are payable quarterly. The payment is due on the last day of the month that follows the end of each calendar quarter; unless the Department, after giving written notice, changes the due date. Interest and penalties for late payments begin to accrue the day after the due date. Contribution payments postmarked on or before the due date are considered paid timely.~~

~~— (a) The Department may establish a separate due date for the payment of contributions when:~~

~~— (i) The employing unit can show a reasonable basis for contending that the status of the employing unit as an employer, the status of any service performed for the employer or the status of any contribution liability is doubtful. Appealing or disagreeing with the Department's decision regarding the employer's status or status of the liability does not in itself show the status is doubtful. Some examples of when a separate due date may be established by the Department are when an employer can show a reasonable basis for erroneously:~~

~~— (A) reporting wages to another state;~~

~~— (B) not reporting wages he considered to be exempt as agricultural labor; or~~

~~— (C) not reporting wages for individuals he considered exempt from employment; or~~

~~— (ii) An employer discontinues business by retirement therefrom, or by sale, merger, consolidation or reorganization involving the transfer of assets. The employer must give written notice to the Department when:~~

~~— (A) the terms of the discontinuance are known or finalized; and~~

~~— (B) again when the status change is accomplished unless both events occur at the same time; or~~

~~— (iii) The possible collection of any contribution will be jeopardized by delaying the collection thereof until the regular due date.~~

~~— (2) An extension of up to 90 days for making quarterly payments will be granted if the employer makes a written request within ten days after the date the written demand for payment is mailed by the Department. Further extensions may be granted if in the judgement of the Department an extension would preserve the possibility of collecting payments due. Interest will accrue on the outstanding balance from the original due date.~~

~~R994 302-103. Contribution Payments.~~

~~— The contributions due will be based on wages paid during the quarter for subject employment, as defined by Subsection R994 401-205.~~

~~— (1) All contributions or other payments should be made payable to the Utah Unemployment Compensation Fund.~~

~~— (2) Contribution payments made by check or other order will constitute payment on the day received only if initially honored by the bank. In the event that the Department incurs necessary expense in the collection of any such check or other order for payment of money, the amount of such expense shall be paid by the person who tendered said check or order to the Department.~~

~~— (3) After a check has been given in payment and has been returned by the depository bank unpaid, the Department reserves the right thereafter to accept from the employer only cash, certified cashier's check, or money order.~~

~~— (4) Contributions, interest or penalty payments received without a report or billing will be applied to the oldest quarter in which an amount is due and will be applied first to the contributions, then to the interest and finally to the penalties due in that quarter. Payments will~~

be applied in this manner unless, at the time the payment is made, the employer specifies otherwise; or at a later date by mutual agreement between the Department and the employer, the payment is applied differently. Payments accompanied by a contribution report or a billing will be applied to the quarters shown on that report or billing.

R994-302-104. Due Dates for Filing Contribution Reports.

— (1) Contribution reports and any equivalent reports required of those employers liable for payments in lieu of contributions are due quarterly on the last day of the month that follows the end of each calendar quarter, unless the Department, after giving written notice, changes the due date. Reports postmarked on or before the due date are considered filed timely.

— (a) Extension for Filing Reports.

— The Department may, for good cause, grant an extension of time for filing a report if the employer makes a written request not later than the due date of the report.

R994-302-105. Other Responsibilities of the Employer.

— (1) The executor or administrator of an employer's estate must give written notice of the employer's death to the Department as soon as practicable.

— (2) An employer must immediately notify the Department of commencement of any receivership or similar proceeding, or of any assignment for the benefit of creditors, and of any court order with respect to the foregoing. An employer must immediately notify the Department of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Act.

— (3) An employer, receiver, trustee, executor or administrator, or other person appointed under the laws of the State of Utah who is in control of the assets of an employer, must file timely with the Department all reports that are required.

R994-302-106. Adjustments and Refunds.

— Adjustments or refunds for contributions overpaid will be made as provided by Subsection 35A-4-306(5). Adjustments for reports not filed or for reports and contributions filed incorrectly will be made as provided by Section 35A-4-305(2).]

R994-302. Employer Contribution Payments.

R994-302-101. Employer Responsibilities.

An employer must notify the Department that it has entered into a business, to report wages paid, to make payments of contributions based on those wages, and to comply with instructions on report forms issued by the Department. An employer must also notify the Department of changes in the business that might affect filing reports or paying contributions.

R994-302-102. Due Dates for Contribution Payments.

(1) Quarterly contribution payments are due from employers who are subject to the Utah Employment Security Act except as noted in subsections (2) and (3) of this section. The payment is due on the last day of the month that follows the end of each calendar quarter unless the Department, after giving written notice, changes the due date. Interest and penalties for late payments begin to accrue the day after the due date. Contribution payments postmarked on or before the due date are considered paid timely.

(2) Domestic employers defined in Subsection 35A-4-204(2)(k) may elect to pay contributions annually. The payment is due on January 31 of the year following the year wages were paid.

(3) Employers with seasonal employment may petition the Department to only pay contributions one, two, or three calendar quarters a year. The payment is due on the last day of the month that follows the end of the calendar quarter unless the Department, after giving written notice, changes the due date.

(4) The Department may establish a different due date for the payment of contributions when:

(a) The employing unit can show a reasonable basis for contending that the status of the employing unit as an employer, the status of any service performed for the employer, or the status of any contribution liability is doubtful. Appealing or disagreeing with the Department's decision regarding the employer's status or status of the liability does not in itself show the status is doubtful. Some examples of when a separate due date may be established by the Department are when an employer can show a reasonable basis for erroneously:

(i) reporting wages to another state;

(ii) not reporting wages it considered to be exempt as agricultural labor; or

(iii) not reporting wages for individuals it considered exempt from employment.

(b) The possible collection of any contribution will be jeopardized by delaying the collection thereof until the regular due date.

(5) An extension of up to 90 days for making quarterly payments may be granted if the employer makes a written request within ten days after the date the written demand for payment is mailed by the Department. Further extensions may be granted if in the judgment of the Department an extension would preserve the possibility of collecting payments due. Interest will accrue on the outstanding balance from the original due date.

R994-302-103. Contribution Payments.

The contributions due will be based on wages paid during the quarter for subject employment, as defined by Section R994-401-205.

(1) All contributions or other payments should be made payable in United States currency to the Utah Unemployment Compensation Fund or to a depository account specified by the Department or Utah State Treasurer.

(2) Contribution payments will be reflected on the Department records on the day received. Payments other than cash will constitute payment on the day received only if honored by the financial institution. In the event that the payment is not honored in full, the Department will remove the dishonored payment from the employer's account and may assess fees as provided for in Section 35A-4-305 and Utah Code Title 07, Chapter 15.

(3) If a non-cash payment instrument has been given in payment and has been returned by the depository institution unpaid, the Department reserves the right thereafter to accept from the employer only cash, certified cashier's check, or money order.

(4) Contributions, interest or penalty payments received without a report or billing will be applied first to any unpaid costs, then to the oldest quarter in which an amount is due and will be applied first to the contributions, then to the interest and finally to the penalties due in that quarter. Payments will be applied in this manner unless the employer or Department specifies otherwise. Payments accompanied by a contribution report or a billing will be applied to the quarters shown on that report or billing.

R994-302-104. Due Dates for Filing Contribution and Equivalent Reports.

(1) Contribution reports and any equivalent reports required of those employers liable for payments in lieu of contributions are due quarterly on the last day of the month that follows the end of each calendar quarter; unless the Department, after giving written notice, changes the due date. Reports postmarked on or before the due date are considered filed timely.

(a) Extension for Filing Reports.

The Department may, for good cause, grant an extension of time for filing a report if the employer makes a written request not later than the due date of the report.

R994-302-105. Other Responsibilities of the Employer.

(1) The executor or administrator of an employer's estate must give written notice of the employer's death to the Department as soon as practicable.

(2) An employer must immediately notify the Department of commencement of any receivership or similar proceeding, or of any assignment for the benefit of creditors, and of any court order with respect to the foregoing. An employer must immediately notify the Department of the filing of any voluntary or involuntary petition in bankruptcy or other proceeding under the Federal Bankruptcy Act.

(3) An employer, receiver, trustee, executor, administrator, or other person appointed under the laws of the State of Utah who is in control of the assets of an employer, must file timely with the Department all reports that are required.

R994-302-106. Adjustments and Refunds.

Adjustments or refunds for contributions overpaid will be made as provided by Subsection 35A-4-306(5). Adjustments for reports not filed or for reports and contributions filed incorrectly will be made as provided by Subsection 35A-4-305(2).

KEY: unemployment compensation, employer liability
Date of Enactment or Last Substantive Amendment: [~~1994~~2007
Notice of Continuation: May 9, 2006
Authorizing, and Implemented or Interpreted Law: 35A-4-302



**Workforce Services, Unemployment
 Insurance**
R994-303
**Contribution Rates and Relief of
 Charges**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE No.: 29687
 FILED: 03/15/2007, 16:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

~~**R994-303. Contribution Rates and Relief of Charges.**~~

~~**R994-303-101. General Definition.**~~

~~— (1) This rule explains some terms used in relation to employer contribution rates and how rates may be affected by delinquent contributions, delinquent reports and acquiring a business of another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-306, and 35A-4-307. It explains when an employer is notified of his contribution rate, his appeal rights if he wants to protest that rate, what a qualified employer is and the conditions under which a qualified employer will receive a rate less than the maximum rate. This rule also defines successor and explains succession and some terms used in relation to successorship such as acquiring a business and assets. The successor's responsibility for the predecessor's liability is discussed in Subsection 35A-4-305(6) of the Act.~~

~~— (2) The objective of the benefit ratio method of taxation is to employ an experience rating system that:~~

- ~~— (a) provides for equitable allocation of costs;~~
- ~~— (b) increases incentives for employer participation;~~
- ~~— (c) makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.~~

~~**R994-303-102. Computation Date.**~~

~~— "Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.~~

~~**R994-303-103. Notification of Contribution Rate and Appeal Rights.**~~

~~— The Department will notify the employer of his contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.~~

~~**R994-303-104. Qualified Employer.**~~

~~— A "qualified employer" is an employer that paid wages during all four quarters of the fiscal year immediately preceding the computation date. Generally "employer" means any employing unit that paid wages during a calendar quarter. An employer becomes subject to the Act on the first day of the quarter in which the employer paid wages. Coverage will be terminated if there is no payroll in each of the four calendar quarters of a calendar year.~~

~~**R994-303-105. Rates Assigned to Qualified Employers.**~~

~~— (1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for~~

~~fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Section 35A-4-303(10).~~

~~— (2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.~~

~~— (3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. Example: If the employer in the example given in the paragraph above paid the contributions due for the second quarter of 1988 during June 1989, he would be reassigned a rate, effective April 1, 1989, based on his own experience. His experience would include taxable wages reported on the late second quarter report. The Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.~~

~~**(4) Delinquent Reports - Effect on Rate.**~~

~~— A delinquent report is one that is not properly filed when due. The Department will notify the employer that the failure to file the delinquent report by the time the contribution rates are computed may be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.~~

~~**R994-303-106. Successorship and Its Effect on Contribution Rates.**~~

~~— (1) Definitions:~~

~~— (a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.~~

~~— (b) "Predecessor" is the employing unit which last operated the business.~~

~~— (c) "Acquired" means to come in possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated, is NOT considered an acquisition, if the court places restrictions on transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.~~

~~— (d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets; for example, cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, an agreement by the predecessor not to compete.~~

~~— (e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.~~

~~— (f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.~~

~~— (g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business~~

activity, for example, no concurrently operating business at another location. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

—(h) "Like part or character" will be defined by using all four digits from the most current Standard Industrial Code (SIC) Manual, published by the Executive Office of the President, Office of Management and Budget. There is no succession unless it is determined that a like part or character of the business acquired is retained. For example: A new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens as an automotive repair shop and not a service station, there is no successorship.

—(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

—(3) Succession:

—In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

—(a) Successor Was a Qualified Employer.

—If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

—(b) Successor Was Not a Qualified Employer.

—If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a rate newly computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

—(c) Successor Was Not an Employer.

—If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This newly computed rate shall be effective on the day of acquisition.

—(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

—A successor will be assigned a 1 percent surcharge in addition to his overall contribution rate if there are unpaid contributions owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

—(5) Successorship Determination and Burden of Proof.

—The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has

been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

R994-303-107. Fiscal Year.

—Fiscal year shall be defined as in Section 35A-4-301(6), to mean the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

R994-303-108. Benefit Costs.

—(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for which the payment is made. The benefit is considered paid on the date the unemployment check is written regardless of when the check is received or cashed by the claimant. Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid. Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established, but will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when he knew or should have known of the establishment of the overpayment. Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

—(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.]

R994-303. Contribution Rates.

R994-303-101. Benefit Ratio Contribution Rate Computation.

—(1) There are two types of contribution rates, "new" employer rates and "experience" rates.

—(2) The new employer rate is assigned to employers with less than one fiscal year of reporting experience. New employers are assigned a rate based on the two-year average benefit ratio, which is calculated by dividing benefit costs by taxable wages, of all employers in the respective industry. The overall new employer rate is the benefit ratio of the respective industry multiplied by the reserve factor plus the Social Cost. New out-of-state contractors are assigned the maximum tax rate allowable under state law unless they purchase an existing business.

—(3) Experience rates are assigned to employers with one or more fiscal years of reporting experience. The overall contribution rate is calculated annually for each employer using the following three components:

—(a) The "Benefit Ratio" is determined by dividing the total of all chargeable benefits paid to the employer's former employees in the last four fiscal years, by the employer's taxable wages for the same time period.

—(b) The "Reserve Factor" adjustment to the benefit ratio, which may be an increase, decrease, or 1.0, is used to maintain an adequate balance in the benefit reserve fund.

—(c) The "Social Cost" is applied to all employers to recover benefit costs that cannot be attributed to a specific employer.

—The overall tax rate is calculated using the following formula:
Benefit Ratio X Reserve Factor + Social Cost

—(4) Contribution rates may be affected by delinquent contributions, delinquent reports, and acquiring a business of

another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-304, 35A-4-306, and 35A-4-307.

(5) The objective of the benefit ratio method of taxation is to employ an experience rating system that provides for equitable allocation of costs, increases incentives for employer participation, and makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.

R994-303-102. Computation Date.

"Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.

R994-303-103. Notification of Contribution Rate and Appeal Rights.

The Department will notify the employer of its contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.

R994-303-104. Qualified Employer.

A "qualified employer" is an employer who was an employer during all four quarters of the fiscal year immediately preceding the computation date.

If an employer reopens its UI account after the account has been closed, the Department will determine if the employer qualifies for an experience rate or new employer industry rate. A qualified employer will be assigned an overall contribution rate for their account using the employer's unemployment experience during the past four fiscal years immediately preceding the computation date. If the reopening employer had no payroll for two or more consecutive calendar years immediately prior to the reopen date, the employer will be considered a new employer and will receive a new account number and the new employer industry rate, pursuant to Section 35A-4-203 of the Act.

R994-303-105. Rates Assigned to Qualified Employers.

(1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Subsection 35A-4-303(9)(b).

(2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.

(3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. The

Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.

(4) Delinquent Reports - Effect on Rate.

A delinquent report is one that is not properly filed when due. Failure to file the delinquent report by the time the contribution rates are computed will be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.

R994-303-106. Successorship and Its Effect on Contribution Rates.

(1) Definitions.

(a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.

(b) "Predecessor" is the employing unit which last operated the business.

(c) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets such as cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.

(f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business activity in this state. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

(h) "Like part or character" will be defined by using the most current North American Industry Classification System (NAICS) manual. There is no succession unless it is determined that a like part or character of the business acquired is retained. An example of such a situation occurs when a new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens as an automotive repair shop and not a service station, there is no successorship.

(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

(3) Succession.

In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

(a) Successor Was a Qualified Employer.

If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

(b) Successor Was Not a Qualified Employer.

If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a new rate computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

(i) Simultaneously as used in this section means the same day.

(ii) If the predecessor(s) and successor are not qualified employers and have different NAICS codes, and the successor continues to operate the acquired business(s), the successor will retain their original NAICS code.

(c) Successor Was Not an Employer.

If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This new computed rate shall be effective on the day of acquisition.

(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

A successor will be assigned a 1 percent surcharge in addition to its overall contribution rate if unpaid contributions are owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

(5) Successorship Determination and Burden of Proof.

The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

R994-303-107. Fiscal Year.

Fiscal year is defined in Subsection 35A-4-301(6), and means the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

R994-303-108. Benefit Costs.

(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for

which the payment is made. The benefit is considered paid on the date the unemployment payment is issued.

(a) Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid.

(b) Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established. Such benefit costs will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when it knew or should have known of the establishment of the overpayment.

(c) Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.

R994-303-109. Actual Reserve Fund Balance.

The "actual reserve fund balance" used in the calculation of the reserve factor is this state's Trust Fund balance on deposit with the United States Department of the Treasury as of June 30 preceding the computation date.

KEY: unemployment compensation, rates

Date of Enactment or Last Substantive Amendment: ~~June 5, 2003~~ 2007

Notice of Continuation: May 23, 2002

Authorizing, and Implemented or Interpreted Law: 35A-4-303



**Workforce Services, Unemployment
Insurance
R994-305
Collection of Contributions**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29688

FILED: 03/15/2007, 16:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining

coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-305. Collection of Contributions.

~~R994 305 101. General Definition.~~

~~Under Subsections 35A 4 305(1)(d) and 35A 4 305(1)(f) the Department will implement a write off policy as set forth in the following paragraphs.~~

~~R994 305 102. Policy Governing the Filing of Warrants.~~

~~Warrants shall be issued on accounts receivable overpayments and delinquent employer accounts of \$100 or more unless the debtor is in compliance with an installment agreement. Warrants will be issued on all fraudulent overpayments established under Subsection 35A 4 405(5), even if there is an installment agreement, within three years of the establishment of the overpayment. No warrants will be issued on non-fault overpayments established under Subsection 35A 4 406(5).~~

~~R994 305 103. When No Warrant Has Been Filed.~~

~~All non-fault overpayments established under Subsection 35A 4 406(5) and all accounts receivable overpayments established under Subsection 35A 4 406(5) for claimants and all liabilities assessed against employers where a warrant has not been filed will be written off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.~~

~~R994 305 104. When a Warrant Has Been Filed.~~

~~(1) Three Year Review.~~

~~Except for fraud overpayments established under Subsection 35A 4 406(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties, which have not been collected or offset within three years after the filing of a warrant will be reviewed for determination of collectibility. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department will write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgement on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.~~

~~(2) Eight Year Write Off.~~

~~All accounts receivable overpayments for claimants including Subsection 35A 4 405(5) overpayments and employer liabilities including interest and penalties which have not been collected within eight years after the issuance of a warrant will be written off, unless payments are being received consistent with an installment agreement or court order. All collection or offset action shall cease. The debt will be forgiven and forgotten as though no such debt ever existed and it will be removed from the Department records. When an overpayment for fraud established under Subsection 35A 4 405(5) is removed from Department records, the claimant may receive waiting week credit and future benefits may be paid without reference to the prior Subsection 35A 4 405(5) overpayment.~~

R994-305-801. Wage List Requirement.~~(1) General Definition.~~

~~The Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments. This rule explains what information is required, due dates, acceptable formats, and penalties for non-compliance.~~

~~(2) Wage List Due Date.~~

~~The wage list for a quarter must be filed by the last day of the month following the end of that calendar quarter.~~

~~(3) Wage Information Required.~~

~~Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided on each wage list in this order: employee's social security number, employee's name (first initial, second initial and full last name), gross wages paid during the quarter (see Section 35A-4-208 for a definition of wages). The gross wages reported are wages, which are considered to be subject employment (see Section 35A-4-204 for a definition of subject employment). Only those employees who were paid wages during the quarter should be listed on the wage list.~~

~~(4) Wage Reporting Methods.~~

~~The Department will accept wage lists filed on approved forms or approved magnetic tape, cartridge, diskette, or filed electronically through the Department's website. All wage lists reported on forms other than those provided by the Department require prior approval.~~

~~(a) Approved Form Reporting.~~

~~The wage list must be typewritten or machine printed in black ink so that it is capable of being "read" by an optical scanner. The wage list must be on Forms 3C or 3H, Utah Employer's Quarterly Wage List, or on plain white paper using the exact same format, placement on the page, and spacing as on the forms listed above. Photocopies of the Department's wage list forms are not acceptable. Wage list forms are available upon request from the Department.~~

~~(b) Magnetic Media Reporting.~~

~~Employers may report wages paid during the quarter on magnetic tape, cartridge, diskette, or filed electronically through the Department's website. Magnetic media reporting must be submitted according to specifications approved by the Department.~~

~~(5) Wage List Total Must Equal the Quarterly Report Total.~~

~~The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, "Employer's Contribution Report." The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, "Reimbursable Insured Employment and Wage Report, Payrolls and New Hires in Utah." Wage lists consisting of more than one page must show the employer's UI registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.~~

~~(6) Wage Lists Corrections for Prior Quarters.~~

~~Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the name, social security number, the quarter, the amount of wages that should have been properly reported, and an explanation for the corrections being made. Corrections to wages may result in additional contributions being assessed or refunded.~~

~~(7) Penalty for Failure to Provide Wage List Information.~~

~~A penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The penalty amount is \$50 for every 15 days, or fraction thereof, that the filing is late, not to exceed \$250 per filing. The reports are due on the last day~~

~~of the month that follows the end of each calendar quarter unless the division, after giving notice, changes the due date. The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause may be established if the employer was prevented from filing a wage list for circumstances which are compelling or beyond his control. Payment of the penalty does not relieve the employer from the responsibility of filing the wage list in the approved format.]~~

R994-305-101. Policy Governing the Filing of Warrants.

(1) Warrants will be issued on fault overpayments and delinquent employer accounts when there is no installment agreement in effect, when the installment agreement provides for more than three years from the date the liability is established to pay the liability, when the monthly installment payment amount on a fault overpayment is less than the amount specified in Subsection R994-406-302(4)(b), or when an installment agreement is canceled due to failure to make payments or due to the occurrence of a new liability.

(2) Warrants will be issued on all fraudulent overpayments established under Subsection 35A-4-405(5), even if there is an installment agreement and warrants on such overpayments, penalties, and costs will be renewed until paid in full.

(3) No warrants will be issued on non-fault overpayments established under Subsection 35A-4-406(5).

R994-305-102. Write Off Policy for Nonfault Overpayments.

All nonfault overpayments established under Subsection 35A-4-406(5) may be written off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.

R994-305-103. Write Off Policy for Other Overpayments.

Except for fraud overpayments established under Subsection 35A-4-406(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties which have not been collected or offset within three years after the filing of a warrant may be reviewed for determination of collectibility. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department will write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgment on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.

R994-305-801. Wage List Requirement.(1) Federal Requirement.

Section 1137 of the Social Security Act requires employers to submit quarterly wage reports to a state agency. This Department is the designated agency for the state of Utah. The Unemployment Insurance Division of the Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments.

(2) Wage List Due Date.

(a) Contributory employers must file a wage list with the Form 3, Employer's Contribution Report. Reimbursable employers must file a wage list with the Form 794, Insured Employment and Wage Report. Wage lists are due the last day of the month following the end of the calendar quarter.

(b) Domestic employers electing to file an annual report must file a wage list with the Form 3D, Domestic Employer's Annual Report. The wage list is due January 31 of the year following the year wages were paid.

(c) Reimbursable employers must not file a wage list with Form 794-N, Non-insured Employment and Wage Report.

(d) Wage list due dates may be changed and extensions granted under the same provisions established for contribution reports in Rule R994-302.

(3) Wage Information Required.

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided for each employee as a line item on each wage list in the following order:

(a) social security number;

(b) first initial, second initial and full last name; and

(c) gross wages paid during the quarter. Section 35A-4-204 defines subject employment and Section 35A-4-208 defines wages. Only those employees who were paid wages during the quarter should be reported on the wage list.

(4) Wage Reporting Methods.

The Department will accept wage lists filed on approved forms, approved magnetic and electronic media, or the Department website. All wage lists reported on forms other than those provided by the Department require prior approval.

(a) Approved Form Reporting.

The wage list must be typewritten or machine printed in black ink so that it is capable of being processed by an optical scanner. The wage list must be on Department approved forms or on plain white paper using the exact same format, placement on the page, and spacing as on the Department approved forms. Wage list forms are available upon request from the Department or may be downloaded from the Department's website.

(b) Magnetic and Electronic Media Reporting.

Magnetic and electronic media reporting must be submitted according to specifications approved by the Department.

(5) Wage List Total Must Equal the Quarterly Report Total.

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, Employer's Contribution Report. The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, Insured Employment and Wage Report. Wage lists consisting of more than one page must show the employer's Utah registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.

(6) Wage Lists Corrections for Prior Quarters.

(a) Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the following information for each employee in the following order:

(i) social security number;

(ii) first initial, second initial and full last name; and

(iii) gross wages that should have been properly reported.

(b) Each page of the wage list adjustments must be identified by the employer's Utah registration number, the employer's name, and the quarter and year.

(c) The employer must submit an explanation for the corrections being made.

(d) Corrections to wages may result in additional contributions being assessed or refunded.

(7) Penalty for Failure to Provide Wage List Information.

(a) A penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The penalty amount is \$50 for every 15 days, or fraction thereof, that the filing is late or not in an acceptable format, not to exceed \$250 per filing.

(b) The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause is established if the employer was prevented from filing a wage list for circumstances that are compelling or beyond the employer's control. Payment of the penalty does not relieve the employer from the responsibility of filing the wage list in the acceptable format.

KEY: unemployment compensation, overpayments

Date of Enactment or Last Substantive Amendment: ~~August 3, 2004~~2007

Notice of Continuation: December 10, 2004

Authorizing, and Implemented or Interpreted Law: 35A-4-305(1)



Workforce Services, Unemployment Insurance **R994-308** Bond or Security Requirement

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 29689

FILED: 03/15/2007, 16:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule.

The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

~~**R994-308. Bond or Security Requirement.**~~

~~**R994-308-101. General Definition.**~~

~~—To ensure compliance with the contribution provisions of the Act, the Department may require an employer to provide a bond or other security deposit under Section 35A-4-308(1). This rule describes the types of deposits, the conditions under which a deposit may be~~

~~required, how the amount of the deposit is determined and the disposition of the deposit.~~

~~**R994-308-102. Types of Deposits.**~~

~~—A cash deposit will generally be required; however, at the Department's discretion other forms of security may be accepted.~~

~~**R994-308-103. Reasons for Requiring a Deposit.**~~

~~—(1) A security deposit may be required whenever circumstances would reasonably cause doubt as to an employer's future compliance with the contribution provisions of the Act. Failure to comply includes such things as failing to file reports, pay contributions, file a wage list or comply with other requests made by the Department. Some of the more common reasons for requiring a deposit are the following:~~

~~—(a) the employer's past failure to comply;~~

~~—(b) the employer is an out-of-state employer and has workers in Utah;~~

~~—(c) the employer is in an industry where the rate of past failure to comply is high;~~

~~—(d) the employer's or principal's past failure to comply in other businesses with which he is or has been affiliated; and~~

~~—(e) the employer is a leasing employer or temporary services employer and the potential for a negative impact on the trust fund is greater due to the fact that the responsibility for the payment of contributions rests with one employer rather than all the employer's clients.~~

~~**R994-308-104. Amount of Deposit.**~~

~~—When a cash deposit is required, such deposit shall be a minimum of \$100 and shall not exceed an amount equal to three times the quarterly contribution liability currently accruing or expected to accrue.~~

~~**R994-308-105. Disposition of Deposit.**~~

~~—If after the employer makes the required deposit he fails to comply with the Act, the Department will use the cash deposit or the proceeds from the sale of the bond or security to pay contributions, interest and penalties due as defined by Subsection R994-302-103(4). The Department may then require a new deposit.~~

~~**R994-308-106. Interest Earned on Cash Deposits.**~~

~~—Interest earned on cash deposits will be paid into the same fund as other interest and penalties collected by the Department as provided by Subsection 35A-4-305(1)(e).]~~

~~**R994-308. Bond Requirement.**~~

~~**R994-308-101. Authority to Require a Bond.**~~

~~—To ensure compliance with the contribution provisions of the Act, the Department may require an employer to provide a bond or other security deposit under Subsection 35A-4-308(1).~~

~~**R994-308-102. Types of Deposits.**~~

~~—A cash deposit will generally be required, however, at the Department's discretion, other forms of security may be accepted.~~

~~**R994-308-103. Reasons for Requiring a Deposit.**~~

~~—(1) A deposit may be required whenever circumstances would reasonably cause doubt as to an employer's future compliance with the provisions of the Act. Failure to comply includes such things as failing to file reports, pay amounts due, file a wage list or comply with other requests made by the Department. Some of the more common reasons for requiring a deposit are:~~

- (a) the employer's past failure to comply,
(b) the employer is an out-of-state employer and has workers in Utah,
(c) the employer is in an industry where the rate of past failure to comply is high, or
(d) the employer's or principal's past failure to comply in other businesses with which the employer or principal is or has been affiliated.

