

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 03, 2009, 12:00 a.m. through November 16, 2009, 11:59 p.m.

Number 2009-23
December 01, 2009

Kimberly K. Hood, Executive Director
Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-538-1773. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. 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

Unless otherwise noted, all information presented in this publication is in the public domain and may be reproduced, reprinted, and redistributed as desired. Materials incorporated by reference retain the copyright asserted by their respective authors. Citation to the source is requested.

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

TABLE OF CONTENTS

SPECIAL NOTICES	1
Insurance	
Administration	
Public Hearing on Proposed Fee for Services Provided on Costs Incurred by the Utah Insurance Department During Fiscal Year 2011.....	1
EXECUTIVE DOCUMENTS	3
NOTICES OF PROPOSED RULES	5
Capitol Preservation Board (State)	
Administration	
No. 33151 (Amendment): R131-2-11 Fees and Charges During Legislative Session.....	6
Commerce	
Administration	
No. 33150 (Amendment): R151-46b Department of Commerce Administrative Procedures Act Rules.....	7
No. 33149 (Amendment): R151-46b-5 General Provisions.....	11
Real Estate	
No. 33148 (New Rule): R162-110 Trainee Registration.....	13
Education	
Administration	
No. 33147 (New Rule): R277-111 Sharing of Curriculum Materials by Public School Educators.....	15
Environmental Quality	
Solid and Hazardous Waste	
No. 33144 (Amendment): R315-7-27 Air Emission Standards for Equipment Leaks.....	16
No. 33145 (Amendment): R315-316 Infectious Waste Requirements.....	17
Health	
Community and Family Health Services, Chronic Disease	
No. 33138 (Amendment): R384-100-10 Penalties.....	21
Human Services	
Substance Abuse and Mental Health	
No. 33142 (Amendment): R523-21 Division of Substance Abuse and Mental Health Rules.....	21
Public Safety	
Driver License	
No. 33143 (Amendment): R708-41 Requirements for Acceptable Documentation, Storage and Maintenance.....	23
Regents (Board Of)	
University of Utah, Administration	
No. 33146 (New Rule): R805-4 Illegal, Harmful and Disruptive Behavior on University of Utah Property.....	27
NOTICES OF CHANGES IN PROPOSED RULES	31
Environmental Quality	
Solid and Hazardous Waste	
No. 32967: R315-2 General Requirements - Identification and Listing of Hazardous Waste.....	32
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	35
Health	
Medical Examiner	
No. 33140: R448-10 Unattended Death and Reporting Requirements.....	35
No. 33141: R448-20 Access to Medical Examiner Reports.....	35

TABLE OF CONTENTS

NOTICES OF RULE EFFECTIVE DATES.....37

RULES INDEX.....39

SPECIAL NOTICES

Insurance Administration

Public Hearing on Proposed Fee for Services Provided on Costs Incurred by the Utah Insurance Department During Fiscal Year 2011

A hearing date has been scheduled for Tuesday, December 8, 2009, at 9:00 a.m. in Room 3112 of the State Office Building (behind the Capitol), 450 N State Street, Salt Lake City, UT. The purpose of the hearing is to obtain public comment regarding a \$10 increase in individual and agency insurance licensing fees.

In compliance with the Americans with Disabilities Act, individuals desiring to attend the hearing who need special accommodations during the hearing (including auxiliary communicative aids and services) should notify us as directed above.

Written comments should be directed to Jilene Whitby by email at jwhitby@utah.gov; FAX at 801-538-3829; or mail to Insurance Department, State Office Building, 450 N State Street, Room 3110, Salt Lake City, UT 84114.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

As part of his or her constitutional duties, the Governor periodically issues **EXECUTIVE DOCUMENTS** comprised of Executive Orders, Proclamations, and Declarations. "Executive Orders" set policy for the Executive Branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. "Proclamations" call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. "Declarations" designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

Governor's Proclamation 2009-06-E: Calling Fifty-Eighth Legislature Into the Sixth Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2009 General Session of the 58th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 58th Legislature into the Sixth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 18th day of November, 2009, at 12:00 noon, for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2009 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 3rd day of November, 2009.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2009/06/E

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between November 03, 2009, 12:00 a.m., and November 16, 2009, 11:59 p.m. are included in this, the December 01, 2009 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 December 31, 2009. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 31, 2010, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Capitol Preservation Board (State),
Administration
R131-2-11
Fees and Charges During Legislative
Session**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33151

FILED: 11/16/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex. The reason for the change to this rule is to reduce fees and charges for specific rooms and spaces during the regular Utah Legislative Session.

SUMMARY OF THE RULE OR CHANGE: This change implements reduced fees and charges for specific rooms and spaces of the Capitol Hill Complex during the regular Utah Legislative Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-101

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment will be an anticipated cost to the state as the state will receive less revenue because the renters will pay less to rent rooms and spaces of the Capitol Hill Complex during the regular legislative session.

◆ **LOCAL GOVERNMENTS:** It is not anticipated that this amendment to reduce rates to rent rooms and spaces of the Capitol Hill Complex during the regular legislative session will have any anticipated cost or savings that will affect local government.

◆ **SMALL BUSINESSES:** This amendment to reduce rates to rent rooms and spaces of the Capitol Hill Complex during the regular legislative session could result in anticipated savings to small businesses as they will pay less to rent rooms.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment to reduce rates to rent rooms and spaces of the Capitol Hill Complex during the regular legislative session is an anticipated savings to general public as costs are being lowered for rooms. Renters will pay less during the regular legislative session.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment will lower costs for room rental for rooms and spaces of the Capitol Hill Complex during the regular legislative session. This will result in a savings for renters as they will be paying less and the state will receive less revenue for room rentals during the regular legislative session.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change in the proposed rule will result in lower costs for room renters who will pay less to rent rooms and spaces in the Capitol Hill Complex but it promotes public access during the regular legislative session.

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ David Hart by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at dhart@utah.gov
◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
◆ Sarah Whitney by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at swhitney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: David Hart, AIA, Executive Director

**R131. Capitol Preservation Board (State), Administration.
R131-2. Capitol Hill Complex Facility Use.
R131-2-11. Fees and Charges During Legislative Session.**

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

(i) Kletting Room located in the Senate Building;
(ii) Olmstead Room located in the Senate Building;
(iii) Spruce Room located in the Senate Building;
(iv) Beehive Room located in the Senate Building;
(v) Seagull Room located in the Senate Building;
(vi) Copper Room located in the Senate Building;
(vii) Rooms B110 and 1112 in the State Office Building;
(viii) Room 130, the Multipurpose/Public Lounge located
in the Capitol;

(ix) Room 170 located in the Capitol; and

(x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) During the hours of 11:00 a.m. through 1:30 p.m., in order to qualify for the free room rental rate for all rooms located in the Senate Building Arsenal Hill Conference Center, the applicant must provide to the Executive Director a copy of the agreement to use the Preferred Caterer for providing food services during the room rental or evidence that the people attending have purchased meals from the Preferred Caterer.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if, in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of \$50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use

Date of Enactment or Last Substantive Amendment: [~~March 26, 2009~~2010]

Notice of Continuation: February 16, 2005

Authorizing, and Implemented or Interpreted Law: 63C-9-101 et seq.

Commerce, Administration
R151-46b
Department of Commerce
Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33150

FILED: 11/16/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing clarifies that recordings of hearings may be made by the use of either a licensed court reporter or a digital audio or video recording. It further clarifies that a person requesting agency review must file a transcript within the time frame the person has stated in the certification regarding transcript.

SUMMARY OF THE RULE OR CHANGE: This filing clarifies that recordings of hearings may be made by the use of either a licensed court reporter or a digital audio or video recording. It further clarifies that a person requesting agency review must file a transcript within the time frame the person has stated in the certification regarding transcript.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No effect to the state budget is anticipated from this amendment which clarifies the methods for recording hearings and clarifies the transcript filing time frame.

◆ **LOCAL GOVERNMENTS:** Local government is not involved in the recordings of this agency's hearings. A local government could be a party in this agency's proceedings, but the amendment regarding transcripts only clarifies the filing time frame and would not have a cost effect for any parties.

◆ **SMALL BUSINESSES:** Small businesses are not involved in the recordings of this agency's hearings. Small businesses could be parties in this agency's proceedings, but the amendment regarding transcripts only clarifies the filing time frame and would not have a cost effect for any parties.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons are not involved in the recordings of this agency's hearings. Other persons could be parties in this agency's proceedings, but the amendment regarding transcripts only clarifies the filing time frame and would not have a cost effect for any parties.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals are not involved in the recordings of this agency's hearings. Individuals could be parties in this agency's proceedings, but the amendment regarding transcripts only clarifies the filing time frame and would not have a cost effect for any parties.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule summary, no fiscal impact to businesses is anticipated from the clarifying provisions relating to recordings of hearings and filing of hearing transcripts.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

(a) required by statute or rule and not waived by the parties; or

(b) permitted by statute or rule and timely requested.