R994-308-104. Amount of Deposit.

(1) When a deposit is required from a contributory employer, the deposit shall be the greater of \$1000 or three times the quarterly contribution liability currently accruing or expected to accrue.

(2) When a deposit is required from a reimbursable governmental or Indian tribal employer, the deposit shall be the greater of \$1000 or nine times the monthly benefit charges currently accruing or expected to accrue.

R994-308-105. Disposition of Deposit.

If the employer fails to comply with the Act after making the required deposit, the Department will use the deposit to pay amounts due as defined by Subsection R994-302-103(4). The Department may then require a new deposit.

R994-308-106. Interest Earned on Deposits.

Interest earned on cash deposits will be paid into the same fund as other interest and penalties collected by the Department as provided by Subsection 35A-4-305(1)(e).

KEY: unemployment compensation, bonding requirements

Date of Enactment or Last Substantive Amendment: [1994]2007

Notice of Continuation: May 9, 2006

Authorizing, and Implemented or Interpreted Law: 35A-4-308(1)



Workforce Services, Unemployment
 Insurance
R994-309
 Nonprofit Organizations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29697

FILED: 03/15/2007, 17:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Added language that a nonprofit reimbursable employer can be liable for penalties,

interest, and collection costs for late payments as provided by state law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.

❖LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.

❖OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-309. Nonprofit Organizations.

R994-309-101. Nonprofit Organization Requirements[General Definition].

[—(1) Section 35A-4-309 describes how nonprofit organizations elect the method of paying for benefits, the effective period of such election, reimbursement methods, billing and collection procedures,

their rights to notice of any determination and their various appeal rights.

] ~~(2)~~ Nonprofit organizations described in Subsection 35A-4-309(1)(b) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A nonprofit organization which elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and one-half of the extended benefits paid to former employees. These reimbursements for benefits paid and other amounts due are ~~due and~~ payable monthly. Reimbursable employers do not pay for any administrative expenses of the unemployment insurance program.

R994-309-103. Election of Payments by Contributions or Reimbursement.

(1) Initial Election.

A nonprofit organization electing to become a reimbursable employer must make a written election within 30 days after the organization becomes subject to the Act. Since it may take some time for the employer to obtain the IRS letter of exemption required for this election, the employer will be a contributing employer until the letter is provided to the Department timely. The employer has 30 days from the date of the IRS letter to provide a copy to the Department in order to be granted reimbursable status retroactive to the date it[he] became subject to the Act under Subsection 35A-4-309(1)(e). When the letter is provided timely, all contributions paid by the employer in excess of benefits paid to former employees will be refunded. Under Subsection 35A-4-309(1)(e) the Department may, for good cause, extend the 30-day period within which the election is made or the 30 days within which the letter of exemption is provided. An initial election to become a reimbursable employer remains in effect for at least one ~~contribution~~ calendar year. ~~[A contribution year is a calendar year.]~~

(2) Subsequent Elections.

A nonprofit organization may elect to change from the contributions to the reimbursement method or from the reimbursement to the contributions method. An election to change from the contributions to the reimbursement method can be made only if accompanied by a copy of the letter of exemption from the IRS. To be consistent with the principle of Subsection 35A-4-309(1)(d), changes from one method to the other will remain in effect for at least two ~~contribution~~ calendar years. ~~[A contribution year is a calendar year.]~~ Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-309(1)(e) the Department may for good cause ~~extend~~ waive the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-309(3), the Department may terminate the reimbursable status if the organization is delinquent in filing Form 794, Insured Employment and Wage Report, Form 3H Employer's Quarterly Wage List, making the reimbursable payments, or paying any other amounts due.

R994-309-104. Liability of an Organization When Changing the Method of Payment.

A nonprofit organization changing from the reimbursement to the contributions method must reimburse the Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A nonprofit organization was a

reimbursable employer during ~~[1985]~~2003 and ~~[1986]~~2004. For ~~[1987]~~2005 the organization elects to pay contributions. If a former employee receives benefits in ~~[1987]~~2005 based on wages paid by the organization in ~~[1986]~~2004, the organization must reimburse the Department for the benefits based on the ~~[1986]~~2004 wages. The organization must also pay contributions on the ~~[1987]~~2005 wages. If this organization changes back to the reimbursement method in ~~[1989]~~2007, any benefits received by a former employee which were based on wages paid in ~~[1988]~~2006 would not be subject to reimbursement since contributions have been paid on those wages.

R994-309-105. Reimbursable Employer's Liability for Benefits Paid.

(1) The reimbursable employer's liability is limited to the amount of benefits paid to the claimant. The employer may also be required to pay interest, penalty, and collection costs on past due amounts.

(2) The employer is not liable for benefits overpaid as a result of agency error or a Department decision which is later reversed unless the reversal was due in whole or in part to the failure of the reimbursable employer to provide complete and accurate information within the time limits ~~[prescribed]~~ established by the Department.

(3) Any benefits established as an overpayment, except overpayments due to the failure of the employer to provide information as provided in subparagraph (2) above, will be deducted from the employer's liability or, at the Department's discretion, refunded as the overpayment is recovered.

(4) If a claimant continues working part-time for a reimbursable employer and had other employment during the base period, the reimbursable employer may be eligible for relief of charges if all the requirements of ~~[rule]~~ Subsection R994-401-302(1) are met.

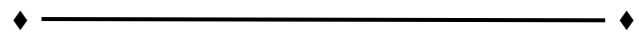
R994-309-107. Monthly Billing of Benefits Paid.

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security ~~[account]~~ number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period, any adjustments to prior benefit charges, and the total amount paid to all such claimants during the previous calendar month.

KEY: unemployment compensation, nonprofit organizations
Date of Enactment or Last Substantive Amendment: ~~[September 29, 2005]~~2007

Notice of Continuation: July 14, 2004

Authorizing, and Implemented or Interpreted Law: 35A-4-309



Workforce Services, Unemployment
 Insurance
R994-310
 Coverage

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE No.: 29695
 FILED: 03/15/2007, 16:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed repeal and reenactment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. Federal definitions have been added to assist the industry in determining coverage. There were so many, mostly minor changes that the underlining and strikeout method of amending the rule made it too difficult to read and understand. For that reason, the Department determined to repeal and reenact the rule. The current rule and this proposed new rule are essentially equivalent in substance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ❖ OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.**R994-310. Coverage.****~~R994 310 101. General Definition.~~**

~~— This rule identifies when coverage under the Act will be terminated and specifies who has the authority to approve an employing unit's election to become covered under the Act.~~

~~R994 310 102. Terminating Coverage.~~

~~— (1) Coverage will automatically be terminated if the employing unit has paid no wages in the preceding calendar year.~~

~~— (2) If within the calendar year after coverage is terminated an employer becomes subject to the Act again, the termination will be canceled or the employer's account will be re-opened.~~

~~— (3) If the Department determines that the termination was not bona fide, but an attempt to manipulate the rate provisions of the Act, the termination will be canceled and the employer will be assigned its earned rate.~~

R994 310 103. Elections to Become Covered.

~~— An employing unit's election to become covered under the Act for either the entire employing unit or for services which do not constitute employment as defined in the Act, may be approved by the Executive Director or designee.]~~

R994-310-101. Coverage Definitions.

(1) "Subject date" is the first day of the calendar quarter in which the employer is required to comply with the Act.

(2) "Effective date" is the first day an employer pays wages or acquires an employing unit.

(3) "Inactive date" is the last day an employer pays wages.

R994-310-102. Initiating Coverage.

(1) An agricultural employer is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer;

(a) pays \$20,000 or more in cash wages in a quarter, or
(b) employs ten or more workers for some portion of a day in each of 20 different calendar weeks.

(2) A domestic employer is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer pays \$1000 or more in cash wages in any quarter.

(3) A nonprofit organization defined in 26 U.S.C.3306(c)(8) is subject to unemployment contributions the first day of the quarter that wages are paid in the year in which the employer employs four or more workers for some portion of a day in each of 20 different calendar weeks.

(a) A nonprofit organization that has an Internal Revenue Service 501(c)(3) classification as the result of an affiliation with a national organization that is subject in another state, is a subject employer on the day they pay any wages in this state.

R994-310-103. Inactivating Coverage.

(1) An agricultural employer's account may be inactivated the last day of a calendar year in which the employer:

(a) pays less than \$20,000 in wages in each quarter of that year, and

(b) employs less than ten workers for some portion of a day in each of 20 different calendar weeks.

(2) A domestic employer's account may be inactivated the last day of a calendar year in which the employer pays less than \$1000 in wages in each quarter of that year.

(3) The account of a nonprofit organization defined in the 26 U.S.C.3306(c)(8) may be inactivated the last day of a calendar year in which the employer employs less than four workers for some portion of a day in each of 20 different calendar weeks.

(4) Coverage will automatically be inactivated if the employing unit has paid no wages in the preceding calendar year.

(5) If within four fiscal years after coverage is inactivated, an employer becomes subject to the Act again, the employer's account may be reopened.

R994-310-104. Elections to Become Covered.

An employing unit's election to become covered under the Act for either the entire employing unit or for services which do not constitute employment as defined in the Act, may be approved by the Executive Director or designee.

KEY: unemployment compensation, coverage

Date of Enactment or Last Substantive Amendment: [September 24, 2004]2007

Notice of Continuation: July 14, 2004

Authorizing, and Implemented or Interpreted Law: 35A-4-310



Workforce Services, Unemployment Insurance

R994-311

Governmental Units and Indian Tribes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 29698

FILED: 03/15/2007, 17:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying

language have been added throughout. This proposed amendment adds language covering Indian Tribes and provides for interest, penalties, and collection costs for late payments to the Department as provided in state statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.

❖LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.

❖OTHER PERSONS: There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

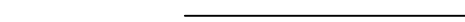
DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: Tani Downing, Executive Director



R994. Workforce Services, Unemployment Insurance.

R994-311. Governmental Units and Indian Tribes.

R994-311-101. Governmental Unit and Indian Tribe Requirements[General Definition].

[—(1) Section 35A-4-311 describes how governmental units elect the method of paying for benefits, the effective period of such

~~election, billing and collection procedures for the reimbursement method and appeal rights related to the election.~~

(1[2]) Governmental units and Indian Tribes described in Subsection 35A-4-311(1[2]) will pay contributions in the same manner as other employers under Section 35A-4-302 unless they elect to become reimbursable employers which are liable for payments in lieu of contributions. A governmental unit or Indian tribe ~~which~~ that elects to become a reimbursable employer pays to the Department an amount equal to the regular benefits and all of the extended benefits paid to former employees. These reimbursements for benefits paid and other amounts due are ~~due and~~ payable monthly. Reimbursable employers do not pay any administrative expenses of the unemployment insurance program.

(2) This state, as required by 35A-4-204(d)(ii), shall reimburse the Department for all regular and extended benefits paid for service performed in the employ of this state.

R994-311-102. Definition of Governmental Units and Indian Tribes.

Section 35A-4-311 applies to governmental units including[-] any county, city, town, school district, or political subdivision and instrumentality of the foregoing or any combination thereof and political subdivisions or instrumentalities of the State of Utah or other states as provided by Subsection 35A-4-204(2)(d) and Indian Tribes. A political subdivision or instrumentality of a state or county, city, town or school district is a subdivision thereof to which has been delegated certain functions of that state, county, etc. Examples of governmental units to which this section applies are county water conservancy districts, state universities, city fire departments, and associations of county governments[-, etc]. The provisions of this rule ~~to~~ do not apply to federal agencies.

R994-311-103. Effective Period of Payments by Contributions or Reimbursement.

(1) Initial Election

A governmental unit or Indian tribe electing to become a reimbursable employer must make a written election within 30 days after the organization becomes subject to the Act. Under Subsection 35A-4-311(1)(e) the Department may, for good cause, extend the 30 day period within which the election is made. This initial election remains in effect for at least one full ~~contribution year~~ (calendar year[~~]~~).

(2) Subsequent Elections

A governmental unit or Indian tribe may elect to change from the contributions to the reimbursement method or from the reimbursement method to the contributions method. To be consistent with the principle of Subsection 35A-4-311(1)(d), changes from one method to the other will remain in effect for at least two ~~contribution years~~ (calendar years[~~]~~). Any election to change from one method of payment to the other must be made in writing no later than 30 days prior to January 1 of the year for which the change is requested. Under Subsection 35A-4-311(1)(e) the Department may for good cause ~~extend~~ waive the 30 day period within which a change from one method to the other is requested. As provided by Subsection 35A-4-311(3), the Department may terminate the reimbursement status if the governmental unit or Indian tribe is delinquent in filing Form 794, Insured Employment and Wage Report, Form 3H Employer's Quarterly Wage List, making the reimbursement payments, or paying any other amounts due.

R994-311-104. Liability of a Governmental Unit or Indian Tribe When Changing the Method of Payment.

A governmental unit or Indian tribe changing from the reimbursement to the contributions method must reimburse the Department for benefits paid on wages earned during the time the organization was a reimbursable employer. Example: A governmental unit was a reimbursable employer during [1985]2003 and [1986]2004. For [1987]2005 the organization elects to pay contributions. If a former employee receives benefits in [1987]2005 based on wages paid by the organization in [1986]2004, the organization must reimburse the Department for the benefits based on the [1986]2004 wages. The organization must also pay contributions on the [1987]2005 wages. If this organization changes back to the reimbursement method in [1989]2007, any benefits received by a former employee which were based on wages paid in [1988]2006 would not be subject to reimbursement since contributions have been paid on those wages.

R994-311-105. Reimbursable Employer's Liability for Benefits Paid.

(1) The reimbursable employer's liability is limited to the amount of benefits paid to the claimant. The employer may also be required to pay interest, penalty, and collection costs on past due amounts.

(2) The employer is not liable for benefits overpaid as a result of agency error or a Department decision which is later reversed unless the reversal was due in whole or in part to the failure of the reimbursable employer to provide complete and accurate information within the time limits ~~prescribed~~ established by the Department.

(3) Any benefits established as an overpayment, except overpayments due to the failure of the employer to provide information as provided in subparagraph (2) above, will be deducted from the employer's liability or, at the Department's discretion, refunded as the overpayment is recovered.

(4) If a claimant continues working part-time for a reimbursable employer and had other employment during the base period, the reimbursable employer may be eligible for relief of charges if all the requirements of ~~rule~~ Subsection R994-401-302(1) are met.

R994-311-107. Monthly Billing of Benefits Paid.

The Department will send a monthly billing to the reimbursable employer if any benefits have been paid to former employees. The billing will include the name and social security ~~account~~ number of each claimant, the amount of the payment to each claimant on the basis of wages paid to him by the reimbursable employer in his base period, any adjustments to prior benefit charges, and the total amount paid to all such claimants during the previous calendar month.

R994-311-108. Charter Schools.

(1) In order to be recognized by this state as a charter school, a school must apply with the Utah State Charter School Board. Charter schools recognized by the Charter School Board are considered to be public schools within the state's public education system.

(2) If a school desires to be eligible for election as a reimbursable employer under Section 35A-4-311, it must verify its status as a school within the state's public education or higher

education systems. A charter school must provide evidence it has a current charter with the State Charter School Board.

KEY: unemployment compensation, government corporations
Date of Enactment or Last Substantive Amendment: [September 29, 2005]2007

Notice of Continuation: July 14, 2004

Authorizing, and Implemented or Interpreted Law: 35A-4-311



Workforce Services, Unemployment Insurance **R994-312** Employing Unit Records - Confidential

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 29699

FILED: 03/15/2007, 17:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment is to ensure the rule accurately reflects current law and practice.

SUMMARY OF THE RULE OR CHANGE: These changes are being made as part of the Department's effort to rewrite all of its rules. This rule was changed to more accurately reflect current practice and state and federal law. Archaic language has been removed and additional explanations and clarifying language have been added throughout. A provision has been added that the Department can bring legal action to compel an employer to produce necessary records in conformance with state law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104, and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ❖ **OTHER PERSONS:** There are no costs or savings to any other persons as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any

business. These changes will have no impact on any employer's contribution tax rate. Tani Downing, Executive Director

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY UT 84111-2333, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2001

AUTHORIZED BY: Tani Downing, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-312. Employing Units Records[~~-Confidential~~].

[R994-312-101. General Definition.

~~Subsection 35A-4-312 defines records an employing unit must keep and to which the Department may have access; it further outlines the rules for confidentiality of the records and the exceptions to those rules. The authority to determine who is or is not an employing unit is granted to the Department Representative in Subsection 35A-4-313.~~

R994-312-101[2]. Recordkeeping[s] Requirements[d].

(1) Each employing unit shall, for a period of at least three calendar years, preserve and make available for inspection all records with respect to employment performed in its service. [Information is required as follows:]

([a]2) The following information is required for[~~th~~] each pay period and for each worker[~~s~~]:

([i]a) [His ~~n~~]Name and social security number [~~-(the social security number is required when filing reports to the Department)-~~];

([ii]b) [His ~~p~~]Place of employment. This includes the city and town, or where appropriate the county, in which the work was performed. If work is performed in several locations, assignment of place of employment is made in the following order[~~s~~]:

([A]i) the worker's base of operations,

([B]ii) the place from which the worker's services are directed or controlled, and

([C]iii) the worker's place of residence[~~-~~];

([iii]c) The date hired[~~-~~];

([iv]d) The date and reason for separation from work[~~-~~];

([v]e) The ending date of each pay period[~~-~~];

([vi]f) The total amount of wages paid [~~for~~] for each pay period[~~s~~] showing separately:

([A]i) money wages; and

~~(B)~~ii) wages as otherwise defined in Section 35A-4-208 and Section R994-208-102~~(-)~~, and

~~(vii)~~g) Daily time cards or time records, kept in the regular course of business.

R994-312-102~~3~~[3]. Examination of Employer Records: Scope and Authority.

(1) The Department is authorized to examine any and all records necessary for the administration of the Act. These records include payroll records, disbursement records, accounting records, tax returns, magnetic and electronic media, personnel records, minutes of meetings, loan documentation, articles of organization, operating agreements, and any other records which might be necessary to determine claimant eligibility and employer liability.

(2) The Department may initiate legal action to compel an employer to provide access to records if the employer fails to provide full access to records.

(3) If an employer maintains its records outside of this state, the employer may be required to submit copies of records for review within this state. The employer is responsible for any costs associated with providing such copies of records.

R994-312-103~~4~~[4]. Confidentiality of Records.

(1) Employers and individuals have a legitimate expectation of privacy in the information they provide to the Department. Therefore, consistent with federal and state requirements of confidentiality, it is the intent of this rule to limit access to Department records for use in:

(a) administration of the programs of the Department and the other divisions of the Department of Workforce Services;

(b) the detection and avoidance of duplicate or fraudulent claims against public assistance funds, or to avoid significant risk to public safety; and

(c) as specifically mandated by federal or state law. Department records shall not be published or open to public inspection in any manner revealing the employer's or the individual's identity except upon written request which shall set forth one or more of the following reasons for disclosure:

(i) Records used in making an initial determination or any decision by the Department may be provided to all interested parties prior to the rendering of any decision to the extent necessary for the proper presentation of the case.

(ii) Any information requested by employers concerning claims for benefits with respect to former or current employees may be provided where the employer's reason for seeking the information is directly related to the unemployment insurance program. Information in the records may be made available to the party who submitted the information to the Department; and an individual's wage data submitted by an employer may be made available to that individual.

(iii) Information in the record may be made available to the public for any purpose following a written waiver by all parties of their rights to non-disclosure.

(iv) Employment and claim information may be disclosed by the Department to other divisions of the Department of Workforce Services for the purpose of carrying out the programs administered by the Department for the protection of workers in the work place; to the Governor's office and other governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation; and to any other governmental agency which is specifically authorized by federal or state law to receive such information, subject to the requirements of Subsection R994-312-304(2).

(v) Employment and claim information may be disclosed by the Department to any other public employees in the performance of their public duties only upon a determination by the Department that such disclosure will not discourage the willingness of employers to report wage and employment information or individuals to file claims for unemployment benefits, and such disclosure:

(A) is directly related to the detection or avoidance of duplicate, inconsistent or fraudulent claims against public assistance funds, or the recovery of overpayments of such funds; or

(B) is necessary to avoid a significant risk to public safety; and Disclosure pursuant to R994-312-304(1)(vi)(B) shall be subject to the requirements of Subsection R994-312-304(2).

(vi) No disclosure of employment or claim information may be made by the Department other than as set forth above. All requests for information must comply with the requirements and procedures contained in this rule. The Department will request a judicial or administrative body to withdraw any subpoena issued by that body if the subpoena does not conform to the Act and this rule.

(2) Employment and claim information may be disclosed to the divisions of the Department of Workforce Services, other governmental agencies, and other public employees only upon completion of a written agreement containing all of the following terms and conditions:

(a) The requesting division or agency must specify a bona fide need for the information, and must agree to use the information only to the extent necessary to assist in its valid administrative needs.

(b) The requesting division or agency must identify all agency officials, by position, authorized to request and receive information.

(c) The methods and timing of requests for information must be agreed upon by the Department and the requesting division or agency, and there must be provision for the appropriate reimbursement of the Department for the costs associated with furnishing the requested information.

(d) The requesting division or agency must agree to implement, at a minimum, the following requirements for safeguarding disclosed information:

(i) the disclosed information may not be used by the requesting division or agency for any purposes not specifically authorized; and

(ii) the information must be stored by the requesting division or agency in a secure place, and electronically stored information must be secured so that unauthorized persons cannot access the information; and

(iii) the requesting division or agency must instruct all persons authorized to request and receive information as to the confidential nature of the information and of the legal sanctions for unauthorized disclosure; and

(iv) the requesting division or agency must permit the Department to make on-site inspections to insure that there is a genuine need for the information, that the information is being used only for that purpose, and that state and federal confidentiality requirements are being met; and

(v) the head of the requesting division or agency must sign a written acknowledgment attesting to the confidentiality requirements of this rule.

KEY: unemployment compensation, confidentiality of information

Date of Enactment or Last Substantive Amendment: ~~1989~~2007

Notice of Continuation: July 14, 2004

Authorizing, and Implemented or Interpreted Law: 35A-4-312



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 between paragraphs (· · · · ·) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules 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 May 1, 2007. At its option, the agency may hold public hearings.

From the end of the waiting period through July 30, 2007, 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.

Environmental Quality, Air Quality
R307-220
Emission Standards: Plan for
Designated Facilities

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29229
 Filed: 03/14/2007, 16:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R307-220-5 incorporates by reference the new designated facilities plan for Mercury Emissions at Coal-Fired Electric Generating Units. The purpose of this change is to revise the plan in response to public comments, and update the adoption date of the plan.

SUMMARY OF THE RULE OR CHANGE: In response to public comments, the Utah Air Quality Board made the following changes to the designated facilities plan for Mercury Emissions at Coal-Fired Electric Generating Units: 1) the Board changed the re-evaluation of the basis for allowance distribution in Section 3(e)(i) from once every year to once every five years. This provides sources with a longer planning horizon and potentially reduces the necessary paperwork; 2) a typographical error was corrected in Section 3(e)(ii)(C); and 3) the adoption date of the plan was updated. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the December 1, 2006, issue of the Utah State Bulletin, on page 12. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Designated Facilities Plan, Section 4, Plan for Mercury Emissions at Coal-Fired Electric Generating Units, March 14, 2007

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no costs to the state budget by adopting this plan; costs for all regulated sources are covered by the fees they pay under Rule R307-415, the operating permits program.

❖ **LOCAL GOVERNMENTS:** Some costs savings may occur because of the change in Section 3(e)(i); however, the amount is unknown and is excepted to be minimal. Other changes are not expected to change costs for local government, because the changes do not create any new requirements.

❖ **OTHER PERSONS:** Some costs savings may occur because of the change in Section 3(e)(i); however, the amount is unknown and is excepted to be minimal. Other changes are not expected to change costs for other persons, because the changes do not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some costs savings may occur because of the change in Section 3(e)(i); however, the amount is unknown and is excepted to be minimal. Other changes are not expected to change costs for affected persons, because the changes do not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some costs savings may occur because of the change in Section 3(e)(i); however, the amount is unknown and is excepted to be minimal. Other changes are not expected to change costs for businesses, because the changes do not create any new requirements. Dianne R. Nielson, Executive Director

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:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-220. Emission Standards: Plan for Designated Facilities.

R307-220-5. Section IV, Coal-Fired Electric Generating Units.

Section IV, Coal-Fired Electric Generating Units, as most recently adopted by the Air Quality Board on ~~February 7, 2007~~ March 14, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, landfills, incinerators, electric generating units

Date of Enactment or Last Substantive Amendment: 2007

Notice of Continuation: March 26, 2002

Authorizing, Implemented, or Interpreted Law: 19-2-104(3)(q)

◆ _____ ◆

Environmental Quality, Air Quality
R307-424
Permits: Mercury Requirements for
Electric Generating Units

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29231
 Filed: 03/14/2007, 16:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make changes to provisions of Rule R307-424 in response to public comments.

SUMMARY OF THE RULE OR CHANGE: In response to public comment, the Air Quality Board made the following revisions to Rule R307-424: 1) the Board removed provisions in Subsection R307-424-3(3) that potentially allowed credits to be generated by units outside of Air Quality's jurisdiction; 2) for the purpose of establishing offset credits to be used in subsequent permitting actions, it was recommended that the rule should establish a baseline date. As such, the Board made changes in Subsection R307-424-3(6) to set a baseline date as 12/31/1999; 3) the Board clarified language in Subsection R307-424-4(3) regarding the circumstances under which the owner or operator of an electric generating units could petition the executive secretary for an alternate compliance limit; and 4) the Board clarified the process involved in petitioning the executive secretary for an alternate compliance limit under Section R307-424-4; therefore, additional language was added in Subsections (a) and (b) to establish criteria by which such a petition might be evaluated.

(DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the December 1, 2006, issue of the Utah State Bulletin, on page 15. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Because this revision does not create any new requirements, no change in costs is expected to the state budget.
- ❖ **LOCAL GOVERNMENTS:** Because this revision does not create any new requirements, no change in costs is expected for local governments.
- ❖ **OTHER PERSONS:** Because this revision does not create any new requirements, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this revision does not create any new requirements, no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this revision does not create new requirements, no change to costs is expected for businesses. Dianne R. Nielson, Executive Director

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:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 05/09/2007

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-424. Permits: Mercury Requirements for Electric
Generating Units.

.....

R307-424-3. Offset Requirement: Mercury.

Sources meeting the applicability requirements of R307-424-1 above and making application for an approval order under R307-401 shall, in addition to any other requirement for obtaining such approval order, obtain an enforceable offset for any potential increase in mercury emissions in accordance with the following:

(1) The permitted increase in mercury emissions, considering the application of any control method or device, shall be offset by mercury emission credits at a ratio of 1 to 1.1 respectively.

(2) The averaging period for such determinations shall be a 12-month period.

(3) Mercury emission credits must be obtained from an EGU located within the State of Utah, ~~excluding~~~~including~~ any EGU located on Indian lands within the State.

(4) To preserve reductions in mercury emissions as credits for use in offsetting potential increases, the executive secretary must identify such credits in an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reduction credits, and to record any transfers of, or liens on, these rights.

(5) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable.

(6) The quantity of mercury emission reductions to be used for credit will be determined in accordance with 40 CFR part 75, or will be based on the best available data reported to the executive secretary. To the extent that the EGU has been subject to the requirements of part 75, mercury emissions data shall be the average of the 3 highest annual amounts over the most recent 5-year period. Mercury emission reductions made prior to December 31, 1999 shall not be creditable for such purpose.

(7) R307-424-3 shall not apply to any EGU for which a valid approval order was issued prior to November 17, 2006.

R307-424-4. Emission Rates.

(1) By no later than December 31, 2012, the owner or operator of any EGU with an input heat capacity in excess of 1,500 MMbtu per hour and having commenced operations prior to November 17, 2006, shall demonstrate compliance with at least one of the following:

(a) A maximum emission rate of 6.50×10^{-7} pounds mercury per million btu heat input; or

(b) A minimum of 90% control of total mercury emissions.

(2) Compliance with (1) above shall be based on an annual averaging period beginning January 1 and ending December 31.

(a) Beginning January 1, 2013, compliance shall be determined using the monitoring and recordkeeping requirements incorporated under R307-224-2. Upon completion of each year's fourth quarterly report, an assessment shall be made for the entire calendar year and reported to the executive secretary within 30 days.

(b) Where it is necessary to determine the mercury content of the coal or coals burned, the owner or operator shall use the appropriate ASTM method, and shall measure at least one representative sample each month. Records of such testing shall be kept for a period of at least five years, and shall be made available to the executive secretary upon request.

(3) Should an EGU be unable to achieve the maximum emission rate or the minimum control efficiency described in ~~found in noncompliance with~~ (1) above, despite proper ~~ly~~ operation ~~of the~~ unit in conjunction with a baghouse as well as wet or dry flue gas de-sulfurization, the owner or operator may petition the executive secretary for a modification to the compliance limitation for the unit ~~limits therein~~ in accordance with R307-401.