(2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(a) the time period for filing a response to a notice of agency action if a response is required or permitted;

(b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(c) the filing of the request for agency action.

(3) Scheduling of Hearings.

(a)(i) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(ii) Notwithstanding the provisions of Subsection R151-46b-5(2), the hearing in any formal or informal adjudicative proceeding shall be concluded not more than 180 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(b) Subject to the provisions of Subsection R151-46b-5(5)(b), the presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

(4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

(5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

(6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

(a) opening statement of the party with the burden of proof;

(b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;

(d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(e) rebuttal case by the party which has the burden of proof;

(f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

(7) Testimony Under Oath.

All testimony presented at a hearing, if offered as evidence in reaching a decision on the merits, shall be given under oath administered by the presiding officer.

(8) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

(9) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

(10) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

(11) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63G-4-209, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

(b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(12) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of:

~~(A) a certified court reporter pursuant to Title 58, Chapter 74, Certified Court Reporters Licensing Act, unless the presiding officer determines it to be unnecessary or impracticable, in which case he shall cause the record to be made by means of an audio or video cassette recorder or other recording device; or~~

(B) a digital audio or video recording in a commonly used file format.

(ii) Informal Adjudicative Proceedings.

The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.

(c) Record Expense.

The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.

(d) Transcription of Record.

(i) If a party is required by Subsection R151-46b-12(3)(d) regarding agency review proceedings to obtain a transcript of a hearing, the party must ensure that the record is transcribed:

(A) in a formal adjudicative proceeding, by ~~the~~a certified court reporter~~[who reported the hearing]~~; or

(B) in an informal adjudicative proceeding, by any certified court reporter or by a person who is not a party in interest. For purposes of this Subsection, "a party in interest" is defined to include a party or a relative of the party. Neither a party's counsel nor an employee of a party's counsel is considered "a party in interest" for purposes of this Subsection.

(ii) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(iii) Pages and lines in a transcript shall be numbered for referencing purposes.

(iv) The party requesting the transcript shall bear the cost of the transcription.

(v) The original transcript of a record of a hearing shall be filed with the presiding officer.

(13) Fees.

(a) Witness Fees.

Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of \$18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.

(b) Interpreter and Translator Fees.

Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.

(c) Officers and Employees not Entitled to Fees - Exception.

No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.

(d) Only One Fee Per Day Allowed.

No witness shall receive fees in more than one adjudicative proceeding on the same day.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63G-4-209(3) (c), an aggrieved party may obtain agency review of a final order issued in an adjudicative proceeding by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available.

(a) Agency review is not available as to any order or decision entered by the following agencies:

- (i) the Real Estate Appraiser Licensing and Certification Board;
- (ii) the Utah Motor Vehicle Franchise Advisory Board;
- (iii) the Utah Powersport Vehicle Franchise Advisory Board.

(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:

(i) Prelitigation proceedings conducted pursuant to Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c) Agency review is not available for any decisions or orders entered by the Division of Corporations and Commercial Code as to the following matters:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; and

(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

(d)(i) Agency reconsideration may be requested for orders or decisions exempt from agency review under Subsections R151-46b-12(2)(a), (b)(ii), and (c) pursuant to Section 63G-4-302.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1) (c).

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and as provided in this Subsection. The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party shall thereafter file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve upon all other parties copies of correspondence, pleadings, and other submissions. If an attorney enters an appearance on behalf of a party, service shall thereafter be made upon that attorney, instead of directly to the party.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the service of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the service of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63G-4-404(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63G-4-301(6).

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [September 22, 2008]2010

Notice of Continuation: May 3, 2006

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Administration
R151-46b-5
 General Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33149

FILED: 11/16/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in our adjudicative proceedings provisions. A determination has been made that the phrase can be removed and replaced with different terminology.

SUMMARY OF THE RULE OR CHANGE: This filing removes the phrase "liberally construed" from the general provisions for agency adjudicative proceedings. Instead, the rule indicates that the agency intends to secure the just, speedy, and economical determination of all issues presented to the agency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will not be affected by the change of terminology in expressing this agency's intent as to its adjudicative proceedings.

◆ **LOCAL GOVERNMENTS:** Local government does not administer this agency's adjudicative proceedings, such that local government budget is not affected.

◆ **SMALL BUSINESSES:** Small businesses will not be affected by the change in terminology in expressing this agency's intent as to its adjudicative proceedings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No persons will be affected by the change in terminology in expressing this agency's intent as to its adjudicative proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected by the change in terminology in expressing this agency's intent as to its adjudicative proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in our adjudicative proceedings provisions. A determination has been made that the phrase can be removed and replaced with different terminology. No fiscal impact to businesses is anticipated from the use of such replacement terminology.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.**R151-46b. Department of Commerce Administrative Procedures Act Rules.****R151-46b-5. General Provisions.**(1) Purpose [~~Liberal Construction~~].

These rules are intended [~~shall be liberally construed~~] to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period. No additional time is provided if service is accomplished by facsimile or other electronic means.

(b) Subject to the provisions of Subsections R151-46b-5(5)(b) and -9(9)(c)(ii), for good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon written application from either party.

(5) Extension of Time; Continuance of Hearing.

(a) When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(i) whether there is good cause for granting the extension or continuance;

(ii) the number of extensions or continuances the requesting party has already received;

(iii) whether the extension or continuance will work a significant hardship upon the other party;

(iv) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(v) whether the other party objects to the extension or continuance.

(b)(i) Notwithstanding the provisions of Subsection R151-46b-5(2) or any other provision of these rules, and except as provided in Subsection (5)(b)(ii), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(ii) Notwithstanding the provisions of Subsection (5)(b)(i), an extension of a time period or a continuance may exceed the time restriction outlined in Subsection (5)(b)(i) only if:

(A)(I) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(II) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds that the withdrawal was for the purpose of delaying the hearing; or

(III) a parallel criminal proceeding exists based on facts at issue in the administrative proceeding; and

(B) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(iii) The failure of the presiding officer to comply with the requirements of this Subsection

(5)(b) is not a basis for dismissal of the matter.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment:

~~[September 22, 2008]~~2010

Notice of Continuance: May 3, 2006

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Real Estate
R162-110
Trainee Registration

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33148

FILED: 11/16/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In H.B. 86 (2009), the Utah Legislature enacted a requirement that appraiser trainees must undergo a background check in order to register with the Division. The legislation also requires trainees to renew their registrations every two years. This rule implements these requirements. (DAR NOTE: H.B. 86 (2009) is found at Chapter 352, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: A trainee must undergo a background check and must meet character and competency standards in order to register with the Division. A trainee must also complete pre-registration education, submit application materials, and affiliate with a certified appraiser. The trainee must notify the Division upon changing a supervisory affiliation. Trainees who registered with the Division without undergoing a background check must re-register. Trainees must renew their registrations every two years.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(4) and Subsection 61-2b-8(2)(d)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division has been registering trainees for several years. The systems and resources for trainee registration are already in place. Similarly, the Division has been conducting background checks for applicants in real estate and mortgage for several years, and it is not anticipated that new resources will be required to conduct background checks for trainee applicants. Finally, it is anticipated that the Division has adequate staff and resources to process trainee renewal applications along with the renewals already being processed for state-licensed and state-certified appraisers.

◆ **LOCAL GOVERNMENTS:** Local governments are not involved in the registration of appraiser trainees.

◆ **SMALL BUSINESSES:** If small businesses that employ trainees wish to bear the application and fingerprinting costs, they may do so. The current cost to fingerprint and register a trainee is \$135.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It will cost a trainee \$135 to fingerprint and register with the

Division. Note that the trainee will also bear the costs of the pre-registration education, but that cost has been in place and is not a new cost as a result of this rule. The trainee will also be affected by the fees for renewal. The current fee for renewal of a trainee registration is set at \$100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons must pay fees for fingerprinting, registration, and renewal as outlined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As required by recent statutory amendments, this rule filing codifies the requirements for initial and renewal registration for appraiser trainees. No fiscal impact to businesses is anticipated beyond those addressed by the Legislature in passing the statutory amendments.

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:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

R162-110. Trainee Registration.

R162-110-1. Trainee Registration.

(1) Registration Required.