(a) Such petition shall be received no later than the date upon which the compliance assessment required under (2)(a) above is due.

(b) Any such determination by the executive secretary will be made on a case-by-case basis, taking into consideration energy, environmental and economic impacts and other costs. It will be based on the best information and analytical techniques available.

KEY: air pollution, electric generating unit, mercury
Date of Enactment or Last Substantive Amendment: 2007
Authorizing, Implemented, or Interpreted Law: 19-2-101; 19-2-104(1)(a); 19-2-104(3)(e); 40 CFR 60.24

◆ ————— ◆

Public Service Commission, Administration **R746-420** Requests for Approval of a Solicitation Process

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29376

Filed: 03/14/2007, 15:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to incorporate comments on the proposed new rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R746-420-2(3) is changed to eliminate reference to alternative ratepayer protection conditions. Subsection R746-420-3(2)(b)(vii) is changed to include "and benefits". Subsection R746-420-3(4)(b) is changed to replace "engineering specifications" with "a description of the facility". Subsection R746-420-3(7)(g) is changed to remove reference to specific items. Subsection R746-420-3(8)(f) is changed to eliminate post-activity acknowledgments. Responsibilities of the independent evaluator which were permissive in Sections R746-420-3 and R746-420-6 are changed to mandatory responsibilities, with the inclusion of a case-by-case exception. Subsection R746-420-6(2)(e) is changed to add documents provided in discovery and to the independent evaluator in the documents that are to be retained. This proposed changes also is modified to allow any party to indicate any additional material to be retained. Other nonsubstantive stylistic and typographical errors are corrected. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the January 15, 2007, issue of the Utah State Bulletin, on page 102. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-17-100 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** It is not anticipated that the proposed changes will have any costs or savings effect upon agencies of the State of Utah. Any costs to state agencies are driven by the provisions of the Energy Resource Procurement Act,

Section 54-17-100 et seq., and were considered by the Legislature in enacting the Act. The proposed rule specifies the information which the Act contemplated would be submitted by utilities affected by the Act and identifies the procedures that will be followed for agency approval of a utility's request to approve a significant resource solicitation or obtain a waiver of a solicitation. The proposed rule's identification of the qualifications for an independent evaluator, the process by which an independent evaluator will perform its work in relation to a solicitation for or acquisition of a significant energy resource, and how payments will be made to an independent evaluator are not anticipated to result in any cost or savings effect on state agencies beyond those considered by the Legislature in enacting the Act.

❖LOCAL GOVERNMENTS: There will be no change in costs or savings to local governments as the proposed rule has no provisions affecting any local government activity.

❖OTHER PERSONS: Although affected utilities will incur costs to comply with the Act, those costs derive from the requirements of the Act and not the proposed rule. The Act requires an affected utility to obtain Commission approval of its acquisition of a significant energy resource and the proposed rule identifies the specific information to be submitted when seeking such approval and the specific steps for the solicitation process that is required by the Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As previously explained, there are no anticipated compliance costs arising from the proposed rule beyond costs which were already considered by the Legislature when enacting the Energy Resource Acquisition Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no different fiscal impact on businesses from the originally proposed rule. Ric Campbell, Chairman

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:

Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.

R746-420. Requests for Approval of a Solicitation Process.

R746-420-1. General Provisions.

(1) A Soliciting Utility filing for approval of a proposed Solicitation and Solicitation Process in accordance with the Energy Resource Procurement Act (Act) shall file a request for approval of the proposed Solicitation and Solicitation Process (Application) which shall include testimony and exhibits which provide:

(a) A description of the Solicitation Process the Soliciting Utility proposes to use;

(b) A copy of the complete proposed Solicitation with appendices, attachments and draft pro forma contracts if applicable;

(c) Information to demonstrate that the filing complies with the requirements of the Act and Commission rules;

(d) Descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids;

(e) Information directing parties to all questions and answers regarding the Solicitation and Solicitation Process posted on an appropriate website;

(f) Information on how participants in the pre-issuance Bidders' conference should submit advance written questions to the Soliciting Utility that are to be addressed at the pre-issuance Bidder's conference;

(g) A list of potentially interested parties to whom the Soliciting Utility has sent or will send notices of the filing of the request for approval of the proposed solicitation with the Commission; and

(h) Other information as the Commission may require.

(2) At the time of filing, or earlier if practicable, the Soliciting Utility shall provide to the Independent Evaluator, data, information and models necessary for the Independent Evaluator to analyze and verify the models.

(3) Pre Bid-Issuance Procedures. Prior to applying for approval of a proposed Solicitation:

(a) The Soliciting Utility shall give advance notice to the Commission as soon as practicable that it intends to conduct a Solicitation Process but not later than 60 days prior to the filing of the draft Solicitation and Solicitation Process to enable the Commission to promptly hire an Independent Evaluator[-];

(b) The Soliciting Utility shall hold a pre-issuance Bidders' conference in Utah, with both in-person and conference call participation at least 15 days prior to the time the Solicitation is filed for approval. Interested persons may attend this conference. The Soliciting Utility shall ensure that all questions and answers, made at the pre-issuance Bidder's conference, are provided or recorded in writing to the extent practicable[-];

(c) At the pre-issuance Bidder's conference, the Soliciting Utility should describe to the attendees in attendance the process, timeline for Commission review of the draft Solicitation and opportunities for providing input, including sending comments and/or questions to the Independent Evaluator[-]; and

(d) No later than the date of filing of the proposed Solicitation, the Soliciting Utility shall issue a notice to potential bidders regarding the timeline for providing comments and other input regarding the draft Solicitation.

(4) Process for Approval of a Solicitation.

(a) Comments on the Soliciting Utility's Application shall be filed with the Commission within 45 days after the filing of the Application. The Independent Evaluator shall provide comments within 55 days after the filing of the Application. The Soliciting

Utility shall file reply comments within 65 days after the filing of the Application.

(b) An Approved Solicitation and related documents shall be posted on an appropriate website as determined by the Commission order approving the Solicitation. Notice of the website posting of a Solicitation shall be sent to the potential bidders identified by the Soliciting Utility and as otherwise directed by the Commission.

(c) All material modifications to the terms and schedule of the Approved Solicitation must be approved by the Commission.

R746-420-2. Requests for Waiver of a Solicitation Process.

(1) A Soliciting Utility filing for waiver of the requirements of Section 54-17-201(2) shall file a request for waiver which shall include testimony and exhibits which provide:

(a) An explanation of and the factual basis for the emergency, opportunity or other factors that support the requested waiver;

(b) If the requested waiver is based upon an emergency, evidence establishing the nature and cause of the emergency and an explanation of why the proposed waiver is in the public interest;

(c) If the requested waiver is based upon a time-limited commercial or technical opportunity, evidence establishing the nature of the opportunity and an explanation of why the proposed waiver is in the public interest;

(d) If the requested waiver is based upon other factors, evidence establishing the nature of those factors and an explanation of why the proposed waiver is in the public interest;

(e) Evidence explaining and demonstrating when the Soliciting Utility first became aware of the claimed emergency, opportunity or other factors and how and when it pursued or responded to the same; and

(f) Evidence showing that a waiver of the Solicitation Process is in the public interest.

(2) A Commission order granting a requested waiver of a Solicitation Process shall not constitute and does not determine approval or disapproval of a significant energy resource decision including cost recovery. The Soliciting Utility retains the obligation to file for approval of a significant energy resource decision under Section 54-17-302.

(3) ~~[In considering a request for waiver of a solicitation process under Section 54-17-201(3), the Commission may determine whether conditions could reasonably be imposed to provide alternative ratepayer protections in lieu of those otherwise provided by a competitive solicitation process and an Independent Evaluator.]~~ Pursuant to Section 54-17-201(3)(c)(ii), the Commission may condition the granting of a waiver on such conditions as the Commission may determine to be just, reasonable and in the public interest. If the Commission determines that insufficient ratepayer protections exist to warrant advance approval under Section 54-17-302, it may deny or condition approval pursuant to Section 54-17-302(6) in such manner as necessary to protect the public interest.

R746-420-3. Solicitation Process.

(1) General Requirements of a Solicitation Process.

(a) All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.

(b) A proposed Solicitation and Solicitation Process must be reasonably designed to:

(i) Comply with all applicable requirements of the Act and Commission rules; ~~and~~

(ii) Be in the public interest taking into consideration:

(A) whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state~~[-];~~

(B) long-term and short-term impacts~~[-];~~

(C) risk~~[-];~~

(D) reliability~~[-];~~

(E) financial impacts on the Soliciting Utility~~[-]; and~~

(F) ~~and~~ other factors determined by the Commission to be relevant~~[-];~~

(iii) ~~[A Solicitation and Solicitation Process shall b]Be~~ sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest~~[-];~~

(iv) ~~[A Solicitation and Solicitation Process shall b]Be~~ designed to solicit a robust set of bids to the extent practicable~~[-]; and~~

(v) ~~[A Solicitation Process shall b]Be~~ commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules and a reasonable evaluation of resource options that can be available to fill the projected need and that will satisfy the criteria contained within Section 54-17-302(3)(c). The utility may request an expedited review of the proposed Solicitation and Solicitation Process if changed circumstances or new information require a different acquisition timeline. The Soliciting Utility must demonstrate to the Commission that the timing of the Solicitation Process will nevertheless satisfy the criteria established in the Act and in Commission rules.

(2) Screening Criteria - Screening in A Solicitation Process.

(a) In preparing a Solicitation and in evaluating bids, the Soliciting Utility shall develop and utilize, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest.

(b) Reasonable initial screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of and initial rankings based upon the following factors:

(i) Cost to utility ratepayers;

(ii) Timing of deliveries;

(iii) Point of delivery;

(iv) Dispatchability/flexibility;

(v) Credit requirements;

(vi) Level of change to pro forma contracts included in an approved Solicitation Process;

(vii) Transmission, Interconnection and Integration costs and benefits;

(viii) Commission-approved consideration of impacts of direct or inferred debt;

(ix) Feasibility, including project timing and the process for obtaining necessary rights and permits;

(x) Adequacy and flexibility of fuel supplies;

(xi) Choice of cooling technology and adequacy of water resources;

(xii) Systemwide benefits of transmission infrastructure investments associated with a project;

(xiii) Allocation of project development risks, including capital cost overruns, fuel price risk and environmental regulatory risk among project developer, utility and ratepayers; and

(xiv) Environmental impacts.

(c) In developing the initial screening and evaluation criteria, the Soliciting Utility, in consultation with the Independent Evaluator (if then under contract) and the Division of Public Utilities, shall consider the assumptions included in the Soliciting Utility's most recent Integrated Resource Plan (IRP), any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.

(d) The Soliciting Utility may but is not required to consider non-conforming bids to the Request For Qualifications (RFQ) or Request For Proposals (RFP). The Soliciting Utility will provide advance notice to the Independent Evaluator of its decision ~~to accept or, to reject~~ consider a non-conforming bid[s].

(3) Screening Criteria - Request for Qualifications and Request of Proposals.

(a) Prior to the deadline for responding to the RFP, the Soliciting Utility may utilize a RFQ.

(b) The Independent Evaluator ~~if directed by the Commission to do so,~~ will provide each of the bidders with a Bid number once the Soliciting Utility, in consultation with the Independent Evaluator, has determined that the bidder has met the criteria under the RFQ.

(c) Reasonable RFQ screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of the following factors:

- (i) Credit requirements and risk;
- (ii) Non-performance risk;
- (iii) Technical experience;
- (iv) Technical and financial feasibility; and
- (v) Other reasonable screening criteria that are applied in a fair, reasonable and nondiscriminatory manner.

(d) The RFQ should instruct each potential bidder to state in its RFQ response whether it is an affiliate of the Soliciting Utility or will contract with an affiliate of the Soliciting Utility.

(4) Disclosures. If a Solicitation includes a Benchmark Option, the Solicitation shall include at least the following information and disclosures:

(a) Whether the Benchmark Option will or may consist of a Soliciting Utility self-build or owned option (Owned Benchmark Resource) or if it is a purchase option (Market Benchmark Resource) ~~[-];~~

(b) If an Owned Benchmark Option is used, ~~the engineering specifications~~ a description of the facility, fuel type, technology, efficiency, location, projected life, transmission requirements and operating and dispatch characteristics of the Owned Benchmark Option. If a Market Benchmark Option is used, the Soliciting Utility must disclose that a market option will be utilized and any inputs that will be utilized in the evaluation ~~[-];~~

(c) A description and examples of the manner in which resources of differing characteristics or lengths will be evaluated ~~[-];~~

(d) That bids will receive Bid numbers from the Independent Evaluator ~~if directed by the Commission~~. The blinded personnel will not have access to any information concerning the relationship between the Bid numbers and the Blinded bids until after selection of the final short list ~~[-];~~

(e) Assurances that resource evaluations will be conducted in a fair and non-preferential manner in comparison to the Benchmark Option ~~[-];~~

(f) Assurances that the Benchmark Option will be validated by the Independent Evaluator and that no changes to any aspect of the Benchmark Option will be permitted after the validation of the

Benchmark Option by the Independent Evaluator and prior to the receipt of bids under the RFP and that the Benchmark Option will not be subject to change unless updates to other bids are permitted ~~[-]; and~~

(g) Assurances that the non-blinded personnel will not share any non-blinded information about the bidders with employees or agents of a Soliciting Utility or its affiliates who are or may be involved in the development of a Solicitation, the evaluation of bids, or the selections of resources (Evaluation Team) until after selection of the final shortlist.

(5) Disclosures Regarding Evaluation Methodology. A Solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids, including a complete description of:

- (a) All evaluation procedures, factors and weights to be considered in the RFQ, initial screening and final evaluation of bids;
- (b) Credit and security requirements;
- (c) Pro forma power purchase and other agreements; and
- (d) The Solicitation schedule.

(6) Disclosures Regarding Independent Evaluator. The Solicitation shall describe the Independent Evaluator's role in a manner consistent with Section 54-17-203, including:

- (a) An explanation of the role of the Independent Evaluator;
- (b) Contact information for the Independent Evaluator; and
- (c) Directions and encouragement for potential bidders to contact the Independent Evaluator with any questions, comments, information or suggestions.

(7) General Requirements. The Solicitation Process must:

- (a) Satisfy all applicable requirements of the Act and Commission rules and be fair, reasonable and in the public interest;
- (b) Clearly describe the nature and all relevant attributes of the requested resources;

(c) Include clear descriptions of the amounts and types of resources requested, the required timing of deliveries, acceptable places of delivery, pricing options, transmission constraints, requirements and costs that are known at the time, scheduling requirements, qualification requirements, bid and selection formats and procedures, price and non-price factors and weights, credit and security requirements and all other information reasonably necessary to facilitate a Solicitation Process in compliance with the Act and Commission rules;

(d) Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the Independent Evaluator;

(e) Ensure that bidders will timely receive the data and information determined by the Soliciting Utility, in consultation with the Independent Evaluator or as directed by the Commission, to be necessary to facilitate a fair and reasonable competitive bidding process and all information reasonably requested by bidders;

(f) Impose credit requirements and other participation and bidding requirements that are non-discriminatory, fair, reasonable, and in the public interest;

(g) Permit a range of commercially reasonable alternatives to satisfy credit and security requirements ~~such as bonds, letters of credit, liens, options to purchase upon default and rights of first refusal~~;

(h) Permit and encourage negotiation with final short-list bidders for the benefit of ratepayers taking into account increased value but also not unreasonably increasing risks to ratepayers;

(i) Provide reasonable protections for confidential information of bidders; subject to disclosure pursuant to appropriate protective

order to the Independent Evaluator and otherwise as required by the Commission;

(j) Provide reasonable protections for confidential information of the Soliciting Utility, subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission[-];

(k) Ensure that if any information that may affect the Solicitation Process is to be shared by the Soliciting Utility with any bidder or with the employees or agents of a Soliciting Utility or its affiliates who may be involved in the development or submission of a Benchmark Option used in a Solicitation (Bid Team), excluding confidential, proprietary or competitively sensitive Benchmark- or bid-specific information or negotiations, that the same information is shared with all bidders in the same manner and at the same time.

(8) Process Requirements for Benchmark Option. In a Solicitation Process involving the possibility of a Benchmark Option:

(a) The Evaluation Team, including non-blinded personnel, may not be members of the Bid Team, nor communicate with members of the Bid Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.

(b) The names and titles of each member of the Bid Team, the non-blinded personnel and Evaluation Team shall be provided in writing to the Independent Evaluator.

(c) The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Bid Team. All such communications to or from the Bid Team must be in writing. The Independent Evaluator must participate in all such communications between members of the Bid Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Independent Evaluator must also make available to the bidder about whose bid the Bid Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Bid Teams. Any response to such correspondence from the bidder must be in writing to the Independent Evaluator and must be conveyed to the Evaluation Team. The Independent Evaluator must provide its own or third party verification of the reasonableness of any technical information solicited from the Bid Team or bidder before it may be used in any evaluation.

(d) There shall be no communications regarding blinded bid information, either directly or indirectly, between the non-blinded personnel and other Evaluation Team members until the final shortlist is determined except as authorized herein, which communications shall be done in the presence of the Independent Evaluator. The non-blinded personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the bidders.

(e) The Evaluation Team shall have no direct or indirect contact or communication with any bidder other than through the Independent Evaluator until such time as a final shortlist is selected by the Soliciting Utility.

(f) Each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute a commitment and acknowledgment that he or she agrees to abide by all of the restrictions and conditions contained in these Commission rules. ~~[Following completion of the Solicitation Process, each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute an acknowledgment certifying that he or she fully complied and satisfied all such~~

~~restrictions and conditions.]~~ These acknowledgments shall be filed with the Commission within 10 days of their execution.

(g) Should any bidder or a member of the Bid Team attempt to contact a member of the Evaluation Team, such bidder or member of the Bid Team shall be directed to the Independent Evaluator for all information and such communication shall be reported to the Independent Evaluator by the Evaluation Team within seven business days.

(h) All relevant costs and characteristics of the Benchmark Option must be audited and validated by the Independent Evaluator prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.

(i) All bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis.

(j) Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the Benchmark Option.

(k) The Solicitation must allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option. The Commission may waive this requirement during review of the draft Solicitation and Solicitation Process for good cause shown.

(l) If the Soliciting Utility is subject to regulation in more than one state concerning the acquisition, construction, or cost recovery of a significant energy resource, the Soliciting Utility shall explain the degree to which it has taken into account the likelihood of resource approval and cost recovery in other jurisdictions in exercising its judgment in selecting the Benchmark Option.

(9) Issuance of A Solicitation.

(a) The Soliciting Utility shall issue the approved Solicitation promptly after Commission approval of the Solicitation and Solicitation Process.

(b) Bidders shall be directed to submit bids directly to the Independent Evaluator in accordance with the schedule contained in the Solicitation.

(c) The Soliciting Utility shall hold a pre-Bid conference in Utah, with both in-person and conference call participation available, at least 30 days before the deadline for submitting responsive bids.

(10) Evaluation of Bids.

(a) The Independent Evaluator~~[-if directed by the Commission,]~~ shall "blind" all bids and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.

(b) The Independent Evaluator shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.

(c) The Soliciting Utility must cooperate fully with the Independent Evaluator.

(d) Subject to an appropriate confidentiality agreement approved by the Commission, the Soliciting Utility shall timely provide to the Independent Evaluator and the Division of Public Utilities full access to all relevant personnel of the Soliciting Utility, together with all data, materials, models and other information, including confidential information and forward pricing curves, used or to be used in developing the proposed Solicitation, preparing the Benchmark Option, or screening, evaluating or selecting bids.

(e) The Soliciting Utility, monitored by the Independent Evaluator, shall conduct a thorough evaluation of all bids in a

manner consistent with the Act, Commission Rules and the Solicitation.

(f) The Independent Evaluator shall pursue a reasonable combination of auditing the Soliciting Utility's evaluation and conducting its own independent evaluation, in consultation with the Division of Public Utilities, such that the Independent Evaluator can fulfill its duties and obligations as set forth in the Act and in Commission Rules.

(g) The Soliciting Utility, the Division of Public Utilities and the Independent Evaluator may request further information from any bidder. Any communications with bidders in this regard shall be conducted only through the Independent Evaluator. The Soliciting Utility shall be informed in a timely manner of the content of any communications between the Independent Evaluator and a bidder, but communications shall be conducted on a confidential or blinded basis.

(h) In order to facilitate both an independent evaluation function and an auditing function, the Independent Evaluator shall have access to all information and resources utilized by the Soliciting Utility in conducting its analyses. The Soliciting Utility shall provide the Independent Evaluator with complete and open access to all documents, information, data and models utilized by the Soliciting Utility in its analyses. The Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the Soliciting Utility's evaluation process in the manner it deems appropriate so that the Soliciting Utility's evaluation process is transparent to the Independent Evaluator. The Soliciting Utility shall have an affirmative responsibility to respond promptly and fully to any request for reasonable access or information made by the Division of Public Utilities or the Independent Evaluator. To the extent the Independent Evaluator determines through its audit or independent evaluation that its evaluation and the Soliciting Utility's yield different results, the Independent Evaluator shall notify the Soliciting Utility and the Division of Public Utilities and attempt to identify reasons for the differences as early as practicable. Where practicable, the Soliciting Utility, the Division of Public Utilities and the Independent Evaluator shall attempt to reconcile such differences. If the differences cannot be reconciled to the Independent Evaluator's satisfaction, the Independent Evaluator will promptly notify the Commission.

(i) The Independent Evaluator ~~[if directed by the Commission,]~~ shall be responsible for unblinding all bids included on the final short-list and providing relevant contact information to the Soliciting Utility for final negotiations with these short-listed bidders. The Independent Evaluator ~~[may]~~ shall monitor any negotiations with short-listed bidders.

(j) The Division of Public Utilities and the Independent Evaluator may, through the Independent Evaluator, ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received. Any such analyses shall be provided to the Division of Public Utilities, the Independent Evaluator and the Soliciting Utility. The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any reasonable amounts paid by the Soliciting Utility for those analyses.

R746-420-4. Qualifications of Independent Evaluator.

(1) An Independent Evaluator must:

(a) Demonstrate qualifications, expertise and experience to perform all of the functions of the Independent Evaluator as contemplated by the Act and Commission rules;

(b) Demonstrate independence from the Soliciting Utility and potential bidders identified by the utility or determined by the Commission;

(c) Be experienced and competent to facilitate necessary communications, including operation and control of a website for all purposes contemplated by Commission rules;

(d) Provide statements of interest to the Commission which disclose:

(i) any contracts or other economic arrangements of any kind between the Soliciting Utility or likely bidders and the Independent Evaluator or any affiliates that currently exist, that have existed within the past ten years, or that have been promised or are expected in the future; and

(ii) memberships in trade organizations; and

(e) File with the Commission a full copy of any agreement of any type between the Independent Evaluator and the Soliciting Utility or any likely bidder or any affiliates.

(2) While performing services related to the Solicitation, the Independent Evaluator shall not accept employment from nor communicate with bidders and the Soliciting Utility regarding future employment or contract opportunities.

R746-420-5. Payments to Independent Evaluator.

(1) Payments to the Independent Evaluator selected by the Commission shall be paid by the Soliciting Utility in accordance with terms and conditions specified by the Commission.

(a) The Commission and the Independent Evaluator shall execute a contract approved by the Commission with such terms and conditions as the Commission may approve.

(b) Invoices for the Independent Evaluator's services shall be sent as directed ~~[on]~~ by contract.

(c) After an invoice is reviewed and approved, it will be forwarded to the Soliciting Utility for payment to the Independent Evaluator.

(d) Unless the Commission directs otherwise in connection with a Solicitation, the expenses of the Independent Evaluator shall be reimbursed as follows:

(i) The Soliciting Utility is authorized to collect bid fees that are reasonable under the circumstances of up to \$10,000 per bid to defray costs of the Independent Evaluator; and

(ii) The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any additional amounts paid by the Soliciting Utility for the Independent Evaluator.

R746-420-6. Functions of Independent Evaluator.

(1) The Independent Evaluator shall perform all functions contemplated by the Act or Commission rules, in coordination with and under the contract with the Commission.

(2) The functions of the Independent Evaluator ~~[may]~~ shall include the following:

(a) Facilitate and monitor communications between the Soliciting Utility and bidders~~[-]~~;

(b) Review and validate the assumptions and calculations of any Benchmark Option~~[-]~~;

(c) Analyze the Benchmark Option for reasonableness and consistency with the Solicitation Process[-];

(d) Analyze, operate and validate all important models, modeling techniques, assumptions and inputs utilized by the Soliciting Utility in the Solicitation Process, including the evaluation of bids[-];

(e) Receive and "blind" bid responses[-];

(f) Provide input to the Soliciting Utility on:

(i) the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest in preparing a Solicitation and in evaluating bids;

(ii) the development of initial screening and evaluation criteria that take into consideration the assumptions included in the Soliciting Utility's most recent IRP, any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option;

(iii) whether a bidder has met the criteria specified in any RFQ and whether to reject or accept non-conforming RFQ responses;

(iv) whether and when data and information should be distributed to bidders because it is necessary to facilitate a fair and reasonable competitive bidding process or has been reasonably requested by bidders;

(v) negotiation of proposed contracts with successful bidders; and

(vi) other matters as appropriate in performing the duties of the Independent Evaluator under the Act and Commission rules, or as directed by the Commission[-];

(g) Ensure that all bids are treated in a fair and non-discriminatory manner[-];

(h) Monitor, observe, validate and offer feedback to the Soliciting Utility, the Commission, and the Division of Public Utilities on all aspects of the Solicitation and Solicitation Process, including:

(i) content of the Solicitation;

(ii) evaluation and ranking of bid responses;

(iii) creation of a short list(s) of bidders for more detailed analysis and negotiation;

(iv) post-Bid discussions and negotiations with, and evaluations of, short list bidders; and

(v) negotiation of proposed contracts with successful bidders[-];

(i) Offer feedback to the Soliciting Utility on possible adjustments to the scope or nature of the Solicitation or requested resources in light of bid responses[-];

(j) Solicit additional information on bids necessary for screening and evaluation purposes[-];

(k) Advise the Commission at all stages of the process of any unresolved disputes or other issues or concerns that could affect the integrity or outcome of the Solicitation Process[-];

(l) Analyze and attempt to mediate disputes that arise in the Solicitation Process with the Soliciting Utility and/or bidders, and present recommendations for resolution of unresolved disputes to the Commission[-];

~~(m)~~ Participate in and testify at Commission hearings on approval of the Solicitation and Solicitation Process and/or approval of a Significant Energy Resource Decision[-];

~~(n)~~ Coordinate as appropriate and as directed by the Commission with staff or evaluators designated by regulatory authorities from other states served by the Soliciting Utility[-];

(o) Perform such other evaluations and tasks as the Commission may direct[-];

(p) At the request of the Commission and subject to the existence or negotiation of appropriate contractual arrangements, participate in the evaluation of a request for an Order to Proceed under Section 54-17-304 and testify at any Commission hearings regarding the same[-]; and

(q) No part or provision of this rule shall prevent or preclude the Commission from removing or dispensing with any function, responsibility, service or task of the Independent Evaluator in a particular case or proceeding as the Commission may determine is appropriate in the circumstances of such case or proceeding.

(3) Communications

(a) Communications between a Soliciting Utility and potential or actual bidders shall be conducted only through or in the presence of the Independent Evaluator. Bidder questions and Soliciting Utility or Independent Evaluator responses shall be posted on an appropriate website. The Independent Evaluator shall protect or redact competitively sensitive information from such questions or responses to the extent necessary.

(b) The Soliciting Utility may not communicate with any bidder regarding the Solicitation Process, the content of the Solicitation or Solicitation documents, or the substance of any potential response by a bidder to the Solicitation, except through or in the presence of the Independent Evaluator.

(c) The Soliciting Utility shall provide timely and accurate responses to any request from the Independent Evaluator, including requests from bidders submitted by the Independent Evaluator, for information regarding any aspect of the Solicitation or the Solicitation Process.

(4) Reports

(a) The Independent Evaluator shall prepare at least the following confidential reports and provide them to the Commission, the Division of Public Utilities and the Soliciting Utility:

(i) Monthly progress reports on all aspects of the Solicitation Process as it progresses;

(ii) Final Reports as soon as possible following the completion of the Solicitation Process. Final reports shall include analyses of the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(iii) Other reports the Independent Evaluator deems appropriate; and

(iv) Other reports as the Commission may direct.

(b) The Independent Evaluator shall prepare at least the following public reports and provide them to the ~~Regulators~~Commission and all Interested Parties:

(i) Final report, without confidential information, analyzing the Solicitation, the Solicitation Process, the Soliciting Utility's evaluation and selection of bids and resources, the final results and whether the selected resources are in the public interest;

(ii) Comments and recommendations with respect to changes or improvements for a future Solicitation Process; and

(iii) Other reports as the Commission may direct.