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

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

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

(a) A trainee applicant shall be denied registration for

(i) Any felony that resulted in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

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

(4) Pre-registration Education. Within the five-year period preceding the date of application, an applicant must successfully complete 75 classroom hours of AQB-approved education as follows:

(a) 30 hours of appraisal principles;

(b) 30 hours of appraisal procedures; and

(c) the 15-hour Uniform Standards of Professional Appraisal Practice (USPAP) course.

(5) Examination. An applicant must pass the final examination in all pre-registration courses.

(6) Application to the Division. An applicant shall submit the following to the Division:

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

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

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

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

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

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

(f) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;

(g) the fee for the criminal background check; and

(h) the application fee.

(7) Affiliation with a Certified Appraiser. Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by

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

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

(8) Notification Requirements. A registered trainee must notify the Division within 10 working days whenever the trainee

(a) affiliates with a new supervising certified appraiser; or

(b) terminates an affiliation with a supervising certified appraiser.

(9) Re-registration of Existing Trainees.

(a) Any trainee who registered with the Division without undergoing a background check shall re-register with the Division according to the following schedule:

(i) a trainee who registered prior to January 1, 2008 must re-register by January 1, 2011;

(ii) a trainee who registered during the 2008 calendar year must re-register in 2011 by the anniversary of the trainee's registration date;

(iii) a trainee who registered on or after January 1, 2009 must re-register on the two-year anniversary of the registration date.

(b) To re-register, a trainee shall submit the following to the Division:

(i) a completed application as provided by the Division;

(ii)(A) two fingerprint cards in a form acceptable to the Division; or

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

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

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

(v) a signed letter of waiver authorizing the Division to obtain the fingerprints of the applicant, review past and present employment records, review education records, and conduct a criminal background check;

(vi) the fee for the criminal background check;

(vii) evidence of having completed the 28 hours of continuing education or AQB qualifying education required for renewal under Subsection 102-3; and

(viii) the application fee.

(d) A Division hearing officer shall review the application of any trainee re-registering under Subsection (9) who fails to meet the character and competency requirements of Subsections (2) and (3). The hearing officer may

(i) approve the application with the concurrence of the Board;

(ii) approve the application subject to probation or restriction; or

(iii) refer the application to the Board for decision.

(10) Registration Renewal.

(a) A trainee registration is valid for two years and must be renewed according to Subsection 102-3 before the expiration date printed on the registration certificate.

(b) If the renewal fee and required documentation are not received by the expiration date, the registration shall expire. It shall be grounds for disciplinary sanction if, after the registration has expired, the trainee continues to perform work for which the trainee is required to be registered.

(c) An expired registration may be renewed or reinstated according to the same rules that govern the renewal and reinstatement of appraiser licenses and certifications, as outlined in Subsections 102.3.2 through 102.3.4.

KEY: real estate appraisals, trainees, registration
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 61-2b-6(4); 61-2b-8(2)(d)

Education, Administration
R277-111
Sharing of Curriculum Materials by Public School Educators

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33147

FILED: 11/13/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments.

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions, standards for educators to share materials, and exemptions to the sharing of materials that may come from school districts and charter schools.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This new rule provides

standards and procedures that apply to Utah educators, school districts, and charter schools when sharing materials developed by educators.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The rule provides standards and procedures that apply to Utah educators, school districts, and charter schools which will be helpful when materials developed by educators are shared, but does not involve any funding or money.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule is applicable to public school teachers, school districts, and charter schools.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, business, or local government entities. This rule is applicable to public school teachers, school districts, and charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule provides standards and procedures which should only be helpful to Utah school teachers, school districts, and charter schools when sharing materials developed by educators.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

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

R277. Education, Administration.
R277-111. Sharing of Curriculum Materials by Public School Educators.
R277-111-1. Definitions.

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

B. "Creative Commons License" means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright applicable law. Creative Commons Licenses are non-exclusive and non-revocable.

C. "District/LEA materials" means materials purchased or developed by a school district/charter school using district funds or resources, including materials, resources or activities which the district requested employees to create, develop or compile during the employees' contract time.

D. "Material(s)" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.

E. "Non-commercial use" means use or exchange without payment or compensation of any kind.

F. "Personally developed materials" means materials developed by an educator. These materials may be developed on the educator's contract time using school resources, on the educator's personal time using personal resources, as an individual employment assignment, or in conjunction with other colleagues.

G. "Teacher curriculum materials" means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.

R277-111-2. 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-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to encourage school productivity and cost effectiveness measures.

B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.

R277-111-3. Educators Sharing Materials.

A. Utah educators may share materials for noncommercial use that educators have developed primarily for use in their own classes, courses or assignments.

B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.

C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.

D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.

E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally-developed materials. However public school employers may provide notice to employees that materials developed with public school funds or during public school employment must be reviewed by the employer prior to sharing or distribution.

F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds or developed within the employee's scope of employment to Utah educators.

R277-111-4. School District/Charter School Rights.

A. Utah school districts or charter schools may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time, developed partially or jointly with school district/charter school funding, as part of a district/charter school assignment or if materials reference or imply school district/charter school use or endorsement.

B. Utah school districts/charter schools may prohibit their employees from sharing materials that were purchased with school district funds or which are licensed specifically for school district/charter school use.

KEY: curriculum materials, sharing

Date of Enactment or Last Substantive Amendment: 2010

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

Environmental Quality, Solid and Hazardous Waste **R315-7-27** Air Emission Standards for Equipment Leaks

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33144

FILED: 11/12/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to adopt equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change includes national emission standards for hazardous air pollutants (NESHAP) for automobile and light-duty truck surface coating operations at major sources of hazardous air

pollutants (HAP). It requires these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The rule also amends Resource Conservation and Recovery Act (RCRA) air emission standards for owners and operators of treatment, storage, and disposal facilities (TSDFs) to exempt air emissions from certain activities that are covered by the final NESHAP.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no additional costs or savings for the state budget beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

♦ LOCAL GOVERNMENTS: There are no additional costs or savings for local governments beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

♦ SMALL BUSINESSES: There are no additional costs or savings for small businesses beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no additional costs or savings for other persons beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional costs or savings for affected persons beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no additional costs or savings for businesses beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Toronto by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2010

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-7-27. Air Emission Standards for Equipment Leaks.

The requirements of 40 CFR subpart BB sections 265.1050 through 265.1064, [1997]2004 ed., [as amended by 62 FR 64636, December 8, 1997, -] are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment:
~~[December 1, 2006]~~2010

Notice of Continuation: August 24, 2006

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and
Hazardous Waste
R315-316
Infectious Waste Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33145

FILED: 11/12/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule addresses the treatment, storage, transportation, and disposal of infectious waste. Changes to the rule are made to make the language clear as to who is affected by the rule and to make the rule consistent with current approved operating practices of disposal facilities.

SUMMARY OF THE RULE OR CHANGE: Several changes are made in the rule to clarify applicability and readability. A new definition of sharps is added. The time allowed for

storage of infectious waste is increased from 30 to 60 days. Requirements that are addressed in other rules are removed. A pressure, as well as a temperature requirement is added. *Mycobacterium bovis* is removed as a required test bacterium. Landfill disposal procedures are modified to allow more flexibility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No costs or savings are anticipated as the state does not operate any infectious waste treatment, storage, transportation, or disposal facilities. The changes will not increase or decrease the load on state regulatory agencies.

◆ **LOCAL GOVERNMENTS:** No costs or savings are anticipated as local governments do not operate any infectious waste treatment, storage, or transportation facilities. Any disposal facilities operated by local government may experience a decrease in costs as a result of the increased time allowed for storage prior to disposal. Landfills may experience a very small decrease in cost of disposal resulting from the increased flexibility. The cost savings in both instances will be small and cannot be quantified.

◆ **SMALL BUSINESSES:** A small business that transports, stores, treats, or disposes of infectious waste will have some minor savings in costs resulting from tracking and maintaining records. Some minor savings will also result for the increase in storage time allowed. The reduction in the required bacteria to be used in testing the effectiveness of treatment methods will result in some minor savings in the cost of treatment studies. The actual cost savings are likely to be small and cannot be quantified but would be less \$1,000 per year per business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A person that transports, stores, treats, or disposes of infectious waste will have some minor savings in costs resulting from tracking and maintaining records. Some minor savings will also result for the increase in storage time allowed. The reduction in the required bacteria to be used in testing the effectiveness of treatment methods will result in some minor savings in the cost of treatment studies. The actual cost savings are likely to be small and cannot be quantified but would be less \$1,000 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A small business or person that transports, stores, treats, or disposes of infectious waste will have some minor savings in costs resulting from tracking and maintaining records. Some minor savings will also result for the increase in storage time allowed. The reduction in the required bacteria to be used in testing the effectiveness of treatment methods will result in some minor savings in the cost of treatment studies. The actual cost savings are likely to be small and cannot be quantified but would be less \$1,000 per year for each business or person affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A small business or person that transports, stores, treats, or disposes of infectious waste will have some minor savings in costs resulting from tracking and maintaining records. Some minor savings will also result for the increase in storage time allowed. The reduction in the required bacteria to be used in testing the effectiveness of treatment methods will result in some minor savings in the cost of treatment studies. The actual cost savings are likely to be small and cannot be quantified but would be less \$1,000 per year for each business or person affected.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-538-6794, by FAX at 801-538-6715, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2010