(c) Upon advance notice to the Soliciting Utility, the Independent Evaluator may conduct meetings with intervenors during the Solicitation Process to the extent determined by the Independent Evaluator or as directed by the Commission.

(d) If at any time the Independent Evaluator becomes aware of any violation of any requirements of the Solicitation Process or Commission rules, the Independent Evaluator shall immediately

notify the Soliciting Utility and the Commission. The Independent Evaluator shall report any actions taken by the Soliciting Utility and any other recommended remedies to the Commission.

(e) The Independent Evaluator shall document all substantive correspondence and communications with the Soliciting Utility and bidders, shall make such documentation available to parties in any relevant proceedings upon proper request and subject to the terms of a protective order if the request contains or pertains to confidential information[5]. Within six months after the end of the Solicitation Process, the Independent Evaluator shall provide a copy of this documentation to the Soliciting Utility. The Soliciting Utility shall maintain a complete record of its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and all materials submitted in response to discovery requests. The Soliciting Utility shall retain such documentation for a period of at least 10 years. A party to a proceeding may petition the Commission to require specified additional materials to be maintained for a specified period.

KEY: significant energy resource, solicitation process, order to proceed, filing requirements

Date of Enactment Last Substantive Amendment: 2007

Authorizing and Implemented or Interpreted Law: 54-17-100 et seq.



Public Service Commission,
Administration
R746-430
Procedural and Informational
Requirements for Review of Utility's
Action Plan

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 29377
Filed: 03/14/2007, 15:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule is to make changes based on comments received on the original proposed new rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R746-430-1(1)(c) is changed to add the words "identification of". Subsection R746-430-2(1)(c) is changed as follows: Subsection (iv) is changed to replace the words "copies of all solicitation documents" with a description of specific documents; and Subsection (v) is deleted. Subsection R746-430-2(1)(i) is changed to include the words "other relevant information in support of the requested approval", and proposed wording found in Subsection (i) is placed in Subsection (j) with the addition of the words "if the commission has not previously issued a protective order in the

approval of the request proceeding". Subsections R746-430-2(2)(e) and R746-430-3(2)(c) are changed to include additional material which will be maintained by the utility and allowing a party to request maintenance of additional material.

Subsection R746-430-3(1)(f) is changed to include the words "if the commission has not previously issued a protective order in the approval request proceeding". Other nonsubstantive stylistic are made. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the January 15, 2007, issue of the Utah State Bulletin, on page 109. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-17-100 et seq.

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: It is not anticipated that the proposed rule will have any costs or savings effect upon state agencies.

Any costs to state agencies are driven by the provisions of the Energy Resource Procurement Act, Section 54-17-100 et seq., and were considered by the Legislature in enacting the Act. The proposed rule specifies the specific information which the Act contemplated would be submitted by utilities affected by the Act and identifies the specific procedures that should be followed for agency approval of a utility's request to approve a resource decision or obtain an order to proceed with an approved resource decision.

❖LOCAL GOVERNMENTS: There will be no change in costs or savings to local governments as the proposed rule has no provisions affecting any local government activity.

❖OTHER PERSONS: Although affected utilities will incur costs to comply with the Act, costs derive from the requirements of the Act and not the proposed rule. The Act allows a utility to seek Commission approval of its resource decision or an order to proceed with the implementation of an approved resource decision. The proposed rule identifies the specific information to be submitted when seeking such approval or order to proceed and the procedural steps for proceedings before the Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As explained previously, there are no anticipated compliance costs arising from the proposed rule beyond costs which were already considered by the Legislature when enacting the Energy Resource Procurement Act.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule, itself, will have no fiscal impact on affected businesses. The fiscal impact which may arise derives from the Act itself and was considered by the Legislature when enacting the specific provisions of the Act. Ric Campbell, Chairman

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:

Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@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 05/01/2007.

THIS RULE MAY BECOME EFFECTIVE ON: 05/08/2007

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.

R746-430. Procedural and Informational Requirements for ~~Review of Utility's~~ Action Plans and Significant Energy Resource Review and Approval.

R746-430-1. Definition[s] and Filing of Action Plan.

Definition: "Action Plan" means a plan, prepared or updated in anticipation of the acquisition of the Affected Utility's significant energy resource(s) under the Energy Resource Procurement Act, Utah Code Title 54 Chapter 17, outlining actions and specific resource decisions intended to implement an Affected Utility's Integrated Resource Plan consistent with the utility's strategic business plan.

(1) Filing of an Action Plan- As soon as practicable after development of its Integrated Resource Plan or as part of the development of an Integrated Resource Plan, each Affected Utility shall file with the Commission an Action Plan. The Affected Utility shall include with the Action Plan the following:

(a) Information showing the Affected Utility's analysis and conclusions by which it identified and selected the actions and significant energy resources which will be pursued through the Action Plan consistent with the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17[-];

(b) Identification of the Integrated Resource Plan used in the development of the Action Plan, including information showing how the Action Plan is consistent with the Integrated Resource Plan or why deviations have been made[-];

(c) Identification of [A] all data, models and information used to develop the Action Plan, including, but not limited to, the Affected Utility's costs, risk and scenario analysis, methodologies and assumptions used to develop the Action Plan[-]; and

(d) Identification of the means, whether included or not included in the Action Plan, by which the Affected Utility may enable changes to the actions and significant energy resource(s) pursued through the Action Plan, which changes may be warranted as the Affected Utility prepares and pursues future Integrated Resource Plans or may revise actions and significant energy resources in future Action Plans.

(2) Procedure on an Action Plan- Upon the filing of an Action Plan[-];

(a) The Commission shall set and give notice of a scheduling conference to set a schedule which will identify the time period during which interested parties may obtain information to prepare comments on the Action Plan, set the date upon which comments shall be provided to the Commission and other interested parties, and set a date upon which reply comments may be made to the comments previously filed.

(b) The Commission may, but is not required to, hold hearings in connection with the Action Plan for the purpose of the Commission's review and guidance.

(3) Affect of Review or Guidance - Nothing in these rules requires any acknowledgment, acceptance or order pertaining to the Action Plan submitted. Any review or guidance provided by the Commission shall not be binding on the Affected Utility and shall not be construed as approval of any action or resource identified in the Action Plan. The Affected Utility's response to any Commission review or guidance may be considered by the Commission in connection with any other request or filing made by the Affected Utility under the Energy Resource Procurement Act, Utah Code Title 54, Chapter 17.

R746-430-2. Approval of a Significant Energy Resource.

(1) Filing Requirements- When an Affected Utility files a request to approve a Significant Energy Resource pursuant to Section 54-17-302, the utility shall include with its request the following:

(a) Information to demonstrate the utility has complied with the requirements of the Energy Resource Procurement Act and Commission rules[-];

(b) Information to demonstrate whether approval of the selected Significant Energy Resource is in the public interest[-];

(c) Information regarding the solicitation process, if the Significant Energy Resource was solicited through a solicitation process, including, but not limited to:

(i) Summaries of all bids received[-];

(ii) Summaries of the Affected Utility's rankings and evaluations of bids[-];

(iii) Copies of all reports relating to the solicitation process made by an independent evaluator who may have been involved with the solicitation process[-];

(iv) ~~Copies of all solicitation documents~~ A copy of the complete Commission approved Solicitation with appendices, attachments and drafts, if applicable[-]; and

(v) A [S] signed acknowledgment[s] from a utility [personnel and the utility's contractors' employees, if any,] officer involved in the solicitation that [they] to the best of his or her knowledge, the utility fully observed and complied with the requirements of the Commission's rules or statutes applicable to the solicitation process[-];

(d) Identification of [A] all information, data, models and analyses used by the Affected Utility to evaluate the acquisition of the Significant Energy Resource if the acquisition is pursuant to Section 54-17-201(3), or to evaluate and rank bids and the selected resource, if the acquisition is by a solicitation process pursuant to Section 54-17-201(2)[-];

(e) Contracts proposed for execution or use in connection with the acquisition of the Significant Energy Resource and identification of matters for which contracts are being negotiated or remain to be negotiated[-];

(f) Information on the estimated costs for the Significant Energy Resource, including but not limited to engineering studies, data, and models used in the analysis, and any other costs which the utility considers recoverable pursuant to Section 54-17-303[-];

(g) An analysis of the estimated effects the Significant Energy Resource will have on the Affected Utility's revenue requirement[-];

(h) Financial information demonstrating adequate financial capability to obtain the Significant Energy Resource pursuant to the proposed acquisition[-];

(i) Identification of all other relevant information in support of the requested approval; and

(j) If the Commission has not previously issued a Protective Order in the approval request proceeding. [-A]a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure to Approve a Significant Energy Resource and Its Acquisition[-].

(a) If the Affected Utility is contemplating acquiring a Significant Energy Resource through a solicitation process, after it has completed its evaluation of bids but prior to filing a request to approve a Significant Energy Resource, the utility shall provide a written notification to the Commission of the Significant Energy Resources it has selected from the bids and the reasoning for the utility's selection of those resources.

(b) The Affected Utility may negotiate a proposed final agreement for the acquisition of the proposed Significant Energy Resource at any time, however, any such agreement shall be expressly conditional on the final decision of the Commission in the approval proceeding.

(c) The Affected Utility shall file a request for approval of a Significant Energy Resource as soon as practicable after completion of the utility's decision to select the resource.

(i) Prior to filing the request for approval of a Significant Energy Resource, the Affected Utility shall provide public notice of its intent to file the request and seek approval of the Significant Energy Resource from the Commission.

(ii) After the filing of the request, the Commission will schedule and provide notice of a Scheduling Conference to set a schedule for the proceedings, including a public hearing, through which it will consider the requested approval of the Significant Energy Resource.

(d) Any agreement for the acquisition of a Significant Energy Resource shall be submitted to the Commission for approval. The Commission will set a schedule to accept comments and reply comments from interested persons and the Affected Utility concerning whether the agreement complies with any Commission orders or Commission conditions relating to the Significant Energy Resource which will be acquired through the agreement.

(e) The Affected Utility shall maintain a complete record of analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the Commission and the Independent Evaluator and all materials submitted in response to discovery requests [and all documents submitted to the Commission] during any proceedings to approve a Significant Energy Resource and its acquisition for at least ten years after the date of a Commission order approving an agreement to acquire the Significant Energy Resource. A party to a proceeding may petition the Commission to require specified additional material to be maintained for a specified time.

R746-430-3. Requests for a Determination of Whether to Proceed with an Approved Significant Energy Resource In the Event of Change in Circumstances or Costs.

(1) Filing of a Request- When an Affected Utility seeks a Commission review and determination, pursuant to Section 54-17-304, of whether it should proceed with an approved Significant Energy Resource decision, the utility shall file with its request the following:

(a) Information concerning the nature and cause of the change of circumstances or projected costs, including, but not limited to, when and how the Affected Utility became aware of the change of circumstances or projected costs and any actions it has taken[-];

(b) Information concerning all costs incurred by the utility or to be incurred by the utility if the Commission determines that the utility should not proceed with the approved Significant Energy Resource, including those for which the utility anticipates it will seek future recovery pursuant to Section 54-17-304(4)[-];

(c) Information concerning the utility's expectations concerning costs, timing and other aspects of an Approved Energy Resource if the utility were to proceed with its acquisition with the changed circumstances or projected costs. This information shall also include proposed contracts or contract amendments, if any, to be used in the event the utility were to proceed with the Significant Energy Resource[-];

(d) The utility's conclusions and recommendations on whether it would or would not be in the public interest to proceed with the Approved Energy Resource, and identification of all information, data, models and analyses used in arriving at the utility's conclusions and recommendations[-];

(e) Information concerning any alternatives which the utility considered to meet the needs or purposes for which the Approved Energy Resource is intended in the utility's own analysis of whether or not to proceed with the Approved Energy Resource, including, but not limited to, identification of all data, models, and analyses used by the utility[-]; and

(f) If the Commission has not previously issued a Protective Order in the approval request proceeding. [-A]a Proposed Protective Order, using the Commission's standard Protective Order, which may be used to facilitate access to information which may be claimed as confidential or protected.

(2) Procedure on a Request for a Commission Review and Determination on Whether to Proceed[-].

(a) The Affected Utility shall give notice of the filing of its request to all parties who participated in the Commission proceedings by which the Significant Energy Resource was approved, individuals who have requested notification of such requests, and, additionally, as directed by the Commission.

(b) The Commission shall set and give notice of a scheduling conference by which it will set a schedule which will identify the time period, if any, during which interested persons may obtain information to prepare comments on the request, set the date upon which comments shall be provided to the Commission and other interested persons, and set a date upon which reply comments may be made to the comments previously filed. The Commission may, but is not required to, set a date for a public hearing on the request.

(c) The Affected Utility shall maintain a complete record of [all materials developed for or used in connection with its request] its analyses and evaluations, including spreadsheets and models materially relied upon by the utility, all materials submitted to the

Commission and all material submitted in response to discovery for a period of ten years from the date the Commission issues an order on its request. A party to a proceeding may petition the Commission to require specified additional information to be maintained for a specified time.

KEY: action plan, significant energy resource, order to proceed, utilities
Date of Enactment or Last Substantive Amendment: 2007
Authorizing, and Implemented or Interpreted Law: 54-17-100 et seq.



End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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).

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

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29632
FILED: 03/12/2007, 15:58

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 Department of Agriculture and Food has the authority under Section 4-5-17 to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it implements Title 4, Chapter 5, the Utah Wholesome Food Act, and is required by Subsection 4-5-17(1). The rule provides the specific food handling and sanitation regulations utilized by all food manufacturers and food establishments in Utah.

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

AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Richard W Clark, or Doug Pearson at the above address, by phone at 801-538-7103, 801-538-7150, or 801-538-7144, by FAX at 801-538-7126, 801-538-7126, or 801-538-7169, or by Internet E-mail at kmathews@utah.gov, RICHARDWCLARK@utah.gov, or dpearson@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 03/12/2007

Commerce, Consumer Protection **R152-26** Telephone Fraud Prevention Act

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29594
FILED: 03/05/2007, 13:42

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 is adopted pursuant to the rulewriting authority granted to the Division pursuant to Section 13-2-5, which provides that the Division may issue rules to administer and enforce the chapters listed in Section 13-2-1, including the Telephone Fraud Prevention Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed, the Division has received no written comments with respect to the rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides definitions, clarifies registration and bonding requirements,

and clarifies the right of rescission. The need for this rule continues to exist. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Thomas Copeland at the above address, by phone at 801-530-6601, by FAX at 801-530-6001, or by Internet E-mail at tcopeland@utah.gov

AUTHORIZED BY: Kevin V Olsen, Director

EFFECTIVE: 03/05/2007

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Commerce, Occupational and Professional Licensing

R156-37

Utah Controlled Substance Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29696
FILED: 03/15/2007, 16:56

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 37, provides for the regulation of controlled substances. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-37-6(1) provides the Division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state. This rule was enacted to clarify the provisions of Title 58, Chapter 37, with respect to controlled substances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in May 2002, it has been amended two times. The Division received no written comments with respect to proposed rule filings made with respect to this rule in February 2006 and August 2002. The Division received an e-mail in August 2002 from Kent Bishop (Governor's Office of Planning and Budget) in which he suggested some nonsubstantive

changes to the rule. The Division filed a nonsubstantive rule filing as a result of Mr. Bishop's comments on 08/19/2002.

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 as it provides a mechanism to inform potential licensees and licensees of the rules relating to controlled substances, as allowed under statutory authority provided in Title 58, Chapter 37. This rule is applicable to occupations and professions involved with controlled substances which are regulated by the Division. The rule should also be continued as it provides information to ensure applicants for licensure are knowledgeable about controlled substance requirements of the Division with respect to items that are not covered separately in each occupational/professional rule.

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:

Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality

R307-101

General Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29661
FILED: 03/15/2007, 07:40

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources...." Other components of Section 19-2-104 authorize the Board to make rules affecting specific sources of air pollution. Rule R307-101 includes definitions used throughout all the rules contained in Title R307 that are written under Section 19-2-104. Without these definitions, the remaining rules would be unenforceable.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-101 has been amended once since its last five-year review (under DAR No. 29000, effective 03/09/2007). One comment was received on that amendment. COMMENT: The current rule makes it clear that all of Salt Lake County is included (in the SO2 maintenance area), but only the elevated part of the east side of Tooele County is included. It seems that the proposed wording leaves it uncertain what "above 5600 feet" modifies just the eastern portion of Tooele County (as the Division of Air Quality apparently intends), or that plus Salt Lake County. To ensure that it is clear that all of Salt Lake County will no longer be considered nonattainment for SO2 (after EPA approves the SO2 Maintenance Plan), KUCC suggests the phrase "All of" be inserted before the phrase "Salt Lake County" in the proposed change to Section R307-101-2 (Kennecott Utah Copper Corporation). RESPONSE: Staff agreed and made the needed change to the rule. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R307-101-2 includes all the definitions that apply throughout all the rules contained in Title R307. Without them, the remaining rules would be unenforceable, so this rule should be continued.

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:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality
R307-110
General Requirements: State
Implementation Plan

FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION

DAR FILE NO.: 29662
FILED: 03/15/2007, 07:41

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: Rule R307-110 incorporates by reference the state implementation plan (SIP) allowed under Subsection 19-2-104(3)(e), which allows the Air Quality Board to prepare a state plan for the prevention, abatement, and control of air pollution. Clean Air Act Section 110(a)(1) (42 U.S.C. 7410(a)(1)) requires that each state adopt and submit to the Environmental Protection Agency (EPA) a plan providing for implementation, maintenance, and enforcement of each health standard promulgated by EPA. If a state fails to do so, EPA is to issue a federal implementation plan in its place, and other federal sanctions also would apply.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-110 has been amended twice since its last five-year review. The first amendment was under DAR No. 29001, and was effective 03/09/2007. The following 16 comments were received on this amendment. COMMENT 1: Page 1, footnote 1: There is a typographical error - the correct date for the referenced EPA guidance document is May 20, 2005 and not May 30, 2005 (EPA). RESPONSE 1: Staff agreed. The date was changed to May 20, 2005. COMMENT 2: Page 5, paragraph under "Point Source Emissions". This paragraph needs to be clarified: The third sentence indicates that "The 2002 emissions inventory for stationary point sources is based on actual activity levels during the peak ozone season and reflects estimated actual emissions." We suggest the State supplement this statement by using information from the first paragraph of section 3.3.1 of the TSD, which further describes that actual annual emission inventory data were used from applicable facilities (to meet the triennial emissions reporting requirement of EPA's Consolidated Emissions Reporting Rule or CERR) and that these emission figures were then converted from tons per year to tons per day along with the application of rule effectiveness. RESPONSE 2: Staff agreed. The paragraph under "Point Source Emissions" on page 5 was changed to read: The 2002 emissions inventory for stationary point sources is based on actual activity levels during the peak ozone season and reflects estimated actual emissions. Actual annual emission data were used from applicable facilities to meet the triennial emissions reporting requirement of EPA's Consolidated Emission Reporting Rule (CERR). These emissions were then converted from tons per year to tons per day and adjusted to reflect current rule effectiveness. COMMENT 3: Page 9, Figure 3: Typographical error in the title - 2018 should be 2014 (EPA). RESPONSE 3: Staff agreed. The title of figure 3 was changed to 2014. COMMENT 4: Page 10, Figure 5: Typographical error in the title - 2018 should be 2014 (EPA). RESPONSE 4: Staff agreed. The title of figure 5 was changed to 2014. COMMENT 5: Page 16, Section 5.a: The introductory statement reads, "The State certifies that all existing RACT controls required in the 1981 Ozone SIP and 1-hour maintenance plan dated September 9, 1998 will remain in effect after approval of this SIP revision." Similarly, referring to the NOx RACT requirements for utility boilers in

the September 9, 1998 1-hour maintenance plan, the introductory language under Section 5.b reads, "These same requirements remain in place and are valid for the 8-hour standard." Subsequent language under Sections 5.a and 5.b seems to undercut these clear statements. For example, for Hill Air Force Base EPA approved various approval orders into the SIP to ensure that RACT for the base would be enforceable. Section 5.a.(3)(b) on page 17 of the draft maintenance plan refers to MACT standards and state rules as constituting RACT. The draft plan also refers to MACT for Olympia Sales, but EPA also incorporated the approval order for Olympia Sales into the SIP. It is not clear whether the State wants to remove the Olympia Sales approval order from the SIP. We have similar questions regarding Gadsby and Kennecott's Utah Power Plant, as well as stationary source control requirements contained in the EPA-approved PM10 SIP. The maintenance plan must clearly indicate which control requirements from the EPA approved SIP the State intends to retain and which control requirements the State proposes to delete. To the extent the State proposes to delete control requirements from the EPA-approved SIP, the State will need to provide an analysis showing that deletion will be consistent with sections 110(1) and 193 of the CAA. See 40 CFR 51.905(a)(4) and EPA's May 20, 2005 section 110(a)(1) maintenance plan guidance, response to question 10. Regarding section 110(1), the analysis should not be limited to 8-hour ozone, but should also consider potential effects on other pollutants. In addition, the State will need to retain any deleted control requirements on the list of potential contingency measures in the 8-hour ozone maintenance plan (EPA). RESPONSE 5: The State of Utah is not removing any approved RACT measures found in any previous maintenance plan or SIP and is not decreasing the level of control. The specifics for each source are described below. a. Hill Air Force Base. RACT for HAFB was determined to be the level of control that existed at the base in 1995. EPA has interpreted this to mean that every approval order condition that existed in 1995 is a SIP condition that would require a SIP modification before a change could be made. This is an unworkable process, and was not what had been intended when the maintenance plan was adopted. The new plan describes RACT in a simpler way that is more stringent than the requirements that existed in 1995. Explanatory language has been added to the plan to explain why the change was made, and how the new way of describing RACT is more stringent than the previous plan. b. Olympia Sales. As explained in the plan, Olympia Sales is no longer a major point source because of emission reductions that were required by the MACT for wood furniture (40 CFR 63 Subpart JJ), which is a more stringent requirement than RACT (see note on page 17 of the maintenance plan). c. Gadsby. As explained in the plan, the emission limits that were established for the PM10 SIP were determined to meet RACT for the ozone plan. The new PM10 maintenance plan that was adopted in 2005 established a 24-hour plantwide NOx limit for the Gadsby plant. This limit was based on an approval order that was issued in 2002 to allow the addition of three new natural-gas-fired turbines to the plant. Clarifying language has been added to the plan to explain that the current emission limitation for Gadsby is equivalent to the level that was determined to meet the RACT requirement in the old ozone

maintenance plan. d. Kennecott's Utah Power Plant. As described in the maintenance plan, the previous RACT determination for this plant has been retained. Clarifying language has been added to the plan to specify the specific limitations for the four boilers that were established in the previous implementation plan. e. NOx requirements in the PM10 SIP. The old ozone maintenance plan referenced the NOx emission reductions that had occurred as a result of the PM10 SIP as further NOx controls that contributed to maintenance of the ozone standard. These were not considered RACT, but were part of an overall demonstration that NOx had been controlled in the area. EPA approved a NOx RACT exemption for all sources except for the Kennecott Power Plant and the Gadsby Power Plant because the ozone nonattainment area was already meeting the ozone standard. In addition, modeling had demonstrated that the Salt Lake Valley was VOC limited and that NOx reductions would not be the best approach in this area. The PM10 maintenance plan has since been amended to focus the SIP limits on the larger emission units that were important for the PM10 attainment/maintenance demonstration. The requirements for smaller sources were maintained in approval orders. Any future changes at these sources will be subject to Utah's new source review program that requires BACT as well as emission offsets for these smaller sources. The PM10 maintenance plan demonstrates the effectiveness of these changes. COMMENT 6: Page 20, under "Determination of the Contingency Trigger Level and Date," second paragraph, and page 21, under "Timeliness of Contingency Actions," second paragraph: Both of these paragraphs indicate that the contingency trigger date is the date that the AQB determines that one or more contingency measures should be implemented. As indicated in our guidance, the trigger for implementation of contingency measures should, "at a minimum," be upon a monitored violation of the 8-hour ozone NAAQS. The proposed maintenance plan language does not meet this standard and must be changed to indicate that the date a monitored violation occurs is the trigger date for implementation of contingency measures. Our guidance further indicates that the schedule for adoption and implementation of contingency measures should be as expeditious as practicable, but no longer than 24 months. Also on page 21, in the same paragraph noted, last sentence, the proposed language reads, "Unless otherwise directed, the necessary contingency measures will be adopted and implemented within eighteen months of the trigger date." The words "Unless otherwise directed" must either be removed or changed to read, "Unless a shorter period is prescribed." This change is necessary to ensure that adoption and implementation of contingency measures is not extended beyond 24 months (EPA). RESPONSE 6: Staff agreed. Wording in sections 6.b. and 6.c. was modified to more closely follow the guidance provided by EPA. Specifically the first paragraph in section 6.c. now reads, "The date that certified data shows that a monitoring violation has occurred will be considered the contingency trigger date." Also the words "Unless otherwise directed" were deleted from the last sentence of the second paragraph of 6.c. COMMENT 7: Page 21, under "Possible Contingency Measures": Of the seven identified contingency measures, five of these are voluntary and are unlikely to produce prompt, enforceable

emission reductions to address a violation of the 8-hour ozone NAAQS. EPA's May 20, 2005 guidance document entitled "Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act" states on page 5; "Contingency Plan - The State must develop a contingency plan that, at a minimum, will ensure that any violation of the 8-hour ozone NAAQS is promptly corrected." Further, in the response portion to question number 11 of our May 20, 2005 guidance, the first sentence states "The Phase I Rule requires the section 110(a)(1) maintenance plan for scenario B and C areas to include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs (51.905(a)(3)(iii) and (4)(ii))." Voluntary measures, although beneficial, may or may not receive wide implementation. Therefore, the necessary emission reductions to promptly correct a violation of the 8-hour ozone NAAQS may not occur. The State should only include contingency measures that would be of a regulatory nature such as, but not limited to; (1) increase the stringency of the cut points in the motor vehicle inspection and maintenance (I/M) programs, (2) revert back to an annual test rather than a biennial test in the I/M programs, and (3) evaluate and require Best Available Control Technology (BACT) for major sources of VOCs rather than only requiring RACT (EPA). RESPONSE 7: The State feels that, because of the length of time required to develop rules and install controls, a certain amount of flexibility must be maintained in the choice of contingency measures. Explanatory language has been added to Section 6.d. of the maintenance plan that describes how the state intends to promptly correct any future violation(s) of the 8-hour ozone standard. The State is committed to quickly apply appropriate controls to meet the NAAQS. COMMENT 8: Page 23, under 7.a: The maintenance plan needs to be more specific than just say the inventories will be updated "periodically." If you will continue to follow a three-year schedule, the maintenance plan should indicate that the inventories will be updated at least once every three years (EPA). RESPONSE 8: Staff agreed. The third sentence in section 7.a. has been changed to read: To verify continued maintenance, the State will update the VOC and NOx emission inventories for Salt Lake and Davis Counties at least once every three years. COMMENT 9: Page 23, under 7.b, second sentence: As reflected in our May 20, 2005 guidance, response to question 9, Section 110(a)(1) maintenance plans remain in effect indefinitely, not just for 10 years. The language of the maintenance plan must be changed to indicate that the maintenance plan will remain in effect even after 2014. The maintenance plan can only be modified or removed from the SIP through the SIP revision process, with EPA's approval (EPA). RESPONSE 9: Staff agreed. The last two sentences in section 7.b. were changed to read: It is understood that maintenance plans approved under section 110(a)(1) remain in effect until amended or repealed. It is further understood that contingency measures approved as part of 110(a)(1) maintenance plans will remain in effect and that they could still be triggered if an area violates the 8-hour standard after 2014. COMMENT 10: Please consider adding tracking and developing strategies to reduce highly reactive VOC's. According to EPA, "an approach that discriminates between VOCs based on reactivity is likely to be more effective and efficient. In particular, reactivity based

approaches are likely to be important in areas for which VOC control is a key strategy for reducing ozone concentrations. Such areas include: Urbanized or other NOx-rich areas where ozone formation is particularly sensitive to changes in VOC emissions." This SIP revision is an effort to meet federal NAAQS requirements. However, California recently calculated that, "An estimated 630 deaths [in California] (probable range: 310 to 950) avoided annually if the 8-hour standard of 0.070 hour is attained." A simple comparison of population indicates that 40 Utahns could be saved from premature death if Utah met the standards California is proposing. Other benefits would be decreased hospital and emergency room visits, reduced school absenteeism and new cases of asthma. Efforts to reduce ozone below current NAAQS will serve all Utahns, and represents a worthy goal for DAQ's efforts. Tracking and developing strategies to reduce highly reactive VOC's is one action Utah could pursue to reduce ozone levels in Utah, even without the trigger of a NAAQS violation (Wasatch Clean Air Coalition). RESPONSE 10: This comment references EPA's Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans (70 FR 54046, September 13, 2005). The guidance summarizes preliminary scientific findings and encourages innovative state applications of reactivity information in the development of VOC control measures. It applies to states or areas currently in an ozone non-attainment status. Utah is in an attainment status. In this document, EPA states that, "The photochemical reactivity of a compound is a measure of its potential to form ozone. By distinguishing between more reactive and less reactive VOCs, it should be possible to decrease ozone concentrations further or more efficiently than by controlling all VOCs equally." It goes on to say that, "Discriminating between VOCs on the basis of their contributions to ozone formation, or reactivities, is not straightforward. Reactivity is not simply a property of the compound itself; it is a property of both the compound and the environment in which the compound is found. The absolute reactivity of a single compound varies with localized VOC-NOx ratios, meteorological conditions, the mix of other VOCs in the atmosphere, and the time interval of interest." Currently, research in both Texas and California is beginning to develop innovative VOC reactivity information that may lead to future control measures. Utah intends to monitor this research and to apply any findings that might be applicable if future VOC reductions are needed. The ozone RACT rules have been an effective part of the overall plan to bring the area into attainment. If future ozone problems occur then all of the ozone control strategies will be reviewed to identify the most effective ways to further reduce VOC emissions. No changes to the rules have been made at this time to increase the stringency of the rules. COMMENT 11: Volume 2, section 3.1.2.2.22, "Fuel Distribution", untitled table at the top of page 3.1.2.2.22-3: The value for the conventional gasoline Reid Vapor Pressure "RVP" listed in this table for the Salt Lake and Davis Counties maintenance area for a summer time emission inventory is shown as 10.6. This is incorrect as by regulation, the summer time RVP for conventional gasoline in the Salt Lake Davis Counties maintenance area is 7.8 psi (EPA). RESPONSE 11: All refineries in Utah currently sell gasoline in Salt Lake and Davis Counties during the summer months with a Reid vapor pressure (RVP) of 7.8 psi. The value for

Reid vapor pressure in the untitled tables at the top of pages 3.1.2.2.22-3 and 3.1.2.2.22-4 are for calculation of annual emissions. The ozone season RVP discussion begins on page 3.1.2.2-4. In this section the RVP has been changed to 7.8 psi. Calculations that were made using a RVP of 10.6 psi have been revised using the value of 7.8 psi. It should be noted that the original calculations using the 10.6 psi RVP also used an "average annual temperature." The revised calculations using the 7.8 psi RVP incorporated the "peak ozone season day" temperature as defined in volume IV of the mobile source document, "Procedures for Emission Inventory Preparation." As a result of these changes, the "Fuel Distribution with RE" category in the area source inventory, changed by a small fraction. These corrected values for the area source category "fuel distribution with RE" have been reflected in the area source data and the associated VOC demonstration graphs. COMMENT 12: Volume 2, section 3.1.2.2.22, "Fuel Distribution", untitled table at the top of page 3.1.2.2.22-4: The value for the conventional gasoline Reid Vapor Pressure "RVP" listed in this table for the Salt Lake and Davis Counties maintenance area for a summer time emission inventory is shown as 10.6. This is incorrect as by regulation, the summer time RVP for conventional gasoline in the Salt Lake Davis Counties maintenance area is 7.8 psi. Also, two column headings in this table may have typographical errors in that they indicate emission factors with and without "Stage II." As Utah does not implement Stage II vapor recovery, these column labels should likely be "Stage I." (EPA). RESPONSE 12: See response to Comment 11. The incorrectly labeled column headings have been changed to read with and without Stage I. COMMENT 13: Volume 2, section 3.1.2.2.22, "Fuel Distribution", "111. Sum the Vapor Loss Factors - - -" Untitled table at the bottom of page 3.1.2.2.22-10: The value for the conventional gasoline Reid Vapor Pressure "RVP" listed in this table for the Salt Lake and Davis Counties maintenance area for a summer time emission inventory is shown as 10.6. This is incorrect as by regulation, the summer time RVP for conventional gasoline in the Salt Lake Davis Counties maintenance area is 7.8 psi. Also, column headings in this table may have typographical errors in that they indicate emission factors with and without Stage II, shown as "with S2VR" and "w/o S2VR." As Utah does not implement Stage II vapor recovery, these column labels, and associated emission factors, should likely be "Stage I." (EPA). RESPONSE 13: Similar to response to Comment 11. In this case the table on page 3.1.2.2.22-10 is addressing annual emissions. The ozone season RVP discussion begins on page 3.1.2.2.22-17 and the ozone season table with the 7.8 psi RVP is on page 3.1.2.2.22-19. The incorrectly labeled column headings have been changed to read "with S1VR" and "without S1VR." COMMENT 14: Volume 2, section 3.1.2.2.38, "Surface Coatings Traffic Markings": We are curious as to why actual lane-mile data were used from 1995 through 1998, but actual data from 2002 were not considered (EPA). RESPONSE 14: Staff used actual lane-miles from 1995 through 1998 because that is what DAQ was provided by the Utah Department of Transportation (UDOT). In 2002, UDOT did not provide actual lane-miles. COMMENT 15: Volume 5, "Projections", section 3.1.3.1.22, "Fuel Distribution", untitled table at the top of page 3.1.3.1.22-3: The value for the conventional gasoline Reid Vapor Pressure

"RVP" listed in this table for the Salt Lake and Davis Counties maintenance area for a summer time emission inventory is shown as 10.6. This is incorrect as by regulation, the summer time RVP for conventional gasoline in the Salt Lake Davis Counties maintenance area is 7.8 psi. Also, same comment for the table at the top of page 3.1.3.1.22-4, and two column headings in this table may have typographical errors in that they indicate emission factors with and without "Stage II." As Utah does not implement Stage II vapor recovery, these column labels should likely be "Stage I." (EPA). RESPONSE 15: Similar to response to Comment 11. In this case the value for Reid vapor pressure in the untitled tables at the top of pages 3.1.3.1.22-3 and 3.1.3.1.22-4 are for calculation of annual emissions. The ozone season RVP discussion begins on page 3.1.3.1-4. The incorrectly labeled column headings for the table at the top of page 3.1.3.1.22-4 have been changed to read with and without Stage I. COMMENT 16: Volume 5, "Projections", section 3.1.3.1.38, "Surface Coatings Traffic Markings": We are curious as to why actual lane-mile data were used from 1995 through 1998, but actual data from 2002 were not considered (EPA). RESPONSE 16: See response to Comment 14 above. The second amendment was under DAR No. 29227, and was effective 02/09/2007. No comments were received on this amendment. No other comments have been received about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Clean Air Act Section 110(a)(1) (42 U.S.C. 7410(a)(1)) requires that each state adopt and submit to EPA a plan providing for implementation, maintenance, and enforcement of each health standard promulgated by EPA. If a state fails to do so, EPA is to issue a federal implementation plan in its place, and other federal sanctions also would apply. Therefore, this rule should be continued. Rule R307-110 incorporates by reference the SIP allowed under Subsection 19-2-104(3)(e).

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at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality
R307-120
 General Requirements: Tax Exemption
 for Air and Water Pollution Control
 Equipment

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 29653
 FILED: 03/15/2007, 07:31

**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: Sections 19-2-124 through 19-2-127 allow sales tax exemptions for pollution control equipment meeting certain requirements set forth in the statute. Rule R307-120 sets forth conditions for eligibility for the tax exemption and identifies the process to apply for certification of the exemption. It also identifies items for which exemptions are not allowed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-120 has been amended once (under DAR No. 29327, effective 03/09/2007). No comments were received during the comment period. No other comments were received about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-120 sets forth conditions for eligibility for the tax exemption allowed in Sections 19-2-124 through 19-2-127 and identifies the process to apply for certification of the exemption. It also identifies items for which exemptions are not allowed. Therefore, this rule should be continued.

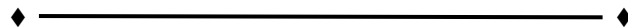
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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-130
 General Penalty Policy

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 29654
 FILED: 03/15/2007, 07:33

**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: Section 19-2-115 authorizes penalties for those found, in a civil proceeding, to violate Title 19, Chapter 2, or any rule, order, or permit issued under that chapter. Rule R307-130 guides the executive secretary of the Air Quality Board in determining a reasonable and appropriate penalty based on the nature and extent of the violation, the economic benefit to the sources of noncompliance, and adjustments for specific circumstances.

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 about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Under Section 19-2-115, a person is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation. Rule R307-130 implements Section 19-2-115; and therefore, this rule should be continued.

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-135
 Enforcement Response Policy for
 Asbestos Hazard Emergency Response
 Act

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 29659
 FILED: 03/15/2007, 07:38

**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: Subsections 19-2-115(2)(b) and (c) authorize penalties for violations of rules adopted under Section 19-2-104 for implementation of 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response. Rule R307-135 sets forth the conditions for issuance of a notice of violation and the penalties to be assessed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received on this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-135 sets forth the conditions for issuance of a notice of violation and the penalties to be assessed, as set forth in 15 U.S.C. 2601 et seq. Therefore, this rule should be continued.

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-220
 Emission Standards: Plan for
 Designated Facilities

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 29655
 FILED: 03/15/2007, 07:34

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws. Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), the Environmental Protection Agency issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources. Rule R307-220 incorporates by reference the Utah Plans written to meet this requirement.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The rule has been amended twice since its last five-year review. The first amendment was under DAR No. 25087, and was effective 10/03/2002. The only comment came from Wasatch Energy Systems in support of the proposed amendment. The second amendment was under DAR No. 29229 (still in process). One comment was received. COMMENT: The commenter agrees with and supports the notion of incorporating Utah's Designated Facilities Plan by reference, and would recommend finalizing the rule after amending the Designated Facilities Plan to address some of its concerns with regard to the allocation methodology; Section IV paragraph 3(e)(ii)(A) in particular (The Intermountain Power Service Corporation). RESPONSE: Staff agreed and made the changes throughout Section IV of the Designated Facilities Plan. No other comments were received about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-220 is required by 42 U.S.C. 7411(d) (Clean Air Act 111(d)). Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality

R307-221

Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29656
FILED: 03/15/2007, 07:35

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: Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws. Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), the Environmental Protection Agency issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources. Rule R307-221 implements the standards for existing Municipal Solid Waste Landfills, as required by 40 CFR 60.30c through 60.36c. The corresponding plan is incorporated by reference in Section R307-220-2. Rule R307-221 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR 60.30c through 60.36c.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received on this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-221 is required by 40 CFR 60.30c through 60.36c. Therefore, this rule should be continued.

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SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality

R307-222

Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29657
FILED: 03/15/2007, 07:36

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: Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws. Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), the Environmental Protection Agency issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources. Rule R307-222 implements the standards for existing Incinerators for Hospital, Medical, Infectious Waste, as required by 40 CFR Subpart Ce. The corresponding plan is incorporated by reference in Section R307-220-3. Rule R307-222 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR 60 Subpart Ce.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-222 is required

by 40 CFR Part 60, Subpart Ce; and the Clean Air Act, 42 U.S.C. 7411(d). Therefore, this rule should be continued.

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

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DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality **R307-223**

Emission Standards: Existing Small Municipal Waste Combustion Units

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29658
FILED: 03/15/2007, 07:36

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: Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws. Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), the Environmental Protection Agency issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources. Rule R307-223 implements the standards for existing Incinerators for Small Municipal Waste Combustion Units, as required by 40 CFR Part 60, Subpart BBBB. The corresponding plan is incorporated by reference in Section R307-220-4. Rule R307-223 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR Part 60, Subpart BBBB. The only source in Utah that is regulated by the Plan and Rule R307-223 is Wasatch Energy Systems in Davis County.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-223 is required by 40 CFR Part 60, Subpart BBBB. Therefore, this rule should be continued.

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

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality **R307-301**

Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29660
FILED: 03/15/2007, 07:39

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 211(m)(1) of the Clean Air Act required Utah County to implement an oxygenated gasoline program to bring it into attainment of the carbon monoxide National Ambient Air Quality Standards. Clean Air Act Section 175A(d) requires that maintenance plans assure prompt action to correct any violation of the standard that occurs after an area is redesignated to attainment and mandatory Clean Air Act requirements such as an oxygenated fuels program must be included as contingency measures. Rule R307-301 remains in place in case the carbon monoxide health standard is violated in Provo or Ogden; in which case, an oxygenated gasoline program could be reinstated based on the trigger measures in State Implementation Plan (SIP) Subparts IX.C.6.e(5)(a) and IX.C.8.f.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS

SUPPORTING OR OPPOSING THE RULE: Rule R307-301 was amended once under DAR No. 26897, effective 05/18/2004. The following comments were received on this amendment: COMMENT 1: It seems to me that in order to make an educated decision, citizens need to be able to see what they are trading for approximately \$5 per winter. I believe that appreciable differences in air quality are worth much more than \$5/person each winter. (Myles Watson) RESPONSE 1: The Division of Air Quality (DAQ) staff agrees. However, the difference is not appreciable. Carbon monoxide levels are approximately 4% lower with oxygenated gasoline, but that percentage is declining each year as more vehicles with advanced technology replace older vehicles. Projections for the future show that the federal health standard will be maintained without oxygenated gasoline for at least the next 10 years. The health standard is set at a level to protect public health. Thus, no health benefits are lost by ending use of oxygenated gasoline. COMMENT 2: ConocoPhillips is directly impacted by the current oxygenated gasoline requirements and the proposed changes. ConocoPhillips supports the State's request that EPA approve a new attainment demonstration and maintenance plan for Provo and redesignate Provo to attainment status for carbon monoxide. Removing the wintertime oxygenate requirement will give fuel suppliers additional flexibility which we all support (letter, H. Daniel Sinks, Fuel Issues Advisor, ConocoPhillips). RESPONSE 2: Noted. COMMENT 3: Highland City wishes to express its support for the current action under consideration. With the proximity to Salt Lake County, it seems of dubious value to have a different kind of gas. As it appears that the air quality has improved it is time to make these changes. Our residents are excited about these changes and are encouraged that they may be coming sooner rather than later (letter, Barry Edwards, City Administrator, Highland City). RESPONSE 3: Noted. COMMENT 4: Mountainland AOG is pleased with the progress of the redesignation request and Maintenance Plan and we look forward to the elimination of the oxyfuel provision for the next fall/winter season starting November 2004. We would like to thank the Division for the positive cooperation demonstrated throughout the preparation of this Plan, and in particular we thank Bill Colbert for his personal helpfulness and professional coordination (Susan Hardy, Air Quality Program Manager, Mountainland Association of Governments). RESPONSE 4: Noted. COMMENT 5: The member companies of the Utah Petroleum Association strongly support the Provo carbon monoxide plan and the deletion of the requirement for use of oxygenated gasoline in Utah County. Oxygenated fuels have served a valid purpose, but eliminating them will be a welcome relief to the petroleum industry. The inconvenience and added expense of producing and dispensing oxyfuel each winter has been a continuing concern for our industry. Our industry is proud to be a positive contributor in Utah's efforts to improve and maintain air quality (Lee Peacock, president, Utah Petroleum Association). RESPONSE 5: Noted. COMMENT 6: With respect to the revised version of Rule R307-301 "Utah and Weber Counties: Oxygenated Gasoline Program as a Contingency Measure", we are unsure of the State's intention. From EPA's perspective, this specific contingency measure rule language does not have to be adopted at this time for the maintenance plan. If the State

decides to have the Utah Air Quality Board adopt this language, this revision does not need to be submitted to EPA (letter, Richard Long, EPA Region 8). RESPONSE 6: Agree.

In fact, there is no longer a need for the rule to be federally-enforceable at all. The letter to EPA requesting redesignation also will request that R307-301 be removed from the federally-enforceable SIP. OTHER COMMENTERS: Rep. David Cox, Lehi; AB Fredericks, Woodland Hills; Paul Jensen, Spanish Fork; Nellie Motes, Provo; Mrs. Paulsen, Payson; Kathy Jackson, Provo; Mr and Mrs Warren Johnson; Spanish Fork; Viril C Long, Provo; Jay Allen, American Fork; Terry Fredericks, Spanish Fork; J.J. Bird, Springville; R. Holley, Springville: The above commenters favored ending the oxygenated gasoline program, and expressed similar reasons, which are: 1) oxyfuel causes poor vehicle performance and reduces gas mileage; 2) oxyfuel doesn't really help the air quality; 3) it's unfair that other areas don't have to use oxyfuel, as well as Utah County; 4) our smog blows in from Salt Lake; 5) it doesn't help here because so many people buy gas outside Utah County; and 6) it's harmful to human health. RESPONSE: If this Plan is adopted, use of oxygenated gasoline in Utah County will end, unless carbon monoxide levels again exceed the federal health standard. No other written comments were received about this rule since its last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 211(m)(1) of the Clean Air Act required Utah County to implement a oxygenated gasoline program to bring it into attainment of the carbon monoxide National Ambient Air Quality Standards. Clean Air Act Section 175A(d) requires that maintenance plans assure prompt action to correct any violation of the standard that occurs after an area is redesignated to attainment and mandatory Clean Air Act requirements must be included as contingency measures. The oxygenated gasoline program is a contingency measure in case the carbon monoxide National Ambient Air Quality Standards (NAAQS) is violated in Provo or Ogden. Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality
R307-320
Ozone Maintenance Areas and Ogden
City: Employer-Based Trip Reduction
Program

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29663
FILED: 03/15/2007, 07:42

**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: Rule R307-320 is authorized by Subsections 19-2-104(1)(h) and (2), which authorize and set forth criteria for consideration in implementing an employer-based trip reduction program for businesses and government agencies that have 100 employees or more at a single site in any ozone nonattainment or maintenance area. The statute requires approval of the governor before implementation, and requires that the Air Quality Board consider the impact of the business on overall air quality and the need of the business to use automobiles in order to carry out its business purposes before implementing the program. Rule R307-320, however, applies only to federal, state and local agencies of government that have 100 or more employees at a single site, and not to businesses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-320 has been amended once since its last five-year review (under DAR No. 29002, effective 03/09/2007). One comment was received. COMMENT: In other proposed rules, the phrase, "Salt Lake and Davis Counties" has been changed to "Ozone Maintenance Areas." In Subsection R307-320-4(3)(b)(ii), you have kept "Salt Lake and Davis Counties." Additionally, Subsection R307-320-4(3)(e) states that the "executive secretary shall approve...;" however, in other rules, the word "shall" has been changed to "will" (Wasatch Clean Air Coalition). RESPONSE: Staff agreed and made the needed changes to the rule text. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Subsections 19-2-104(1)(h) and (2) authorize a trip reduction program for businesses and federal, state, and local governments having more than 100 employees at a single location to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements. The rule is required by the state implementation plan for ozone, incorporated by reference under Section R307-110-13. That plan applies in Salt Lake and Davis Counties. Therefore, this rule should be continued. In addition, the rule

could be implemented as a contingency measure in Ogden City and Utah County if health standards are violated. Though the statute authorizes the Air Quality Board to require a trip reduction program for businesses, Rule R307-320 applies only to federal, state, and local agencies of government that have 100 or more employees at a single site. The purpose of the rule is to reduce the number of miles driven by employees commuting to and from work. Many of the agencies that have achieved the greatest reduction in drive-alone rates are located in downtown areas where bus routes, light rail and van pools provide many options for employees. Where employees work erratic schedules, or where there are security concerns, employees are not asked to participate. About 80 agencies have been tracked, and, in general, compliance has been good. The lowest measured drive-alone rate is 35% at the U.S. Bureau of Reclamation. A great deal of the success of the program is attributable to the Utah Transit Authority (UTA), which markets an assortment of alternatives to driving alone. These programs include connecting potential carpoolers, promoting vanpools, and providing a free ride home for participants who have occasional emergencies that necessitate getting home at a different time. UTA improves the success of the rule by offering their voluntary programs to businesses, though Rule R307-320 does not apply to businesses.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-325
Ozone Nonattainment and Maintenance
Areas: General Requirements

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29664
FILED: 03/15/2007, 07:42

**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: Rule R307-325 establishes general requirements for control of volatile organic compounds, a precursor to ozone, in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan (SIP) for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source..." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety..."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-325 has been amended twice since the last five-year review. The first amendment was under DAR No. 28544, and was effective 06/16/2006. No comments were received during the comment period. The second amendment was under DAR No. 29003, and was effective 03/09/2007. Four comments were received.

COMMENT 1: Proposed deletion of generic RACT provisions from prior version "R307-325-2 Existing Sources": While EPA said these provisions were not required as part of the 1-hour ozone SIP, EPA did approve them into the SIP. Thus, the State will need to demonstrate that deletion of these provisions will not interfere with attainment, maintenance, or any other requirement of the CAA, per section 110(1) of the CAA. If all sources potentially subject to the rule were controlled through adoption of specific RACT provisions, this demonstration would consist of a simple certification to that effect. Please note that any analysis should consider pollutants other than ozone, such as PM10 and PM2.5(EPA). RESPONSE 1: The generic RACT provisions in R307-325 describe Utah's initial approach to address RACT for the ozone maintenance plan. EPA did not accept this approach, and so source-specific VOC RACT determinations were made for major VOC sources. Source-specific NOx RACT determinations were made for two major NOx RACT sources and a NOx RACT waiver was granted for all remaining sources. The generic RACT provisions in R307-325 have never been applied to any source, and deletion of the language will not interfere with attainment, maintenance, or any other requirement of the CAA. The State of Utah certifies that that all sources potentially subject to this rule were controlled through source-specific RACT determinations, or were addressed by the NOx RACT waiver that was granted in 1997. COMMENT 2: This language (in R307-325) confused me; it seemed to imply that the purpose of RACT was to result in evaporation. Possibly it would be clearer if changed to "...result AFTER the application of..." from "...result from the application..." (Wasatch Clean Air Coalition). RESPONSE 2: Staff agree and made needed changes to the rule text.

COMMENT 3: In the last sentence which states "...control technology that is reasonably available considering technological and economic feasibility." It would be more appropriate to state instead "...reasonably available control technology (RACT)," as this is the term used in the CAA (EPA). RESPONSE 3: Staff agree and made needed changes to rule text. COMMENT 4: Several staff members have commented that although Utah rule requires sources with VOC contaminated rags to keep such rags covered, transporters and launderers of these VOC laden rags are not required by rule to keep them covered. Please add language that clarifies that transport and laundering of VOC laden rags is subject to the Ozone Provisions (Wasatch Clean Air Coalition). RESPONSE 4: The ozone RACT rules have been an effective part of the overall plan to bring the area into attainment. If future ozone problems occur then all of the ozone control strategies will be reviewed to identify the most effective ways to further reduce VOC emissions. No changes to the rules have been made at this time to increase the stringency of the rules. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the SIP for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the Environmental Protection Agency (EPA) would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality
R307-326
Ozone Nonattainment and Maintenance
Areas: Control of Hydrocarbon
Emissions in Petroleum Refineries

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29665
FILED: 03/15/2007, 07:42

**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: Rule R307-326 establishes Reasonably Available Control Technology (RACT), as required by Section 182(b)(2)(A) of the Clean Air Act, for the control of hydrocarbon emissions from petroleum refineries that are located in any ozone nonattainment and maintenance areas. The rule is based on federal control technique guidance documents. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source..." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety..."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-326 has been amended once since its last five-year review (under DAR No. 29006, effective 03/09/2007). Five comments were received. COMMENT 1: This requirement contains no provision for updating the procedure for minimizing VOC emissions during turnarounds. If the procedure is to be maximally effective, it should be reviewed and updated regularly. Significant equipment and procedural changes have taken place since 1990, and any plan prepared then is outdated and likely not useful. Besides being outdated, the lack of reporting requirements could lead a source to believe complying with the procedure is voluntary. Please insert appropriate updating and reporting requirements into this provision (Wasatch Clean Air Coalition). RESPONSE 1: The ozone RACT rules have been an effective part of the overall plan to bring the area into attainment. If future ozone problems occur then all of the ozone control strategies will be reviewed to identify the most effective ways to further reduce VOC emissions. No changes to the rules have been made at this time to increase the stringency of the rules. COMMENT 2: To make certain that the rule is not mistakenly applied to a copper refinery; KUCC suggests that DAQ add the word "petroleum" before the word "refinery" in the rule title, and before the word "refinery" in the rule purpose and applicability sections of Rule R307-326 (Kennecott Utah Copper Corporation). RESPONSE 2: Staff agreed and made the needed changes to the rule text. COMMENT 3: in Subsection R307-326-10(3): In order to fulfill the requirements of R307-326-10(1), the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA" (EPA).

RESPONSE 3: Subsection R307-326-10(1) describes the process that must be followed before a source could use alternate monitoring methodology, including a requirement for Environmental Protection Agency (EPA) concurrence. It is not necessary to repeat these requirements in Subsection R307-326-10(3). The current language was approved by EPA and has been effective. COMMENT 4: This rule makes frequent and interchangeable use of "volatile organic compound" and "VOC." Readability and clarity would be improved if VOC were used consistently after the initial volatile organic compound (VOC) (Wasatch Clean Air Coalition). RESPONSE 4: Staff agreed and made the changes throughout Rule R307-326. COMMENT 5: Comment on rules regarding potential alternative requirements or deadlines: There are various instances in which the RACT rules allow sources to implement alternative requirements or to meet different deadlines with the executive secretary's or Board's approval. See, for example, R307-326-4(3), -6(3), -7, -9(1), -9(5)(a), 10(2); R307-327-4(1), -6(l)(a) and (c), -6(3)(d), -7(2); R307-328-4(6) and (9), -6(4), -8(2); and similar provisions in the other RACT rules. We recognize that this language appears in the existing EPA-approved SIP. However, as you know, we have expressed concern to State management and staff regarding these types of provisions within the Utah SIP and our belief that these provisions should be modified or removed. Because the Board will already be considering changes to these rules, we think it would be an appropriate time for the Board to rectify these problems in these rules. One possible approach would be to add language providing an approval or concurrence role for EPA. This would be consistent with some of the language regarding "alternate methods of control" that is already part of the EPA-approved SIP. For example, see the language in R307-326-10(1). If these rules are submitted to us without the requisite changes, we may be unable to act on them or approve them (EPA). RESPONSE 5: As explained in the comment, these requirements are part of the approved SIP. The ozone RACT rules have been in place, and have effectively reduced VOC emissions since the early 1980's. The provisions to allow sources to implement alternate requirements or to meet different deadlines are important to allow flexibility. These provisions have not been misused during the last 25 years. An extra layer of review would provide no additional air quality benefit. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Air Quality
R307-327
Davis and Salt Lake Counties and
Ozone Nonattainment Areas:
Petroleum Liquid Storage

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29666
FILED: 03/15/2007, 07:43

**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: Rule R307-327 requires that petroleum refineries have measures in place to reduce emissions of volatile organic compounds, a precursor to ozone, from their large storage tanks in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-327 was amended once since its last five-year review (under DAR No. 29004, effective 03/09/2007). Three comments were received. COMMENT 1: To make certain that the rule is not

mistakenly applied to a copper refinery; KUCS suggests that DAQ add the word "petroleum" before the word "refinery" everywhere it occurs in the proposed Purpose and Applicability sections of Rule R307-327 (Kennecott Utah Copper Corporation). RESPONSE 1: Staff agreed and made needed changes to the rule title and text. COMMENT 2: R307-327-7(3), R307-328-8(3), R307-335-7(3), R307-340-16(3), R307-342-7(3): Same comment for all; the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA" (Environmental Protection Agency (EPA)). RESPONSE 2: In all these rules, the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again. The current language was approved by EPA and has been effective. COMMENT 3: Comment on rules regarding potential alternative requirements or deadlines: There are various instances in which the RACT rules allow sources to implement alternative requirements or to meet different deadlines with the executive secretary's or Board's approval. See, for example, R307-326-4(3), -6(3), -7, -9(1), -9(5)(a), 10(2); R307-327-4(1), -6(l)(a) and (c), -6(3)(d), -7(2); R307-328-4(6) and (9), -6(4), -8(2); and similar provisions in the other RACT rules. We recognize that this language appears in the existing EPA-approved SIP. However, as you know, we have expressed concern to State management and staff regarding these types of provisions within the Utah SIP and our belief that these provisions should be modified or removed. Because the Board will already be considering changes to these rules, we think it would be an appropriate time for the Board to rectify these problems in these rules. One possible approach would be to add language providing an approval or concurrence role for EPA. This would be consistent with some of the language regarding "alternate methods of control" that is already part of the EPA-approved SIP. For example, see the language in R307-326-10(1). If these rules are submitted to us without the requisite changes, we may be unable to act on them or approve them (EPA). RESPONSE 3: As explained in the comment, these requirements are part of the approved SIP. The ozone RACT rules have been in place, and have effectively reduced VOC emissions since the early 1980's. The provisions to allow sources to implement alternate requirements or to meet different deadlines are important to allow flexibility. These provisions have not been misused during the last 25 years. An extra layer of review would provide no additional air quality benefit. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-328
Ozone Nonattainment and Maintenance
Areas and Utah and Weber Counties:
Gasoline Transfer and Storage

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29667
FILED: 03/15/2007, 07:44

**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: Rule R307-328 establishes Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline transport vehicles and storage tanks in any ozone nonattainment or maintenance areas and Utah and Weber Counties. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-328 was amended once since its last five-year review (under DAR No.