AUTHORIZED BY: Dennis Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.

R315-316. Infectious Waste Requirements.

R315-316-1. Applicability.

(1) The standards of Rule R315-316 apply to:

(a) any health facility [~~as defined by Subsection 19-6-102(10)~~] that generates more than 200 pounds, per month, of infectious waste [~~as defined by Subsection 19-6-102(12)~~];

(b) any transporter that collects and transports more than 200 pounds of infectious waste in any one load; and

(c) a [~~storage, treatment, or disposal~~] facility storing more than 200 pounds of infectious waste, or a facility treating or disposing of infectious waste.

(2) The standards of Rule R315-316 do not apply to

(a) [a]any health facility that generates 200 pounds, or less, of infectious waste per month[-];

(b) any transporter that:

(i) collects and transports 200 pounds or less of infectious waste from all generators in any one load; or

(ii) collects infectious waste only from facilities that generate 200 pounds or less of infectious waste per week; and

(c) infectious waste generated by a household.

R315-316-2. General Operational Requirements.

(1) Every owner and operator of a health facility or a transporter of infectious waste, regulated by Rule R315-316, that

generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

- (a) type and estimated quantity of waste generated or handled;
- (b) segregation, packaging, and labeling procedures;
- (c) collection, storage, and transportation procedures~~[-, including the name of the transporter, to be implemented];~~
- (d) treatment or disposal methods that will be used~~[-, and disposal facility that will be used];~~ and
- (e) the person responsible for the management of the infectious waste.

(2) ~~[All infectious waste generators and handlers shall report any delivery of unauthorized waste to the local health department immediately upon recognition.~~

~~————(3) [Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment in a location appropriate for human remains.~~

(3) For the purposes of Rule R315-316 "sharps" means any object that may be contaminated with a pathogen and that is capable of cutting or penetrating skin or a packaging material.

R315-316-3. Storage and Containment Requirements.

(1) ~~[Containment]~~Infectious waste shall be contained in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects or rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste during storage.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage~~[-,] or handling~~[-, or transport].~~~~

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All ~~[containers used for containment of any]~~ infectious waste ~~[shall]~~containers should be red or orange~~[-, or if containers are not red or orange,] and~~ shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste~~[-, and] the surface of the liner has not been damaged or punctured.~~

(8) Storage and containment areas shall: protect infectious waste from the elements; be ventilated to the outside atmosphere; be~~[- only]~~ accessible only to authorized persons; and be

marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, ~~[#]the infectious waste shall be stored at or below a temperature of 40 degrees Fahrenheit (5 degrees Celsius)~~[-, or below].~~~~

(10) Under no conditions may infectious waste be stored for longer than ~~[30]60~~ days.

(11) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste ~~[before the waste has been rendered non-infectious]~~ unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle~~[- compartment]~~ or unless all of the waste is to be treated as infectious waste in accordance with ~~[this section]~~Rule R315-316.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

- (a) be trained in the proper use of protective equipment;
- (b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and
- (c) shall have face shields and respirators available~~[-, as deemed necessary by the transporter].~~

(d) Protective gear that becomes soiled with infectious waste shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Executive Secretary.

(4) ~~[Transport vehicles]~~Vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation related to infectious, biohazardous or biomedical waste.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be ~~[so]~~designed and constructed, and its contents limited, so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible ~~[but not to exceed 30 days after generation,] and shall be~~

treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) All material that has been rendered non-infectious through an approved treatment method may be handled as non-infectious solid waste, provided it is not otherwise a hazardous waste or a radioactive waste excluded from disposal in a solid waste facility by ~~[Rule R315-316]~~ Rules R315-301 through 320.