29005, effective 01/16/2007). Two comments were received. COMMENT 1: R307-327-7(3), R307-328-8(3), R307-335-7(3), R307-340-16(3), R307-342-7(3): Same comment for all; the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA" (Environmental Protection Agency (EPA)). RESPONSE 1: In all these rules, the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again. The current language was approved by EPA and has been effective. COMMENT 2: Comment on rules regarding potential alternative requirements or deadlines: There are various instances in which the RACT rules allow sources to implement alternative requirements or to meet different deadlines with the executive secretary's or Board's approval. See, for example, R307-326-4(3), -6(3), -7, -9(1), -9(5)(a), 10(2); R307-327-4(1), -6(l)(a) and (c), -6(3)(d), -7(2); R307-328-4(6) and (9), -6(4), -8(2); and similar provisions in the other RACT rules. We recognize that this language appears in the existing EPA-approved SIP. However, as you know, we have expressed concern to State management and staff regarding these types of provisions within the Utah SIP and our belief that these provisions should be modified or removed. Because the Board will already be considering changes to these rules, we think it would be an appropriate time for the Board to rectify these problems in these rules. One possible approach would be to add language providing an approval or concurrence role for EPA. This would be consistent with some of the language regarding "alternate methods of control" that is already part of the EPA-approved SIP. For example, see the language in R307-326-10(1). If these rules are submitted to us without the requisite changes, we may be unable to act on them or approve them (EPA). RESPONSE 2: As explained in the comment, these requirements are part of the approved SIP. The ozone RACT rules have been in place, and have effectively reduced VOC emissions since the early 1980's. The provisions to allow sources to implement alternate requirements or to meet different deadlines are important to allow flexibility. These provisions have not been misused during the last 25 years. An extra layer of review would provide no additional air quality benefit. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-335
Ozone Nonattainment and Maintenance
Areas: Degreasing and Solvent
Cleaning Operations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29668
FILED: 03/15/2007, 07:44

**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: Rule R307-335 establishes Reasonably Available Control Technology (RACT) for degreasing and solvent cleaning operations that are located in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source..." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-335 was amended once since its last five-year review (under DAR No. 29008, effective 01/16/2007). One comment was received. COMMENT: On Subsections R307-327-7(3), R307-328-8(3), R307-335-7(3), R307-340-16(3), R307-342-7(3): Same comment for all; the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA" (Environmental Protection Agency (EPA)). RESPONSE: In all these rules, the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again.

The current language was approved by EPA and has been effective. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality
R307-340
Davis and Salt Lake Counties and
Ozone Nonattainment Areas: Surface
Coating Processes

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29669
FILED: 03/15/2007, 07:45

**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: Rule R307-340 establishes Reasonably Available Control Technology (RACT) for surface coating operations that are located in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan (SIP) for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air

pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-340 was amended once since its last five-year review (under DAR No. 29009, effective 03/09/2007). Three comments were received. COMMENT 1: This rule makes frequent and interchangeable use of "volatile organic compound" and "VOC." Readability and clarity would be improved if VOC were used consistently after the initial volatile organic compound (VOC) (Wasatch Clean Air Coalition). RESPONSE 1: Staff agreed and made the changes throughout Rules R307-326, R307-340, and R307-343. COMMENT 2: Several rules reference EPA guidance documents, for example, "EPA-340/1-88-003, Recordkeeping Guidance for Surface Coating Operations and the Graphic Arts Industry" in R307-340-4(2)(a)(v). These guidance documents cannot be located on the DAQ website, nor are they linked to a site where they are posted, as federal rules are. Compliance and citizen involvement would be easier if these documents were easily located on the DAQ website (Wasatch Clean Air Coalition). RESPONSE 2: Staff agreed. When EPA guidance documents are referenced in the ozone RACT rules, a link to the documents will be included on UDAQ's web page. COMMENT 3: R307-327-7(3), R307-328-8(3), R307-335-7(3), R307-340-16(3), R307-342-7(3): Same comment for all; the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA." (EPA). RESPONSE 3: In all these rules, the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again. The current language was approved by EPA and has been effective. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the SIP for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the Environmental Protection Agency (EPA) would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality **R307-341** Ozone Nonattainment and Maintenance Areas: Cutback Asphalt

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29670
FILED: 03/15/2007, 07:45

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: Rule R307-341 establishes reasonably achievable control technology (RACT) requirements for the use or application of cutback asphalt in any ozone nonattainment or maintenance areas. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-341 was amended once since its last five-year review (under DAR No. 29010, effective 01/16/2007). No comments were received. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, the Environmental Protection Agency would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality **R307-342**

Ozone Nonattainment and Maintenance Areas: Qualification of Contractors and Test Procedures for Vapor Recovery Systems for Gasoline Delivery Tanks

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29671
FILED: 03/15/2007, 07:46

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: Rule R307-342 establishes the requirements for the qualification of contractors to perform vapor tightness tests on gasoline transport vehicles equipped with vapor recovery equipment. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 U.S.C. 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-342 was amended once since its last five-year review (under DAR No. 29011, effective 01/16/2007). One comment was received. COMMENT: In Subsections R307-327-7(3), R307-328-8(3),

R307-335-7(3), R307-340-16(3), and R307-342-7(3): the same comment for all; the first sentence should be changed to read "...or approved by the Executive Secretary after obtaining concurrence from EPA" (Environmental Protection Agency (EPA)). RESPONSE: In all these rules the process that must be followed, before a source could use alternate monitoring methodology, is described in an earlier paragraph. It is not necessary to repeat the reference to EPA concurrence again.

The current language was approved by EPA and has been effective. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 U.S.C. 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007



Environmental Quality, Air Quality **R307-343**

Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29672
FILED: 03/15/2007, 07:47

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: Rule R307-343 regulates

wood furniture manufacturers that have the potential to emit 25 tons or more of volatile organic compounds each year in any ozone nonattainment or maintenance area. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source...." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety...."

Summary of written comments received during and since the last five year review of the rule from interested persons supporting or opposing the rule: Rule R307-343 was amended once since its last five-year review (under DAR No. 29012, effective 03/09/2007). Five comments were received. COMMENT 1: R307-343-9(1) requires sources subject to R307-343 to follow the reporting requirements of 40 CFR Part 63, Subpart A, the general provisions of the federal Maximum Achievable Control Technologies (MACT) rule, which regulates hazardous air pollutants. KraftMaid is not subject to the MACT rule, and this reference is confusing. R307-343 already requires all the reports that are required by Subpart A, except for submittal of a compliance certification. We recommend that R307-343-9(1) be deleted, and that the requirement for a compliance certification be added to R307-343-6(4)(c) (KraftMaid). RESPONSE 1: Staff agreed and made the necessary changes to the rule text. COMMENT 2: The title of R307-343 is Ozone Nonattainment and Maintenance Areas: Emission Standards for Wood Furniture Manufacturing Operations, while R307-343-2, applicability, indicates the rule is applicable to sources located in any ozone nonattainment or maintenance area. Why are they different? (KraftMaid). RESPONSE 2: In the title of the rule, and is appropriate, because the rule is intended to regulate emissions in all areas where compliance with the ozone standard is difficult—that is, all ozone nonattainment and maintenance areas. R307-343-2 stresses that the rule applies to any individual source that is located in any nonattainment or maintenance area. However, to improve clarity, R307-343-1 was revised. COMMENT 3: R307-343-6(3)(d) still requires submittal of an initial compliance status report, though R307-343-9(2), which specifies the timetable to submit the report, is proposed for deletion. The new R307-343-9(2) addresses the semi-annual report, not the initial compliance status report. In addition, R307-343-10(2) requires submittal of the initial compliance status report within 60 days of initial startup. Because we are using a control device to comply, our Approval Order allows us up to 180 days to test the device, and we may have trouble complying within 60 days. We recommend that the deadline be extended to 180 days (KraftMaid). RESPONSE 3: Staff agreed. Note that the compliance procedures for sources using a control device are specified in R307-343-6(2)(b), while procedures for other sources are found in R307-343-6(2)(a). R307-343-9(1) was revised to address the initial compliance status report. COMMENT 4: The new R307-343-10(2) requires that the work practice implementation plan be submitted within 60 days of initial startup, while R307-343-6(3)(d) requires that the initial compliance status report state that the plan has been developed and implemented. Also, R307-343-5(1)(a) requires

that the plan be available for inspection at all times, and that the executive secretary can require that the plan be modified if it does not adequately address the requirements of R307-343-5. We recommend that the requirement to submit the initial work practice implementation plan be submitted within 60 days be dropped (KraftMaid). RESPONSE 4: Staff agreed that requiring the plan to be submitted within 60 days does not add much value; DAQ staff will inspect the new source regularly and can review the plan at that time. In reviewing this comment, staff believe that all of R307-343-10(2) can be deleted, as the initial compliance status report addressed in R307-343-10(2)(b) is now addressed in R307-343-9(1). The purpose of R307-343-10 is to set a deadline for sources that are located in an area that is designated nonattainment in the future, not to address sources that newly locate into an area that is already designated nonattainment or maintenance. Staff made the needed changes to the rule text. COMMENT 5: This rule makes frequent and interchangeable use of "volatile organic compound" and "VOC." Readability and clarity would be improved if VOC were used consistently after the initial volatile organic compound (VOC) (Wasatch Clean Air Coalition). RESPONSE 5: Staff agreed and made the changes throughout R307-326, R307-340 and R307-343. No other comments were received about this rule since the last review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-343 limits the emissions of volatile organic compounds, a precursor to ozone, from wood furniture manufacturers in ozone nonattainment and maintenance areas. This rule is needed to ensure that emissions of air pollution do not harm public health. This rule outlines emissions standards for wood furniture manufacturing operations and should be continued. This rule is part of a proactive strategy to ensure that Salt Lake and Davis Counties continue to meet the ozone standard. Therefore, this rule should be continued.

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:

Mat E. Carlile at the above address, by phone at 801-536-4136, by FAX at 801-536-0085, or by Internet E-mail at MCARLILE@utah.gov

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

EFFECTIVE: 03/15/2007

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Environmental Quality, Drinking Water
R309-520
 Facility Design and Operation:
 Disinfection

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 29642
 FILED: 03/13/2007, 17:32

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-4-104 authorizes the Drinking Water Board to make rules in accordance with Title 63, Chapter 46a, as necessary to administer the Safe Drinking Water Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five years opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes requirements for facilities which disinfect public drinking water throughout the State, and since the Board has not received comments opposing this rule the Board feels it is prudent to continue this rule.

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

ENVIRONMENTAL QUALITY
 DRINKING WATER
 150 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@utah.gov

AUTHORIZED BY: Ken Bousfield, Acting Director

EFFECTIVE: 03/13/2007

Environmental Quality, Radiation
 Control

R313-35

Requirements for X-Ray Equipment
 Used for Non-Medical Applications

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE NO.: 29595
 FILED: 03/05/2007, 13:48

**NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality and Subsection 19-3-104(4) authorizes the Utah Radiation Control Board to make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This has not been a controversial rule. Employees of the Division of Radiation Control have reviewed this rule and they recommend that the Radiation Control Board continue the rule. No written comments have been received during and since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the radiation safety requirements for persons who use electronic sources of radiation for industrial radiographic, analytical, or other nonmedical applications. The electronic sources of radiation may cause a significant health hazard if not properly controlled. There have not been any comments received that were in opposition to the rule.

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

ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 Room 212
 168 N 1950 W
 SALT LAKE CITY UT 84116-3085, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Craig Jones at the above address, by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Dane Finerfrock, Director

EFFECTIVE: 03/05/2007

Natural Resources; Oil, Gas and
Mining; Administration

R642-100

Records of the Division and Board of
Oil, Gas and Mining

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29596
FILED: 03/07/2007, 08:47

**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 concerning handling of records is authorized under the rulemaking authority granted in Sections 40-6-5, 40-8-6, and 40-10-6, and is specifically authorized by the Government Records and Management Act (GRAMA), Section 63-2-101 et seq.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that a process remains in place for managing the records of the Division and Board of Oil, Gas and Mining.

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

NATURAL RESOURCES
OIL, GAS AND MINING; ADMINISTRATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Abandoned Mine Reclamation

R643-870

Abandoned Mine Reclamation
Regulation Definitions

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29597
FILED: 03/07/2007, 08:50

**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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Definitions in this rule are necessary for consistent usage in regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Definitions for Abandoned Mine Reclamation in this rule are necessary to avoid inconsistent use of terminology by the board, division, and affected parties. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-872
Abandoned Mine Reclamation Fund

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 29598
FILED: 03/07/2007, 08:51

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25.1 specifically creates the Abandoned Mine Reclamation Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes how the Abandoned Mine Reclamation Fund will be managed. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-874
General Reclamation Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 29599
FILED: 03/07/2007, 08:52

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25 specifically establishes eligible land and water resource restoration priorities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes reclamation eligibility requirements and objectives in the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-875
 Noncoal Reclamation

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29600
 FILED: 03/07/2007, 08:52

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25 specifically establishes eligible land and water resource restoration priorities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes noncoal reclamation eligibility requirements in the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
 OIL, GAS AND MINING;
 ABANDONED MINE RECLAMATION
 Room 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-877
 Rights of Entry

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29601
 FILED: 03/07/2007, 08:53

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-27 specifically establishes provisions for entry upon land adversely affected by past mining.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for entry upon land for reclamation purposes by the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
 OIL, GAS AND MINING;
 ABANDONED MINE RECLAMATION
 Room 1210
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Abandoned Mine Reclamation
R643-879

Acquisition, Management, and
Disposition of Lands and Water

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29602
FILED: 03/07/2007, 08:54

**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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-27 specifically establishes provisions when the state may acquire land adversely affected by past mining and later disposition.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for acquisition of eligible land and water resources for emergency and reclamation purposes and also the disposition of lands so acquired. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Abandoned Mine Reclamation
R643-882

Reclamation on Private Land

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29603
FILED: 03/07/2007, 08:54

**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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-28 specifically establishes provisions for potential recovery of reclamation costs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for recovery of the cost of reclamation activities conducted on private land by the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

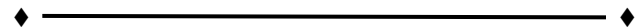
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-884
State Reclamation Plan

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 29604
FILED: 03/07/2007, 08:55

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-26 specifically establishes provisions for submittal of the state reclamation plan and application for support of the state program to the federal Secretary of the Interior.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for the preparation, submission, and approval of the state reclamation plan to the Office of Surface Mining which is critical to funding of the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-886
State Reclamation Grants

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE No.: 29605
FILED: 03/07/2007, 08:55

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 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-26 specifically establishes provisions for submittal of the state reclamation plan and application for support of the state program to the federal Secretary of the Interior.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for receipt of grants by the Abandoned Mine Reclamation Program for the reclamation of lands and water in the reclamation plan. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Coal
R645-100

Administrative: Introduction

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29606

FILED: 03/07/2007, 08:56

**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 40-10-6 and Subsection 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. The definitions and other administrative components in this rule are utilized for consistent regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Mining Association is seeking clarification or amendment of three of the definitions within this rule. The Division is meeting with the Utah Mining Association and applicable coal company members to discuss these matters. UtahAmerican Energy, Inc. recently filed a petition with the Board to propose amendment of the definition of intermittent stream.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The definitions applicable to the Coal Program in this rule are necessary to avoid inconsistent use of terminology by the board, division, and affected parties. The other administrative items in this rule include the description of the applicability of these rules, petitions for rulemaking, citizen suits, availability of records, and computation of time frames. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

Natural Resources; Oil, Gas and
Mining; Coal
R645-103

Areas Unsuitable for Coal Mining and
Reclamation Operations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29607

FILED: 03/07/2007, 08:57

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-24 specifically establishes provisions for a planning process enabling objective decisions for land areas unsuitable for coal mining operations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for the designation of lands unsuitable for coal mining and reclamation operations. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

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**Natural Resources; Oil, Gas and
Mining; Coal
R645-200
Coal Exploration: Introduction**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29608
FILED: 03/07/2007, 08:57

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes categories of coal exploration based upon tons of coal to be removed and the general responsibility of the division and any person seeking to conduct coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

◆ ————— ◆

**Natural Resources; Oil, Gas and
Mining; Coal
R645-201
Coal Exploration: Requirements for
Exploration Approval**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29609
FILED: 03/07/2007, 08:58

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes requirements that are necessary for coal exploration permit approval within Utah. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

Natural Resources; Oil, Gas and
Mining; Coal
R645-202
Coal Exploration: Compliance Duties

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29610
FILED: 03/07/2007, 08:58

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for required documents to be available and for performance standards pertaining to the coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Coal
R645-203
Coal Exploration: Public Availability of
Information

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29611
FILED: 03/07/2007, 08:59

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules. Section 40-10-19 also specifically establishes provisions for records obtained under the chapter to be made available to the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for availability of public records and confidentiality pertaining to coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Coal
R645-300

Coal Mine Permitting: Administrative
Procedures

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29612
FILED: 03/07/2007, 08:59

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the administrative procedures that are necessary for permitting of coal mines including public participation, approval of permit applications, and administrative and judicial review of decisions on permits. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007



Natural Resources; Oil, Gas and
Mining; Coal
R645-301

Coal Mine Permitting: Permit
Application Requirements

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29613
FILED: 03/07/2007, 09:00

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Mining Association is proposing an amendment to a portion of Sections R645-301-765, R645-301-728, and R645-301-800. The Division is meeting with the Utah Mining Association to discuss this matter. No written comments have been received seeking repeal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary since it states the required information to be reflected in each permit application by a coal mine operator including information on soils, biology, engineering, geology, hydrology, and bonding. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

AUTHORIZED BY: John Baza, Director

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Natural Resources; Oil, Gas and
Mining; Coal
R645-302
Coal Mine Permitting: Special
Categories and Areas of Mining

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29614
FILED: 03/07/2007, 09:00

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state. Section 40-10-17 also specifically establishes provisions for performance standards for coal mining and reclamation, as well as rulemaking authority to govern the granting of variances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for special categories of mining such as steep slopes and experimental practices mining, and special areas of mining such as prime farmland and alluvial valley floors. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

EFFECTIVE: 03/07/2007

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Natural Resources; Oil, Gas and
Mining; Coal
R645-303
Coal Mine Permitting: Change,
Renewal, and Transfer, Assignment, or
Sale of Permit Rights

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29615
FILED: 03/07/2007, 09:01

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-12 specifically establish provisions for permit renewal as well as permit revision and transfer, assignment, or sale of the rights granted under the permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for coal mine permit renewals and changes, as well as transfer, assignment, or sale of permit rights. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

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**Natural Resources; Oil, Gas and
Mining; Coal
R645-402**

**Inspection and Enforcement: Individual
Civil Penalties**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29616
FILED: 03/07/2007, 09:01

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-20(6) specifically establishes provisions for civil penalties for a director, officer, or agent of a corporation who knowingly authorizes a violation of a condition of a coal mining permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards and procedures that are necessary for individual civil penalties against any corporate director, officer, or agent of a corporate permittee who knowingly authorizes a permit violation. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider at the above address, by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

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**Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-1**

Oil and Gas General Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29617
FILED: 03/07/2007, 09:02

**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: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. The definitions in this rule are utilized for consistent regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The definitions in this rule are necessary to avoid inconsistent use of terminology by the board, division, industry, and other affected parties. Therefore, this rule should be continued. There are no comments in opposition to this rule.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider or Michael Hebertson at the above address, by phone at 801-538-5328 or 801-538-5333, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at steveschneider@utah.gov or michaelhebertson@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

EFFECTIVE: 03/07/2007

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**Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-2
General Rules**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29618
FILED: 03/07/2007, 09:03

**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: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. This rule covers the authorities granted to the division by the Board of Oil, Gas and Mining, and the scope of Title R649 and its rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to specify the authority and scope of the division's responsibilities provided for in Title 40, Chapter 6, et seq. It also provides a framework for day to day operations. Therefore, this rule should be continued. There is no opposition to this rule.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Michael Hebertson or Steve Schneider at the above address, by phone at 801-538-5333 or 801-538-5328, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at michaelhebertson@utah.gov or steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

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**Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-3
Drilling and Operating Practices**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29619
FILED: 03/07/2007, 09:03

**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: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the division would not have the ability to issue permits, conduct inspections, review operations, and function in the arena of regulating oil and gas operations in the state. Therefore, this rule should be continued. There is no opposition to the renewal of this rule.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Steve Schneider or Michael Hebertson at the above address, by phone at 801-538-5328 or 801-538-5333, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at steveschneider@utah.gov or michaelhebertson@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

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Natural Resources; Oil, Gas and
Mining; Oil and Gas

R649-5

Underground Injection Control of
Recovery Operations and Class II
Injection Wells

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29620
FILED: 03/07/2007, 09:04

**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 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. Subsection 40-6-5(5) specifically provides the board with exclusive jurisdiction over class II injection wells as defined by the federal Environmental Protection Agency.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the numerous injection wells used for waste disposal and reservoir pressure maintenance would fall under federal authority. This rule allows the division to assume primacy for injection operations. Therefore, this rule should be continued. There are no opposing comments to renewal of this rule.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Michael Hebertson or Steve Schneider at the above address, by phone at 801-538-5333 or 801-538-5328, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at michaelhebertson@utah.gov or steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

Natural Resources; Oil, Gas and
Mining; Oil and Gas

R649-8

Reporting and Report Forms

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29621
FILED: 03/07/2007, 09:04

**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 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. This statute authorizes the board to adopt rules for reporting and the division is the repository for these records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for the division to carry out the requirement to collect appropriate information from parties in the oil and gas industry and then make available to the public. This rule is necessary for consistency in data collection and data publication. Therefore, this rule should be continued. There are no comments in opposition to this rule.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Michael Hebertson or Steve Schneider at the above address, by phone at 801-538-5333 or 801-538-5328, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at michaelhebertson@utah.gov or steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 03/07/2007

EFFECTIVE: 03/07/2007

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**Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-9
Waste Management and Disposal**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29622
FILED: 03/07/2007, 09:04

**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 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two parties submitted written comments in support of renewal of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the state would not have a vehicle to manage the wastes generated in the process of exploration and production of petroleum hydrocarbons in the state. This rule and the board authority extended to the division are the means for proper disposal and handling of these wastes. Therefore, this rule should be continued.

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

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Michael Hebertson or Steve Schneider at the above address, by phone at 801-538-5333 or 801-538-5328, by FAX at 801-359-3940 or 801-359-3940, or by Internet E-mail at michaelhebertson@utah.gov or steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

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**Natural Resources, Wildlife Resources
R657-43
Landowner Permits**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29639
FILED: 03/13/2007, 12:36

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate the management of big game species. This rule provides the standards and procedures for private landowners to obtain landowner permits for taking specific big game species from the landowner's property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-43 were received since 03/01/2002 when the rule 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: Rule R657-43 provides the requirements, procedures, and standards for private landowners to obtain landowner permits for taking buck deer within a general regional hunt boundary where the landowner's property is located, and taking bull elk, buck deer, or buck pronghorn within a limited entry unit. This rule provides the opportunity for landowners, whose property provides habitat for deer, elk, or pronghorn, to benefit by obtaining landowner permits for use within a general regional hunt area or limited entry area where the landowner's property is located. The provisions adopted in this rule are effective in providing the requirements, procedures, and standards for managing the landowner permit program. Continuation of this rule is necessary for continued success of this program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacoons@utah.gov

AUTHORIZED BY: James F Karpowitz, Director

EFFECTIVE: 03/13/2007

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**Public Safety, Driver License
R708-2
Commercial Driver Training Schools**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29593
FILED: 03/02/2007, 16:04

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 53-3-501 through 509 require the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating Commercial Driver Training Schools and their instructors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so the Commercial Driver Training Schools program can be continued to be administered as per the requirements in the statute.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vrooms@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/02/2007

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**Public Safety, Driver License
R708-3
Driver License Point System
Administration**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 29590
FILED: 03/02/2007, 10:14

**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 purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to administer a point system for Utah drivers as mandated by statute so we can take administrative action, suspensions, etc., when needed.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vrooms@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/02/2007

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**Public Safety, Driver License
R708-7
Functional Ability in Driving: Guidelines
for Physicians**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29633
FILED: 03/13/2007, 08:28

**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 purpose of this rule, as per Sections 53-3-224 and 53-3-303, is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the drivers' responsibilities regarding their health as it relates to highway safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the Division can continue to evaluate impaired drivers to see if they can safely operate a motor vehicle.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vrooms@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/13/2007

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Public Safety, Driver License

R708-14

**Adjudicative Proceedings For Driver
License Actions Involving Alcohol and
Drugs**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29591
FILED: 03/02/2007, 11:06

**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 purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol/drug adjudicative proceedings as per Section 53-3-104.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to establish procedures for administering adjudicative hearings for alcohol and drug-related offenses as required in Section 53-3-104.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vrooms@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/02/2007

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Public Safety, Driver License

R708-34

**Medical Waivers for Intrastate
Commercial Driving Privileges**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29589
FILED: 03/02/2007, 09:42

**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: In accordance with Section 53-3-303.5 the purpose of this rule is to allow individuals, who want to drive intrastate only, be allowed to get a waiver from

meeting the minimum federal fitness standards as defined in 49 CFR 391.41.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so individuals who qualify can get an intrastate only driver license as per statute.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/02/2007

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Public Safety, Driver License

R708-35

Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 29592
FILED: 03/02/2007, 12:08

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 purpose of this rule is to establish procedures to be used by the Utah Driver License Division for non-alcohol/drug adjudicative proceedings as per Section 53-3-104.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to establish procedures for administering adjudicative hearings for non-alcohol and drug related offenses as required in Section 53-3-104.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Nannette Rolfe, Director

EFFECTIVE: 03/02/2007

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Public Service Commission, Administration

R746-349

Competitive Entry and Reporting Requirements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR File No.: 29626
FILED: 03/08/2007, 14:20

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 54-8b-2.1 allows the Commission to issue certificates to multiple providers of telecommunications services. This rule identifies information that applicants should file in order to establish their qualifications for a certificate. The Federal Telecommunications Act of 1996 and Section 54-8b-2.2 require telecommunications provider to interconnect their networks and make their facilities available to one another. Sections 54-8b-16 and 17 require the Commission to resolve interconnection disputes and this rule identifies information service providers should file in order for the commission to resolve service and interconnection disputes. Section 54-8b-2.3 deals with pricing flexibility and maintenance of that authority. This rule addresses the information and processes used by the commission relative to service providers pricing flexibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One comment was received from the Department of Public Utilities on 09/03/2002 to modify the language in Subsection R746-349-3(A)(2) to specify the bond also be available to reimburse liabilities of the telecommunications company to the Universal Public Telecommunications Service Support Fund, impaired hearing fund, or Utility Regulatory fee, and subject to commission approval, to cover any cost incurred by another telecommunications company as a result of a certificated company discontinuing local service. The Commission did not amend the rule to expand bond coverage beyond customer account projections as currently written. A rule amendment was made in August 2005 where Section R746-349-9 was added to the Rule based on statutory changes in Section 54-8b-3.3.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Statutory provisions requiring commission regulation and resolution disputes in the areas addressed by the rule continue in force and necessitate continuation of the rule. There have been no comments in opposition to the rule.

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:
Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy, Legal Counsel

EFFECTIVE: 03/08/2007



Public Service Commission,
Administration
R746-351
Pricing Flexibility

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 29627
FILED: 03/09/2007, 09:55

**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 54-8b-2.3 allows the Commission to grant or deny a petition for pricing flexibility to an incumbent telephone corporation for the same or substitutable public telecommunications services in the same defined geographic area. This rule clarifies the conditions and establishes the procedure by which the pricing flexibility granted to an incumbent telephone corporation becomes effective.

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 submitted during the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The procedure described in this rule by which the pricing flexibility, granted by the Commission to an incumbent telephone corporation, may become effective continues to be necessary. Therefore, this rule should be continued.

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:
Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy, Legal Counsel

EFFECTIVE: 03/09/2007



Tax Commission, Auditing
R865-6F
Franchise Tax

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 29624
FILED: 03/08/2007, 11:29

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Sections 16-10a-1501 through 16-10a-1533 establish guidelines by which a business may receive authority to become qualified or incorporated to transact business in Utah, and the penalties for transacting business without authority. Requirements for establishing a legal place of business for foreign corporations operating in the state are addressed, as well as requirements for the withdrawal of a foreign corporation. They also provide guidelines for revocation. Also, these sections outline procedures for a foreign company to become domesticated. Section 53B-8a-112 gives the Tax Commission permission to establish rules to implement the corporate franchise and individual income tax imposed on the Utah Educational Savings Plan Trust property and income. Section 59-7-104 requires all foreign and domestic corporations to pay an annual corporate franchise or income tax. Section 59-7-105 provides additions to unadjusted income for computing adjusted income. Section 59-7-106 provides subtractions from unadjusted income for computing adjusted income. Section 59-7-108 provides guidelines on the treatment of distributions made by corporations. Section 59-7-112 provides for the governance of installment sales. Sections 59-7-302 through 59-7-321 require allocation and apportionment of income for corporations earning income both within and without the state. They also establish a three-part formula for apportionment of business income based on the property factor, payroll factor, and sales factor. Section 59-7-317 provides instructions for computing sales factor with regard to corporate franchise tax. Section 59-7-402 indicates when corporations must file a water's edge combined report and gives direction on who may elect to file the report. Section 59-7-403 provides unitary groups with the option of filing a worldwide combined report; if this report is elected they must continue to file this report unless they have consent from the Tax Commission to file on another basis. Section 59-7-501 provides guidelines for taxable period and accounting method to be used in computing Utah taxable income. Section 59-7-502 states that if a corporation changes its taxable year for federal tax purposes or changes its accounting period, the new taxable year or accounting period shall become the corporation's taxable year for Utah corporate franchise and income tax. Section 59-7-505 establishes requirements for filing returns, including combined returns, and states when they are due. Section 59-7-601 creates a corporate franchise tax credit for certain gross interest income. Section 59-7-602 creates a corporate franchise tax credit for corporations making cash contributions to sheltered workshops. Section 59-7-603 creates a corporate franchise tax credit for corporations donating sophisticated technological equipment to schools. Section 59-7-605 creates a corporate franchise tax credit for corporations purchasing new vehicles powered by clean burning fuels or converting vehicles to clean burning fuels. Section 59-7-606 creates a corporate franchise tax credit for corporations that convert stoves to utilize cleaner burning fuels. Section 59-7-607 creates a corporate franchise tax credit for corporations receiving an allocation of the annual federal low-income housing tax credit. Section 59-7-608 provides a corporate franchise tax credit for corporations that hire certain individuals with a disability. Section 59-7-609 provides a corporate franchise tax credit equal to 20% of the qualified rehabilitation expenditures made in connection with

the restoration of a residential certified historic building. Section 59-7-610 provides a corporate franchise tax credit for businesses operating in a recycling market development zone.

Section 59-7-612 provides a corporate franchise tax credit for research activities conducted in the state. Section 59-7-613 provides a corporate franchise tax credit for machinery, equipment, or both used in conducting qualified research or basic research in the state. Section 59-7-614 provides a corporate franchise tax credit for renewable energy systems. Section 59-7-701 allows an S corporation to be taxed for state purposes the same as it is taxed for federal purposes. Section 59-7-703 requires an S corporation to pay or withhold tax for nonresident shareholders and indicates how that tax shall be calculated. Section 59-13-202 creates a corporate franchise tax credit against fuel tax for persons using stationary farm engines, and self-propelled nonhighway farm machinery. Sections 63-38f-401 through 63-38f-415 establish the enterprise zone act, which provides state assistance to businesses operating in rural parts of the state. Section 63-38f-413 provides state tax credits for certain businesses operating within the enterprise zone.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-6F-1 clarifies franchise tax responsibilities of foreign corporations. It also clarifies the manner in which a foreign corporation terminates its corporate franchise tax responsibilities. Section R865-6F-2 establishes taxable year for purposes of the corporate franchise tax and clarifies when first return period begins. Section R865-6F-6 sets forth guidelines to determine whether nexus has been established for purposes of subjecting a corporation to the Utah corporation franchise tax. Section R865-6F-8 classifies all business income as either "business" or "nonbusiness," provides rules to determine whether income is business or nonbusiness, defines and establishes criteria for apportionment of tax, and defines the three elements of the apportionment formula: the property factor, payroll factor, and sales factor. Section R865-6F-14 states the Tax Commission policy to follow federal law as closely as possible in determining net income for Utah corporate franchise tax. The rule lists items normally followed in conformity with federal law and items requiring different state tax treatment. Section R865-6F-15 clarifies that the installment method of reporting corporate income is a postponement of tax, not an exemption from tax. This section states when the privilege of installment reporting is terminated. This section also states that installment income is subject to the same allocation and apportionment provisions as all other corporate income. Section R865-6F-16 provides a methodology for apportioning income from long-term construction projects when a taxpayer elects to use the percentage-of-completion method of accounting or the completed contract method of accounting. Section R865-6F-18 defines "member" and "producer" for purposes of the corporate franchise and income tax exemption for a farmers' cooperative; provides procedures for

qualifying for and applying the exemption. Section R865-6F-19 provides a methodology for apportioning trucking company income to Utah. Section R865-6F-22 defines "worldwide year" and "water's edge year" in treatment of carrybacks and carry forwards, and notes criteria and penalties for switching from worldwide method to water's edge or from water's edge method to worldwide method. Section R865-6F-23 defines "permitted mine" and "purchaser outside of the United States" in regard to the Utah steam coal tax credit. This section also establishes criteria necessary to qualify and use steam coal tax credit in the state of Utah. Section R865-6F-24 provides that, in the case of a unitary group, nexus created by any member of the group creates nexus for the entire unitary group. Section R865-6F-26 provides instructions for applying for and receiving historic preservation tax credit, and any subsequent carry forwards of that credit. Section R865-6F-27 provides that the order of deducting credits against the corporate franchise tax is: 1) nonrefundable credits; 2) nonrefundable credits with a carry forward; and 3) refundable credits. Section R865-6F-28 provides guidance on what investments qualify for the enterprise zone franchise tax credits and how a business should calculate its base number of employees. This section also outlines the effect on tax credits if a county loses its designation as an enterprise zone. Section R865-6F-29 provides a methodology for apportioning railroad income to Utah. Section R865-6F-30 sets forth the information a trustee of the Utah Educational Savings Plan Trust must provide to the tax commission and the forms necessary to provide this information to the commission. Section R865-6F-31 defines "outer-jurisdictional property," "print," "printed materials," "purchaser," "subscriber," and "terrestrial facility." This section also provides a methodology for apportioning income of publishing companies to the state for franchise tax purposes. Section R865-6F-32 provides a methodology for apportioning the income of financial institutions to the state for franchise tax purposes and defines terms related to financial institutions. Section R865-6F-33 defines terms related to telecommunications corporations; provides a methodology for apportioning and allocating income for telecommunications corporations to the state for purposes of franchise tax. Section R865-6F-34 defines "qualified subchapter S subsidiary"; provides that an entity that meets the federal definition of a qualified subchapter S subsidiary will be treated for state corporate franchise tax purposes in the same manner it is treated for federal income tax purposes; indicates how the S corporation parent of a qualified subchapter S subsidiary determines nexus and how the S corporation parent calculates the payroll, property, and sales tax factors for purposes of apportioning income to the state. Section R865-6F-35 clarifies calculation of tax S corporations are required to pay or withhold for nonresident shareholders; indicates information the S corporation must provide for the Tax Commission for each nonresident shareholder. Section R865-6F-36 defines terms for registered securities or commodities brokers or dealers; and provides a methodology for apportioning the income of registered securities or commodities brokers or dealers to the state for corporate franchise and income tax purposes. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/08/2007



Tax Commission, Auditing **R865-11Q** Sales and Use Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29644
FILED: 03/14/2007, 10:43

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: Section 34A-2-202 requires an annual assessment of employers who are authorized to pay compensation direct; and indicates how that assessment shall be calculated.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-11Q-1 clarifies when employers need to obtain the experience modification factor, and provides direction for those who fail to obtain the factor within the specified time. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/14/2007

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Tax Commission, Auditing R865-13G Motor Fuel Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 29628
FILED: 03/09/2007, 13:03

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: Section 59-13-201 imposes a motor fuel tax on all motor fuel sold, used, or received for sale in the state. It also provides tax exemptions for motor fuel distilled from coal, oil shale, rock asphalt, bituminous sand, or hydrocarbons located in this state; deliveries to government agencies; and exports. It also provides instructions for the distribution of funds. Section 59-13-202 entitles any person who purchases motor fuel for the use of stationary or self-propelled machinery used for nonhighway farm operation to a refund of motor fuel tax paid, and provides methods for obtaining the refund. Section 59-13-203.1 requires that any individual desiring to distribute motor fuel in the state of Utah obtain a license from the Tax Commission. This section also sets forth requirements of the form of the license application; requires bonding as a prerequisite for a license; and indicates how the amount of the bond shall be determined. Section 59-13-204 states that licensed distributors who receive motor fuel are liable for motor fuel tax, and shall compute the tax on the total taxable amount of motor fuels received; and provides a method for distributors to sell motor fuel tax exempt to other distributors. Section 59-13-208 requires that every carrier delivering fuel within the state of Utah from outside the state shall report in writing all deliveries made during the past month. Section 59-13-210 allows the Tax Commission to create rules to enforce the motor fuel laws; and requires the Tax Commission to examine returns and recompute monthly reports of sales, as necessary, estimate the amount of tax due, collect delinquent tax, refund overpayments, and provide for judicial review of dissatisfied taxpayer claims. Section 59-13-404 provides a refund or credit of aviation fuel tax paid by a federally certificated air carrier on gallons of aviation fuel purchased at the Salt Lake International Airport; and provides procedures for administering the refund or credit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-13G-1 defines "carrier" with regard to motor fuel deliveries; and requires that every carrier delivering motor fuels within this state submit written reports concerning all deliveries from outside Utah. Section R865-13G-3 provides criteria for determining whether a sale of motor fuel meets the export exemption from motor fuels tax. This section also requires that each export sale of motor fuel be supported by records. Section R865-13G-5 allows motor fuel dealers that sell motor fuel in wholesale quantities to become a licensed distributor; and allows licensed distributor to purchase motor fuel tax exempt if he satisfies certain conditions. Section R865-13G-6 upon Tax Commission approval, exempts from motor fuel tax volatile or inflammable liquids that qualify as motor fuels, but are not useable in their present state in internal combustion engines. Section R865-13G-8 clarifies definition of "agricultural purposes", for purposes of allowing tax refund for persons engaged in commercial agricultural work. Section R865-13G-9 clarifies exemption from motor fuel tax for motor fuels refined in Utah from solid hydrocarbons. Section R865-13G-10 provides procedures for distributors that make sales to government agencies to claim the fuel tax exemption for sales to government agencies; and clarifies the exemption from motor fuel tax for sale of motor fuel to Indian tribes and government agencies. Section R865-13G-11 defines "gross gallon" and "net gallon" for use in calculating motor fuel tax liability. This section requires that all licensed distributors calculate motor fuel tax using either gross gallon or net gallon basis; and requires distributors to inform the Tax Commission of choice then exclusively use this basis of calculation for 12 months without alternating. Section R865-13G-13 sets procedure for government entities to apply for a refund for motor fuel taxes paid; and lists the records required to be maintained for purchases on which the refund is claimed. Section R865-13G-15 provides procedures for administering the reduction of motor fuel tax authorized under Section 59-13-201. Section R865-13G-16 defines the "tax year" for purposes of administering the aviation fuel tax refund or credit for aviation fuel tax paid on gallons of aviation fuel purchased at Salt Lake International Airport. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/09/2007

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Tax Commission, Auditing R865-19S Sales and Use Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29641
FILED: 03/13/2007, 15:29

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 10-1-303 defines terms used in the Municipal Energy Sales and Use Tax Act. Section 10-1-306 grants the Tax Commission rulemaking power to establish the delivered value and the point of sale of taxable energy. Section 10-1-307 establishes a method for collection of municipal energy sales and use tax by the Tax Commission; and provides circumstances under which an energy supplier shall pay the tax directly to a municipality. Section 10-1-405 requires the Tax Commission to collect the municipal telecommunications license tax pursuant to a uniform interlocal agreement between the municipalities that impose the tax and the commission; and requires the Tax Commission to develop the uniform interlocal agreement by rule. Section 19-6-808 provides guidelines for payment of the waste tire recycling fee. Section 59-12-102 defines terms used in the Sales and Use Tax Act. Section 59-12-103 establishes a sales and use tax base, the state sales tax rate, and earmarking of certain sales tax revenues. Section 59-12-104 lists sales and uses that are exempt from sales and use tax. Section 59-12-104.1 exempts sales made by or to religious or charitable organizations from sales and use tax law; provides that the exemption shall, with exceptions, be administered as a refund; and requires the Tax Commission to promulgate refund procedures by rule. Section 59-12-105 requires certain exempt sales to be reported to the Tax Commission by the owner or purchaser; provides penalties for failure to report these exempt sales; and gives the Tax Commission the right to waive, reduce, or compromise the penalties. Section 59-12-106 requires all persons required by law to collect sales and use tax to have a license issued by the Tax Commission, prior to the collection of tax; and requires vendors to obtain an exemption certificate at the time of sale to evidence the sale qualifies for an exemption. Section 59-12-107 requires each vendor with nexus in this state to collect and remit sales and use tax to the Tax Commission, on forms prescribed by the Tax Commission; allows the Tax Commission to require security; provides credits for prepaid sales and use tax; and provides penalties for violation of law. Section 59-12-108 requires any vendor whose annual tax liability exceeds \$50,000 for the previous

year to file with the Tax Commission on a monthly basis; requires vendors whose annual tax liability exceeds \$96,000 for the previous year to file monthly tax returns by electronic funds transfer; allows vendors required to file monthly to retain a portion of the sales tax they collect; and gives the Tax Commission rulemaking power for the procedures necessary to determine tax liability for purposes of this section. Section 59-12-109 establishes that confidentiality of sales and use tax returns and other information filed with the Tax Commission is governed by Section 59-1-403. Section 59-12-111 requires all Utah vendors holding a state sales tax license to keep accurate records of all sales made for a period of three years; and requires them to be accessible to authorized Tax Commission employees upon request. Section 59-12-112 creates a tax lien on any unpaid sales taxes when a business is sold; and clarifies the liability of the purchaser of the business when the previous owner has not paid the sales tax. Section 59-12-118 grants the Tax Commission exclusive authority to administer, operate, and enforce the provisions of Title 59, Chapter 12, Sales and Use Tax Act; and includes a grant of rulewriting authority to enforce the chapter. Section 59-12-301 allows a county legislative body to impose a transient room tax for every occupancy of public accommodations. Section 59-12-352 allows a municipality to impose a municipal transient room tax for every occupancy of public accommodations. Section 59-12-353 allows a municipality to impose an additional transient room tax for every occupancy of public accommodations to repay bonded or other indebtedness. Section 59-12-902 allows a sales tax refund for a qualified emergency food agency based on the pounds of food donated to the qualified emergency food agency; and grants rulemaking authority to the Tax Commission for implementation of the refund. Section 59-12-1102 allows a county to impose an additional sales and use tax on all taxable transactions; sets forth the procedures a county must follow in order to impose the tax; and provides for the distribution of the revenue collected from the imposition of this tax.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-19S-1 distinguishes between sales and use taxes. Section R865-19S-2 describes sales and use taxes as transaction taxes rather than taxes on articles sold; and explains that purchaser pays the tax, not the vendor. The vendor merely remits the tax to the state. Section R865-19S-4 indicates that an invoice or receipt shall show sales tax as a separate line item. If vendors collect an excess amount of tax, they must refund the tax to customers or remit excesses to the Tax Commission. The section also indicates circumstances under which an over collection of taxes may be offset against an under collection of taxes. Section R865-19S-7 explains sales tax license requirements for businesses; and outlines rules for business address changes and business closures. Section R865-19S-12 prescribes the basic form for vendor tax returns; outlines

the Tax Commission rules for timely filing and extensions; distinguishes between annual filing status and quarterly filing status requirement; and explains alternative sales tax deposits (daily, weekly, or monthly) if necessary for the remittance of tax. Section R865-19S-13 explains confidentiality of returns and states that persons requesting a copy of their own tax returns must present proper identification. Section R865-19S-16 clarifies vendor procedure when the vendor has collected excess taxes. Section R865-19S-20 defines the term "total sales" for sales tax purposes; and enumerates the circumstances under which the Tax Commission will give adjustments and credits. Vendor commissions are not deductible. Section R865-19S-22 describes the proper method of sales and use tax record keeping for retailers, lessees, and lessors; discusses proper microfilm and microfiche methods and automated data processing accounting system records; and explains Tax Commission prerogatives if records are not prepared and maintained in the prescribed manner. Section R865-19S-23 describes the exemption certificate requirement for vendors of exempt tangible personal property; and states that the burden of proving an exemption is on the vendor. Section R865-19S-25 requires sales tax license holders to return tax licenses for cancellation upon sales of business; and requires sales tax license holders to retain business records for three years after discontinuation of business. Section R865-19S-27 defines "retail sales" for sales tax purposes; and states that retail sales have broader meaning than merely sales of tangible personal property. Section R865-19S-29 defines "wholesale sale" for sales tax purposes; states that price and quantity are not factors in defining a wholesale sale; and requires wholesale vendors to obtain exemption certificates from purchasers. Section R865-19S-30 lists the evidence required for calculating sales and use tax for vehicle sales with or without a trade-in vehicle used as partial payment. Section R865-19S-31 time and place of sale determined by contract between seller and buyer. The intent of the parties is subject to generally accepted contract law. Section R865-19S-32 explains sales tax implications for leases, rentals, and conditional sales leases; and provides examples of taxable leases. Section R865-19S-33 defines "admissions", "annual membership dues", and "season passes"; clarifies what is not an admission; and states that amounts paid for activities that are not admissions must be separately stated on the invoice. Section R865-19S-34 defines "place of amusement" as a definite location. Admission is subject to tax even though the charge includes the right to participate in an activity. Section R865-19S-35 clarifies definition of "residential use" to include nursing homes; states that the definition of "fuels" does not include explosives; and taxable status of fuel furnished through a single meter is determined by its predominant use. Section R865-19S-37 defines "commercials", "audio tapes", "video tapes", "motion picture exhibitor", and "distributor". Section R865-19S-38 clarifies definition of "isolated or occasional" sales. Section R865-19S-40 explains the sales tax exemption for agricultural produce/agricultural products exchanges. Section R865-19S-41 clarifies, for purposes of the sales tax exemption for the U.S. government, when a sale is made to the U.S. government. Section R865-19S-42 clarifies when a sale is made to "state of Utah" for exemption purposes. Section R865-19S-43 outlines exemption

qualification requirements for religious or charitable institutions. Section R865-19S-44 explains the meaning of "sales made in interstate commerce". Section R865-19S-48 explains that returnable containers are not exempt from sales tax (although nonreturnable containers are). Containers sold for final use to the consumer are not exempt. Deposits on containers are subject to sales tax; and retailers may take tax credit if deposit refund is made to customer. Section R865-19S-49 defines "farming operations" for purposes of the agricultural exemption; food, medicine, and supplies for animals in agricultural use exempt from sales tax. Fur bearing animals raised for fur are exempt agricultural products. These exemptions are only applicable to commercial farming operations. Purchasers must supply exemption certificate to vendor. This section also explains that poultry, eggs, and dairy products are not seasonal products under Subsection 59-12-104(21). Section R865-19S-50 defines flowers, trees, bouquets, plants, etc. as agricultural products; and explains tax rules for florist telegraphic deliveries. Florist receiving the order from the buyer must collect tax. Section R865-19S-51 clarifies tax rules for manufacturing and assembling labor on tangible personal property. The sale of the personal property itself is not exempt unless specifically exempted. Section R865-19S-53 states that sales by finance companies of tangible personal property acquired by repossession or foreclosure are subject to tax. Section R865-19S-54 explains governmental sales tax exemption and lists state and federal governmental entities exempt from tax. Section R865-19S-56 explains that sales by employers to employees are generally subject to sales tax. Section R865-19S-57 retail sales of ice are taxable. Ice to be re-sold is not taxable. Contract sales of ice to railroads or freight lines are taxable; and no deduction for services is allowed. Section R865-19S-58 explains that construction materials are taxable to contractor or repairman if contractor or repairman converts them to real property; defines "construction materials"; states that sales of materials to contractors are taxable; sale of completed real property is not. The contractor is the final consumer when contractor converts tangible personal property to real property. This Section also defines conditions under which sales of construction materials to religious or charitable institutions are exempt; and provides examples of items that remain tangible personal property even when attached to real property (and hence are taxable). Section R865-19S-59 defines sales of tangible personal property to repair persons or renovators as "for resale" sales, and therefore exempt; and sales of supplies consumed by repair persons or renovators are taxable. Section R865-19S-60 explains that items sold to businesses for use in carrying on business are taxable; and gives examples of office supplies, trade fixtures, etc. that are subject to tax. Section R865-19S-61 clarifies definition of tax exempt meal sales. Meals available to general public are not exempt. This section also defines "available to general public". Section R865-19S-62 states that meal tickets, coupon books, and merchandise cards, sold by persons engaged in selling those items, are taxable; and explains collection procedures. Section R865-19S-63 defines tombstones and grave markers as improvements to real property; and defines tax rules for sales of these items. Section R865-19S-64 clarifies tax rules for the goods and services provided by morticians, undertakers and funeral directors. Section R865-19S-65

clarifies tax rules for newspaper sales; defines "newspaper" for tax exemption purposes; and explains rules for advertising inserts. Section R865-19S-66 distinguishes between services rendered and tangible personal property sold by optometrists, ophthalmologists, and opticians; and that the services are not taxable, but sales of the tangible personal property are taxable. Section R865-19S-68 defines premiums, gifts, rebates, and coupons as taxable tangible personal property; and explains tax rules for donations of these items. Section R865-19S-70 defines persons who render services (doctors, dentists, barbers, or beauticians) as the consumers of the tangible personal property dispensed during their services. Section R865-19S-72 explains sales tax exemption for trade-ins and exchanges of tangible personal property. Section R865-19S-73 explains the responsibility of trustees, receivers, executors, administrators, etc. of collecting and remitting sales tax on all taxable sales, including those made at liquidation. Section R865-19S-74 defines vending machine operators as retailers; and defines "cost" for the purposes of the 150% cost formula in Subsection 59-12-104(3); and requires vending machine operators to secure a sales tax license and to display license number on each vending machine. Section R865-19S-75 defines sales by photographers, photofinishers, and photostat producers as sales of tangible personal property; and requires these persons to collect tax on their services and on sales of related tangible personal property. Section R865-19S-76 defines charges for painting, polishing, washing, cleaning, and waxing tangible personal property as subject to tax, with no deduction allowed for the service involved; and explains that sales of items used in providing these services are subject to tax. Section R865-19S-78 explains that labor charges for installation, repair, renovation, and cleaning of tangible personal property are taxable; labor charges for installation of tangible personal property that becomes real property are not subject to tax. (This clarifies Subsection 59-12-103(1)(g)). Section R865-19S-79 defines "tourist home", "hotel", "motel", "trailer court", "trailer", and "accommodations and service charges". Section R865-19S-80 defines "Pre-press materials" and "printer"; and describes sales tax liability for sales and purchases made by printers. Section R865-19S-81 explains that the sale of artwork is taxable; and that the purchase of art supplies that become part of the finished product may be purchased tax free. Section R865-19S-82 outlines sales tax rules for items used for display, trial, or demonstration; that tangible personal property used for display, trial, or demonstration is not subject to tax; and that demonstration items used primarily for company or personal use are subject to tax. Section R865-19S-83 describes procedure for tax reimbursement of purchases for construction of pollution control facilities; and provides that after a pollution control facility is certified qualifying purchases should be made tax exempt. Section R865-19S-85 defines "establishment", "machinery and equipment", and "manufacturer" for the purpose of the exemption for new and expanding operations and normal operating replacements; and indicates when different activities performed at a single location constitute a separate and distinct establishment. Section R865-19S-86 outlines procedures for mandatory filers, defines "mandatory filer" and related terms; describes criteria for vendor reimbursement of the cost of collecting and remitting sales taxes; and delineates procedures for Electronic Funds

Transfer (EFT) remittance of sales taxes. Section R865-19S-87 defines "tooling", "special tooling", "support equipment", and "special test equipment" for purposes of the aerospace or electronics industry contract exemption set forth in Section 59-12-104. Section R865-19S-90 defines "interstate", "intrastate", and "two-way transmission" for purposes of Section 59-12-103; and enumerates taxable telephone services and gives examples of nontaxable charges. Section R865-19S-91 explains that sales to government contractors are subject to sales tax if the contractor uses or consumes the property; and lists criteria for qualification as a purchasing agent for a government entity. Section R865-19S-92 defines "computer generated output"; indicates that prewritten computer software is subject to sales tax regardless of the form in which it is transferred; and indicates that custom computer software is exempt from sales tax regardless of the form in which it is transferred. Section R865-19S-93 describes procedure for payment of waste tire recycling fees and clarifies what sales of tires are subject to the fee. Section R865-19S-94 distinguishes between taxable and nontaxable tips, gratuities, and cover charges at restaurants, cafes, and clubs. Section R865-19S-96 outlines assessment of the transient room tax. Section R865-19S-98 defines "use" for purposes of vehicle sales tax exemption for nonresidents; describes qualifications for nonresident status; and describes qualifications for vehicles deemed not used in this state. Section R865-19S-99 explains that vehicles purchased in another state are exempt from Utah sales tax if sales tax has been paid in another state; and that the registration card from another state serves as evidence of such payment. Section R865-19S-100 explains procedures for sales tax exemptions and refunds for religious and charitable organizations. Section R865-19S-101 explains that document preparation fees assessed for motor vehicle sales are exempt from sales tax if separately identified and not included in the vehicle sale price. Section R865-19S-102 states that ski resorts that do not have a separate meter for their exempt purchases shall determine a methodology to calculate exempt electricity purchases, and to receive Tax Commission approval prior to using that methodology. Section R865-19S-103 defines "gas" and "supplying taxable energy" for purposes of the municipal energy sales and use tax; defines "delivered value" and "point of sale" of taxable energy; and sets forth responsibilities of an energy supplier and a user of taxable energy. Section R865-19S-104 clarifies that the annual distribution of the county option sales tax shall be based on a calendar year; and adjustments shall be reflected in the February distribution. Section R865-19S-105 specifies procedures for qualified emergency food agencies to receive a refund of sales and use taxes paid on donated food. Section R865-19S-107 specifies that a manufacturer or purchaser of semiconductor fabricating, processing, research, or development materials must report exempt sales for purchases that were made exempt under Section 59-12-104. Section R865-19S-108 defines "user fee" for purposes of sales and use tax on admission or user fees. Section R865-19S-109 distinguishes between the taxable and nontaxable status of purchases and sales made by a veterinarian; provides that if a sale by a veterinarian includes both taxable and nontaxable items; and that the nontaxable items must be separately stated or the entire invoice is subject to tax. Section R865-19S-110 defines "advertiser"; and

clarifies taxable status of purchases and sales made by advertisers. Section R865-19S-111 clarifies when a graphic design service is nontaxable; provides that a vendor who provides both nontaxable graphic design services and taxable tangible personal property must separately state nontaxable amounts or the entire sale is taxable. Section R865-19S-113 defines "federal airway"; indicates when amounts paid for aircraft or watercraft tours are exempt from sales tax; and indicates when sales tax shall be collected in Utah for a service that occurs in Utah and another state. Section R865-19S-114 defines items that constitute clothing in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-115 defines items that constitute protective equipment in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-116 defines items that constitute sports or recreational equipment in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-117 provides guidelines for rounding the computation of sales tax. Section R865-19S-118 provides the terms of the uniform interlocal agreement that governs the commission's administration of the municipal telecommunications license tax. Section R865-19S-119 provides guidelines for the payment or collection of sales tax by a nonrestaurant that provides both food and lodging. Section R865-19S-120 defines terms for the sales tax exemption relating to film, television, and video; and indicates transactions that do not qualify for the sales tax exemption. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/13/2007

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**Tax Commission, Motor Vehicle
R873-22M
Motor Vehicle**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 29631
FILED: 03/12/2007, 14:33

**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: Section 41-1a-102 provides definitions used in the motor vehicle chapter of the Utah Code. Section 41-1a-104 grants the Tax Commission power to enter into agreements with other jurisdictions concerning the registration, administration, and enforcement of motor vehicle laws. Section 41-1a-108 requires the Motor Vehicle Division to examine and determine the genuineness of application for registration, titling, and plating of vehicles, vessels, or outboard motors. Section 41-1a-116 allows the Tax Commission to disclose protected motor vehicle records for purposes of advisory notices; and allows Tax Commission by rule, to provide for telephone access to records. Section 41-1a-211 allows the Motor Vehicle Division to grant a temporary permit for vehicles that are in the process of registration. Section 41-1a-214 requires owner of a vehicle to sign the registration card, keep it in the vehicle at all times, and to display the card to authorized state personnel upon request. Section 41-1a-215 states the general rule that all registrations shall be for a 12-month period beginning with the day of registration, and provides exemptions. Section 41-1a-401 requires vehicles to have two license plates, and requires the Division to set specifications for license plate materials and manufacture. Section 41-1a-402 provides that the license plates shall be in colors selected by the Tax Commission and shall display the name of the state, a designation of the county in which the vehicle is registered, the date of expiration, the registration number assigned to the vehicle, and a slogan. Section 41-1a-411 requires individuals who want personalized license plates to apply for a personalized license plate; and provides that the Tax Commission may refuse a personalized plate in certain circumstances. Section 41-1a-413 provides that persons who have been issued personalized plates must either apply to display the plates on another vehicle, or surrender the plates to the Motor Vehicle Division upon sale, trade, or release of ownership on the original vehicle. Section 41-1a-414 requires that persons with disabilities qualifying under Tax Commission rules carry an appropriately marked license plate or windshield placard in order to take advantage of parking space for disabled. Section 41-1a-416 allows individuals owning vehicles built before 1973 to apply for an original issue license plate of the format and type issued by the state in the year as the model year of the vehicle. Section 41-1a-419 indicates how the Division shall design special group license plates; and allows the owner of a vehicle that is forty years or older with a horseless carriage plate issued prior to July 1, 1992, the privilege of exchanging it for a vintage vehicle special group license plate issued after July 1, 1992. Section 41-1a-420 requires the Division to issue a disability special group license plate or windshield placard in accordance with federal law; and indicates where a removable placard shall be placed on the vehicle. Section 41-1a-422 provides a definition of "private institution of higher education", and "standard collegiate degree" for purposes of collegiate license plates. Section 41-1a-522 requires the Tax Commission to establish a record of a nonconforming vehicle and print "manufacturer buy back nonconforming vehicle" clearly on the new certificate of title. Section 41-1a-701

provides that when a vehicle is sold, its registration expires; and requires that a vehicle owner remove the license plates and either forward them to the Motor Vehicle Division for destruction, or have them transferred to another vehicle when the owner relinquishes ownership of the vehicle. Section 41-1a-801 provides a state vehicle identification number (VIN) if the original VIN is altered or destroyed; requires owner to apply for state-issued VIN with information required by Tax Commission. Section 41-1a-1001 provides definitions necessary for implementation of salvage vehicle unbranding laws. Section 41-1a-1002 provides requirements for obtaining an unbranded title to a salvage vehicle, including interim inspections; and requires damage to be repaired pursuant to standards set by the Motor Vehicle Enforcement Division. Section 41-1a-1004 provides that if a vehicle is branded as rebuilt or restored to operation, in a flood, or not restored to operation, before a transfer of ownership, the new title to the vehicle should mirror the existing brand. Sections 41-1a-1009 through 41-1a-1011 provide a definition of "abandoned vehicle", and the process that the Tax Commission must take to dispose of vehicles meeting the criteria. Section 41-1a-1010 requires a person to obtain a permit to scrap, dismantle, destroy, or change a vehicle; allows the Tax Commission to collect a fee for inspection of vehicles for which the permit has been obtained; and indicates when a permit to dismantle may be rescinded. Section 41-1a-1101 authorizes the Division or any peace officer to take possession of any vehicle without a warrant under certain circumstances; and authorizes the Tax Commission to make rules for establishing standards for impound lots, impound yards, and public garages. Section 41-1a-1209 lists vehicles exempt from registration fees. Section 41-1a-1211 sets fees for license plates, personalized license plates, and special group license plates. Section 53-8-205 requires a safety inspection to be performed on motor vehicles, with some exceptions; and indicates frequency of required safety inspection. Section 72-10-102 defines terms under the uniform aeronautical regulatory act. Section 72-10-109 requires that persons operating, piloting, or navigating an aircraft in Utah have proper registration; indicates instances when registration is not required. Section 72-10-112 subjects persons who fail to properly register aircraft to the same penalties provided for failure to register motor vehicles.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R873-22M-2 clarifies documentation necessary for registration or titling of vehicles under unique circumstances. Section R873-22M-7 specifies procedures for transfer of license plates from one vehicle to another; and provides a method for determining additional registration fees if the gross laden weight of a vehicle registered by gross laden weight increases during the registration year. Section R873-22M-8 clarifies when a registration issued for a period of three, six, or nine calendar months expires. Section R873-22M-11 allows a driver to carry a copy of the original registration card in lieu of the original in

state-owned or state-leased vehicles. Section R873-22M-14 clarifies positioning of decals on license plates. Section R873-22M-15 sets forth procedures for applying for a state-issued vehicle identification number (VIN) if the original VIN has been removed or altered or if one never existed; states where a state-issued VIN shall be placed on the vehicle; and sets forth specifications for state-issued VIN. Section R873-22M-16 establishes requirements for: 1) a lien holder who repossesses a motor vehicle to obtain title on that vehicle; 2) recording a new lien; and 3) issuing a new certificate of title showing the assignee as lienholder. Section R873-22M-17 provides criteria that an impound lot must meet to be used by the state of Utah. Section R873-22M-20 defines "aircraft;" provides that aircraft subject to the Federal Aviation Administration registration shall be registered in Utah; provides a registration period; provides that aircraft assessed as part of an airline by the Tax Commission are exempt from registration; and requires a decal to be placed on a registered aircraft. Section R873-22M-22 allows an out-of-state branded vehicle to be issued a comparable Utah branded title; provides that Utah registration expires when a vehicle qualifies for a title brand; and defines "cost to repair or restore a vehicle for safe operation" for purposes of unbranding a vehicle. Section R873-22M-23 requires that the owner of a vintage vehicle provide a registration information update every five years after July 1, 1995. Section R873-22M-24 provides definitions of "cosmetic repairs" and "collision estimating guide recognized by the Motor Vehicle Enforcement Division" for purposed of unbranding salvage vehicles. Section R873-22M-25 requires written notification that a vehicle has been issued a salvage certificate or branded title to a prospective buyer on a form provided by the Motor Vehicle Enforcement Division; and states where the form must be displayed if the seller is a dealer. Section R873-22M-26 states that a certified vehicle inspector shall determine if an interim inspection is needed; that vehicles repaired beyond the point of a required interim inspection may not be unbranded if the interim inspection has not been performed; provides guidelines on when a repair may qualify a vehicle to receive an unbranded title; and states that persons performing the inspection must have an I-CAR certification. Section R873-22M-27 sets forth requirements individuals must meet to qualify for special group license plates. Section R873-22M-28 allows the owner of a vehicle that is forty years or older with a horseless carriage plate issued prior to July 1, 1992, the privilege of exchanging it for a vintage vehicle special group license plate issued after July 1, 1992. Section R873-22M-29 details what a removable and a temporary removable disabled windshield placard shall look like; and provides when the windshield placard may be issued and where it must be placed in the vehicle. Section R873-22M-30 defines the term "series" with regard to the issuance of an original issue license plate; and states that the numeric code on the original issue plate cannot mirror a numeric code on a license plate already in existence. Section R873-22M-31 requires the Tax Commission to keep a list of vehicles eligible for classification as special interest vehicles; and allows the Motor Vehicle Division Director to add a vehicle to the list if the vehicle meets criteria established in Utah code. Section R873-22M-32 defines certificate of title with regard to Section 41-1a-1010; and requires an applicant with a vehicle eligible for retitling under Section 41-1a-1010 to receive a title

consistent with the title at the time of application for a permit to dismantle. Section R873-22M-33 provides a definition of "private institution of higher education" and "standard collegiate degree" for purposes of collegiate license plates. Section R873-22M-34 states conditions under which a personalized license plate may not be issued; allows an applicant the right to request a review of the denial; and provides procedures for review. Section R873-22M-35 states that if the user of a personalized plate fails to renew the plate within one year of the expiration, the plate will be considered surrendered to the division and the plate may be reissued to a new requestor. Section R873-22M-36 defines "advisory notice" and provides the procedures necessary to access protected motor vehicle records by telephone or in person. Section R873-22M-37 designates which of the standard license plates will be issued when the individual fails to indicate a preference for one or the other of the standard issue license plates; and an exchange of one type of standard issue license plate for the other standard issue license plate shall be subject to the plate replacement fee. Section R873-22M-40 provides a method to determine the age of a vehicle for purposes of determining the frequency of the state safety inspection required under Section 53-8-205. Therefore, this rule should be continued.

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

TAX COMMISSION
 MOTOR VEHICLE
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/12/2007

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**Tax Commission, Motor Vehicle
 Enforcement
 R877-23V
 Motor Vehicle Enforcement**

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**

DAR FILE No.: 29651
 FILED: 03/14/2007, 13:49

**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 41-3-105 gives

rulemaking authority to the motor vehicle enforcement administrator to carry out the purposes of the chapter; details information that a license application shall contain; gives administrator rulemaking authority to require signs; and sets forth duties of the administrator and the division. Section 41-3-201 requires that all dealers, salespersons, manufacturers, transporters, dismantlers, distributors, factory branch distributors, distributor branch and representative, crushers, remanufactures, and body shops operating in Utah have a license issued by the administrator. Section 41-3-202 establishes scope of operation allowed businesses that receive and operate under licenses issued by the Motor Vehicle Enforcement Division. Section 41-3-210 sets forth a list of prohibitions for license holders; and requires licensees to maintain records. Section 41-3-301 requires dealers to submit a title, within 45 days of sale, to the Division; and requires dealers to provide certain information to the Division within 45 days of issuance of a temporary permit. Section 41-3-302 allows a dealer to issue a temporary registration permit to persons purchasing a vehicle, pursuant to the Tax Commission rule; states that permits are good for 45 days; and dealers are responsible and liable for registration of each motor vehicle for which a permit is issued. Section 41-3-305 states that if an applicant meets criteria established in rule by the Tax Commission, the law allows the Division to issue in-transit permits for the use of highways for a time period not to exceed 96 hours. Section 41-3-507 requires license holders to keep a written record of special plates they issue; states what must be included in the record; and requires that lost or stolen special plates be reported immediately to the motor vehicle enforcement division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R877-23V-3 prohibits holders of a dealer license from working as a salesperson for another dealer but does allow dealership owners to engage as no-fee salespersons for their own dealerships. Section R877-23V-4 prohibits individuals holding a dealer's license to employ, enter into a contract with, or encourage persons to act as a salesperson if the person is not licensed as a salesperson in Utah. Section R877-23V-5 establishes guidelines for issuance, placement, and records of temporary motor vehicle registration permits and extension permits issued by dealers. Section R877-23V-6 clarifies issuance of in-transit permits for piggybacked semi-tractors. Section R877-23V-7 sets forth standards of practice for advertising and sale of motor vehicles. Section R877-23V-8 requires all dealers, dismantlers, manufacturers, remanufactures, transporters, crushers, and body shops to post a legible sign at principal and additional places of business; and requires these entities to identify their vehicles through signage on the vehicles. Section R877-23V-10 requires all automobile manufacturers licensed in Utah, to comply with federal vehicle identification number (VIN) requirements. Section R877-23V-11 requires all persons

licensed under Section 41-3-202 to notify the Division immediately of any change in ownership, address, or circumstance relating to the licensee's fitness to be licensed. Section R877-23V-12 establishes criteria that must be met before the issuance of a motor vehicle related license. Section R877-23V-14 requires a dealer issuing temporary permits to segregate and identify state mandated fees. The section also requires a dealer to post a visible and prominent sign if the dealer charges a customer a dealer documentary service fee. Section R877-23V-16 provides that a lost or stolen special plate may be replaced only after it has expired; and requires a replaced special plate to be included in the calculation of special plates under Section 41-3-503. Section R877-23V-18 outlines qualifications for a salvage vehicle buyer license and evidence needed to support those qualifications. Section R877-23V-19 indicates the language that must be on the notice for a vehicle offered for sale in this state that was initially delivered for sale outside the United States. Therefore, this rule should be continued.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/14/2007

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Tax Commission, Property Tax **R884-24P** Property Tax

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 29630
FILED: 03/12/2007, 11:22

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 11-13-302 requires a project entity created under the Interlocal Cooperation Act to pay a fee to each taxing jurisdiction in lieu of ad valorem property tax. This section also provides methods for calculation, collection, and distribution of the fee. The section was renumbered from Section 11-13-25 in 2002. Section 41-1a-301 provides procedures for apportioned registration and

licensing of interstate commercial vehicles. Section 59-2-102 provides definitions relating to property tax. Section 59-2-103 requires that all residential property be assessed at a uniform and equal rate on the basis of its fair market value; and provides for a residential exemption. Section 59-2-201 requires the Tax Commission to determine the fair market value of specified property; provides a methodology for determining fair market value of productive mining property; and requires the Tax Commission to notify the property owner and the assessor of the assessment. Subsection 59-2-201(4) requires the Tax Commission to notify the owner of the property and the county assessor immediately following the Tax Commission's assessment of property. Section 59-2-210 indicates how tax on mining property shall be collected; and allows the withholding of royalty payments as detailed in Tax Commission rule. Section 59-2-211, to ensure payment and collection of ad valorem property tax, allows the Tax Commission to collect a security, in an amount determined by the Tax Commission, from firms mining uranium and vanadium. Section 59-2-301 requires the county assessor to assess all property in the county that is not lawfully assessed by the Tax Commission. Section 59-2-302 provides that assessments made by the county assessor or the Tax Commission are the only basis of property taxation for political subdivisions of the state. Section 59-2-303 requires the assessor to assess all property subject to taxation to the owner of the property as of January 1. Section 59-2-305 requires county assessor to list all property according to its fair market value; and allows the Tax Commission to proscribe procedures and formats that will provide uniformity to property listing. Section 59-2-306 authorizes a county assessor to require a signed statement regarding real and personal property that may be assessed, and the county in which the property is located. Section 59-2-402 requires that a proportional assessment be made to property tax if a piece of taxable transitory personal property is brought into the state after the assessment date; gives the Tax Commission rulemaking authority to implement proportional assessment; and exempts certain property from proportional assessment. Section 59-2-404 levies a uniform tax on aircraft required to be registered; and requires the Tax Commission to promulgate rules to implement the uniform tax. Section 59-2-405 imposes a statewide uniform fee of 1.5 percent of the fair market value of motor vehicles not subject to Section 59-2-405.1, and to watercraft, recreational vehicles, and all other tangible personal property; and requires the Tax Commission to establish fair market value. Section 5-2-405.1 imposes a statewide uniform fee for vehicles under 12,000 pounds based on the age of the vehicle. Section 5-2-406 requires the Tax Commission to enter into a contract with each county; pursuant to this contract, either the Tax Commission or the county will collect all state and local fees due on the vehicles; requires the contract to contain performance standards; and gives rulemaking authority to the Tax Commission. Sections 59-2-501 through 59-2-515 define property that may be valued as agricultural; provides qualifications to receive this valuation; requires a rollback of tax when property no longer qualifies; and excludes certain land from the agricultural assessment. Subsection 59-2-508(2) outlines the application process to have land valued, assessed, and taxed as land in agricultural use. Section 59-2-515 allows the Tax Commission

rulemaking authority to effectively administer the valuation of agricultural property. Section 59-2-701 requires that all persons conducting appraisals of property for fair market value of real property for the assessment roll in Utah hold an appraiser's certificate or registration issued by the Division of Real Estate. It also allows the Tax Commission to prescribe qualifications for persons performing appraisals. Section 59-2-702 requires the Tax Commission to conduct training and continuing education programs to educate appraisers and county assessors. Section 59-2-704 requires the Tax Commission to conduct and publish studies to determine the relationship between market value shown on the assessment roll and the market value of real property in each county. The Tax Commission shall order counties to adjust assessment rates to coincide with the studies; and this section allows the Tax Commission to conduct appraisals in a county with insufficient sales data. Section 59-2-704.5 requires the Tax Commission to adopt, by rule, standards for determining acceptable assessment levels and valuation deviations within each county. Section 59-2-705 requires the Tax Commission to provide qualified personal property appraisers to the county to aid in the audit of taxable personal property in the county. Section 59-2-801 provides a methodology for the Tax Commission to apportion the assessment of property assessed by it. Section 59-2-918 prohibits a taxing entity from budgeting an increased amount of ad valorem tax revenue without advertising that increase; provides a required format for the advertisement. Section 59-2-918.5 prohibits a taxing entity from imposing a judgment levy without advertising that intent and holding a public hearing on the matter; provides a required format for the advertisement. Section 59-2-919 prohibits a tax rate in excess of the certified tax rate unless the taxing entity approves a resolution after first advertising that intent; provides a required format for the notice of the proposed tax increase; allows the Tax Commission to promulgate rules allowing the advertisement under this section to be combined with the Section 59-2-918 advertisement; requires the county auditor to notify all owners of real property, prior to July 22, of a hearing on the proposed increase; and sets forth guidelines for the hearing. Section 59-2-920 requires a taxing entity to submit to the Tax Commission a resolution to increase a tax rate above the certified tax rate. Section 59-2-921 requires the county board of equalization and the commission to notify each taxing entity of changes in the taxing entity's assessment roll and adopted tax rate resulting from county board of equalization and Tax Commission actions. Section 59-2-922 requires a taxing entity to repeat the procedures required under Section 59-2-919 if it determines that a greater tax rate is required than that initially approved. Section 59-2-923 provides that a taxing entity may not adopt its final budget until the public hearing required by Section 59-2-919 is held. Section 59-2-924 requires the county assessor to report the valuation of property within the county to the county auditor and the Tax Commission, and requires the county auditor to report that information, along with the certified tax rate, to each taxing entity; defines certified tax rate and indicates how the certified tax rate shall be determined; and requires the county auditor to notify all property owners of any intent to exceed the certified tax rate. Section 59-2-1004 allows a taxpayer dissatisfied with a valuation or equalization to appeal to the

board of equalization; and requires the county board of equalization to hold public hearings; allows a taxpayer to appeal the decision of the board of equalization to the Tax Commission. Section 59-2-1005 requires the county legislative body to include a notice of procedures for appeal of any personal property valuation with each tax notice; and provides procedures for appeal of taxable value. Section 59-2-1101 exempts the owner of certain property from taxation; and requires an owner to file an affidavit, if required by the Tax Commission, in order to receive exempt status for the property value. Section 59-2-1104 defines "residence;" exempts from property tax certain property owned by disabled veterans or their unmarried surviving spouses and minor orphans. Section 59-2-1106 exempts from property tax certain property owned by blind persons or their unmarried surviving spouses or minor orphans; and authorizes county to provide refunds for those qualifying for this exemption. Sections 59-2-1107 through 59-2-1109 authorize a county to defer or abate taxes paid by indigent persons. Section 59-2-1113 exempts household furnishings, furniture, and equipment that are used exclusively by the owner at the owner's place of residence from property tax. Subsection 59-2-1202(5) defines "household income" for purposes of the home owner's and renter's property tax credits. Section 59-2-1302 lists the duties of the assessor or treasurer; authorizes an unpaid tax to be used as a lien against the real property; provides that an unpaid property tax is a lien upon the owner's property; and defines when an assessment is considered delinquent. Section 59-2-1303 allows an assessor to seize personal property on which a delinquent property tax or uniform fee exists; and provides procedures for the sale of seized property. Section 59-2-1317 requires the treasurer to collect the taxes and furnish tax notices to taxpayers; and indicates the information that shall be included on the notice. Section 59-2-1328 requires the payment of refunds and interest if a tax paid under protest was unlawfully collected; and allows a taxing entity to impose a judgment levy to pay its share of eligible judgments. Section 59-2-1330 provides that if a board of equalization, court, or the Commission orders a reduction in the tax on a property, the taxpayer shall receive a refund of that tax, plus interest; provides an interest rate for refunds and sets a time within which the refund and interest must be paid; and allows a taxing entity to impose a judgment levy to pay its share of eligible judgments. Section 59-2-1347 allows the county legislative body and the Tax Commission the right to defer or adjust the property tax of an individual if it is determined that it is in the best interest of the state or the county; provides procedures for applying for deferral; and requires county legislative body or the Tax Commission to post notice of any deferrals or adjustments. Section 59-2-1351.1 provides procedures for sale of personal property seized as a result of failure to pay property tax; and includes notice requirements for sale of the property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS

IN OPPOSITION TO THE RULE, IF ANY: Section R884-24P-5 defines "household income" with regard to property tax abatements or deferrals for indigent persons; and states that absence from residence due to vacation, confinement to hospital, or other temporary situations shall not be deducted from the ten-month residency requirement of Section 59-2-1109. Section R884-24P-7 defines terms; and provides a methodology for assessment of mining properties. Section R884-24P-8 clarifies procedures for payment to the Tax Commission of security deposit required by Section 59-2-211 to ensure payment of property tax on uranium and vanadium mining properties. Section R884-24P-10 defines terms and provides methodology necessary for taxation of underground rights in land that contains deposits of oil or gas; and also provides for withholding of these taxes. Section R884-24P-14 requires assessor to consider preservation easements when valuing historically significant real property and structures; and also requires the property owner to inform the assessor and the Tax Commission of the preservation easement. Section R884-24P-16 defines terms and provides a methodology for valuing Interlocal Cooperation Act project entity properties. This section also refers to Section 11-13-25 which is renumbered. Section R884-24P-17 sets standards to be followed when performing a reappraisal of all classes of locally-assessed real property within a county. Section R884-24P-19 sets forth the ad valorem training and designation program. Section R884-24P-20 defines terms concerning the appraisal of property under construction and provides methodology for valuing that property. Section R884-24P-24 sets forth form county auditor must use to notify real property owners of property valuation and tax changes; and provides guidelines to be used in determining new growth, the certified tax rate, and increase in property tax revenues. Section R884-24P-27 defines terms related to the standards of assessment performance; sets forth standards of assessment performance regarding assessment level and uniformity; states when corrective action is necessary; and provides an alternate performance evaluation. Section R884-24P-28 sets forth a procedure for reporting heavy equipment leased or rented during the tax year. Section R884-24P-29 states situations when household furnishings, furniture, and equipment are subject to property tax. Section R884-24P-32 clarifies that leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property unless the underlying real property is owned by an exempt entity. Section R884-24P-33 defines terms; and provides percent good schedules for all personal property to be used to arrive at the property's taxable value. Section R884-24P-34 clarifies that information gathered for the purposes of an assessment or sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program and not for isolated reappraisal of properties. Section R884-24P-35 requires the owner of property receiving a property tax exemption based on exclusive use for religious, charitable, or educational purposes to file an annual affidavit. Section R884-24P-36 sets forth items that must appear on the real property tax notice, in addition to items required in Section 59-2-1317. Section R884-24P-37 requires the county assessor to maintain an appraisal record of all real property subject to assessment by the county; indicates what information shall be

included in the record; and requires the value of the land and improvements be shown separately. Section R884-24P-38 provides definitions and a methodology for assessing nonoperating railroad properties. Section R884-24P-40 clarifies when parsonages, rectories, monasteries, homes, and residences are used exclusively for religious purposes; and states that vacant land not actively used by the religious organization is not exempt from property tax. Section R884-24P-41 clarifies when it is proper to request an adjustment of taxes for past years under Section 59-2-1347. Section R884-24P-42 states that the Tax Commission is responsible for auditing the administration of the Farmland Administration Act, to verify proper listing and classification of properties assessed under the Act, and conduct routine audits of personal property accounts. Section R884-24P-44 indicates who is the owner for purposes of the property tax exemption for the owner of equipment and machinery used for agricultural purposes; and clarifies when machinery and equipment are not used for farming purposes. Section R884-24P-47 provides procedures for determining the average wholesale market value of aircraft; sets forth guidelines for aircraft purchased or moved to Utah during the year; and provides procedures for registration of aircraft and distribution of uniform tax collected. Section R884-24P-49 defines terms and provides a methodology for valuing a private rail car company apportioned to Utah. Section R884-24P-50 defines terms and provides a methodology for apportioning the Utah portion of commercial aircraft. Section R884-24P-52 defines terms and establishes criteria necessary for the determination of whether a residence is a primary residence in Utah. Section R884-24P-53 provides valuation tables for the valuation of land subject to the Farmland Assessment Act. Section R884-24P-55 requires each county to establish a written ordinance for real property sale procedures and indicates what issues the ordinance must address. This section requires that the ordinance be displayed in a public place and be available to all interested parties. Section R884-24P-56 provides a formula to calculate the previous year's statewide rate; apportions vehicles assessed under Section 41-1a-301 at the same percentage filed with the Customer Service Division of the Tax Commission; and defines "principal route". Section R884-24P-57 defines terms related to a judgment levy; provides guidelines on a judgment levy public hearing and advertisement; and requires taxing entities to file with the Tax Commission a statement certifying that they meet the qualifications for imposing a judgment levy. Section R884-24P-58 indicates how the one-time decrease in the certified rate based on the county option sales tax shall be determined. Section R884-24P-59 indicates how the one-time decrease in the certified rate based on resort community sales tax shall be determined. Section R884-24P-60 excludes motorcycles from the definition of "motor vehicle"; provides additional guidelines on the calculation of the age-based uniform fee on tangible personal property. Section R884-24P-61 defines "recreational vehicle" and excludes motorcycles from the definition of "motor vehicle"; clarifies what types of personal property the uniform fee applies to; and provides a formula to determine the fair market value of tangible personal property. Section R884-24P-62 defines terms related to state-assessed utility and transportation properties; and provides a methodology for valuation of state-assessed utility and

transportation properties. Section R884-24P-63 requires a written customer service performance plan to be developed by the party contracting to collect both state registration fees and county property taxes on vehicles; and requires county offices and the Tax Commission to provide training. Section R884-24P-64 provides a formula for determining the taxable value of vehicles owned by disabled veterans and the blind for purposes of the property tax exemptions for the disabled veterans and the blind. Section R884-24P-65 defines "transitory personal property" and clarifies when this type of property is subject to a proportional assessment of property tax. Section R884-24P-66 defines "factual error"; and indicates when a board of equalization must accept a property tax appeal that is filed beyond the period allowed under the statute of limitations. Section R884-24P-67 provides an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects. Therefore, this rule should be continued.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 03/12/2007



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*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63-46a-4(9).

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing

No. 29391 (AMD): R156-9-302a. Qualifications for Licensure - Examination Requirements.
Published: February 1, 2007
Effective: March 13, 2007

No. 29393 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: February 1, 2007
Effective: March 13, 2007

Environmental Quality

Air Quality

No. 29000 (AMD): R307-101-2. Definitions.
Published: October 1, 2006
Effective: March 9, 2007

No. 29000 (CPR): R307-101-2. Definitions.
Published: February 1, 2007
Effective: March 9, 2007

No. 29001 (AMD): R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.
Published: October 1, 2006
Effective: March 9, 2007

No. 29001 (CPR): R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.
Published: February 1, 2007
Effective: March 9, 2007

No. 29327 (AMD): R307-120. General Requirements: Tax Exemption for Air and Water Pollution Control Equipment.
Published: January 1, 2007
Effective: March 9, 2007

No. 29228 (AMD): R307-210. Stationary Sources.
Published: December 1, 2006
Effective: March 15, 2007

No. 29230 (NEW): R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units.
Published: December 1, 2006
Effective: March 15, 2007

No. 29002 (AMD): R307-320. Davis, Salt Lake and Utah Counties, and Ogden City: Employer-Based Trip Reduction Program.
Published: October 1, 2006
Effective: March 9, 2007

No. 29002 (CPR): R307-320. Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program.
Published: February 1, 2007
Effective: March 9, 2007

No. 29003 (AMD): R307-325. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Ozone Provisions.
Published: October 1, 2006
Effective: March 9, 2007

No. 29003 (CPR): R307-325. Ozone Nonattainment and Maintenance Areas: General Requirements.
Published: February 1, 2007
Effective: March 9, 2007

No. 29006 (AMD): R307-326. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Control of Hydrocarbon Emissions in Refineries.
Published: October 1, 2006
Effective: March 9, 2007

No. 29006 (CPR): R307-326. Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Refineries.
Published: February 1, 2007
Effective: March 9, 2007

No. 29004 (AMD): R307-327. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Petroleum Liquid Storage.
Published: October 1, 2006
Effective: March 9, 2007

No. 29004 (CPR): R307-327. Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage.
Published: February 1, 2007
Effective: March 9, 2007

No. 29009 (AMD): R307-340. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Surface Coating Processes.
 Published: October 1, 2006
 Effective: March 9, 2007

No. 29009 (CPR): R307-340. Ozone Nonattainment and Maintenance Areas: Surface Coating Processes.
 Published: February 1, 2007
 Effective: March 9, 2007

No. 29012 (AMD): R307-343. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations.
 Published: October 1, 2006
 Effective: March 9, 2007

No. 29012 (CPR): R307-343. Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations.
 Published: February 1, 2007
 Effective: March 9, 2007

Drinking Water

No. 29369 (AMD): R309-105. Administration: General Responsibilities of Public Water Systems.
 Published: January 15, 2007
 Effective: March 6, 2007

No. 29364 (AMD): R309-110. Administration: Definitions.
 Published: January 15, 2007
 Effective: March 6, 2007

No. 29363 (AMD): R309-150. Water System Rating Criteria.
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No. 29371 (AMD): R309-200. Monitoring and Water Quality: Drinking Water Standards.
 Published: January 15, 2007
 Effective: March 6, 2007

No. 29365 (AMD): R309-210. Monitoring and Water Quality: Distribution System Monitoring Requirements.
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No. 29366 (AMD): R309-215. Monitoring and Water Quality: Treatment Plant Monitoring Requirements.
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Published: February 1, 2007

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Published: February 1, 2007

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Published: February 1, 2007

Effective: March 12, 2007

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Effective: March 19, 2007

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Published: February 1, 2007

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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, 2007, including notices of effective date received through March 15, 2007, the effective dates of which are no later than April 1, 2007. 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. 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).

DAR NOTE: Because of space constraints, the Rules Index by Keywords is not included in this issue.

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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