(b) Except for incineration and steam sterilization, no treatment method may be used to render materials non-infectious without receiving prior approval from the Executive Secretary.

(3) Infectious waste may be incinerated in an incinerator provided the incinerator is permitted or approved under Rules R315-301 through 320.

~~(a) The incinerator shall comply with the requirements of Rule R315-306 and provide complete combustion of the waste to carbonized or mineralized ash.~~

~~(b) A composite sample of the ash and residues from the incinerator shall be taken at least once each year. The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 1991 ed., Toxic Characteristics Leaching Procedure (TCLP) on parameters determined by the Executive Secretary to determine if it is a hazardous waste. If hazardous, it shall be managed by applicable state regulations.]~~

(4) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available, and shall certify in writing that he understands, written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure ~~[or]~~ of container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate *Bacillus stearothermophilus* spores in the center of the waste load at a 6 Log₁₀ reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature~~[-]~~-sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached and a pressure of at least 15 psi was maintained during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of *B. stearothermophilus* at least once each 40 hours of operation or each week, whichever is less frequent.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day~~[-]~~ and the date~~[-]~~ of each load and the operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature, pressure, and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis when the Executive Secretary finds the proposed alternative treatment method renders the material non-infectious.

(b) The determination shall be based on the results of laboratory tests, submitted by the person proposing the use of the treatment method, meeting the following requirements:

(i) the laboratory tests shall be conducted:

(A) by qualified laboratory personnel;

(B) using recognized microbial techniques;

(C) on samples that have been inoculated with the test organisms, then subjected to the proposed treatment method and processed ~~[the same way as will be used in]~~ in an identical way to the treatment process [if approved] being proposed for approval; and

(ii) the results of the tests must document that the proposed treatment method inactivates:

(A) vegetative bacteria - *Staphylococcus aureus* (ATCC 6538) or *Pseudomonas aeruginosa* (ATCC 15442) at a 6 Log₁₀ reduction or greater (a 99.9999% reduction or greater of the organism population);

(B) fungi - *Candida albicans* (ATCC 18804), *Penicillium chrysogenum* (ATCC 24791), or *Aspergillus niger* at a 6 Log₁₀ reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage (ATCC15597-B1) at a 6 Log₁₀ reduction or greater;

(D) parasites - *Cryptosporidium* spp. oocysts or *Giardia* spp. cysts at a 6 Log₁₀ reduction or greater;

(E) mycobacteria - *Mycobacterium terrae*~~[-]~~ or *Mycobacterium phlei*~~[-]~~ or *Mycobacterium bovis* (BCG) (ATCC-35743) at a 6 Log₁₀ reduction or greater; and

(B) Bacterial spores - *Bacillus stearothermophilus* spores (ATCC 7953) or *Bacillus subtilis* spores (ATCC 19659) at a 4 Log₁₀ reduction or greater (a 99.99% reduction or greater of the organism population).

(iii) The Executive Secretary shall review the submitted materials and reply in writing within 30 days of the receipt of the ~~[submission]~~ treatment studies.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers ~~[at the bottom of]~~ in the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal

Date of Enactment or Last Substantive Amendment: [February 1, 2007]2010

Notice of Continuation: February 14, 2008

Authorizing, and Implemented or Interpreted Law: 19-6-105

Health, Community and Family Health
Services, Chronic Disease
R384-100-10
Penalties

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33138

FILED: 11/03/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature, See H.B. 32, 2009 General Session. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-30 and Section 26-5-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Civil money penalties are issued to providers who are not in compliance with state rules.
- ◆ **LOCAL GOVERNMENTS:** Some regulated entities that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
- ◆ **SMALL BUSINESSES:** In the state fiscal year 2009, no small businesses were assessed a civil money penalty for violation of this rule. It is possible but not likely with this rule change that a small business could be assessed a \$10,000 civil money penalty.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In the state fiscal year 2009, no businesses were assessed a civil money penalty for violation of this rule. It is possible but not likely with this rule change that a business could be assessed a \$10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the state fiscal year 2009, no businesses were assessed a civil money penalty for violation of this rule. It is possible but not likely with this rule change that a business could be assessed a \$10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Civil money penalties are an important tool to encourage

voluntary compliance with licensing standards. Due process protections are in place. The overall fiscal impact is small and may be avoided by following licensing requirements.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
CHRONIC DISEASE
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:

◆ Kathryn Rowley by phone at 801-538-6233, by FAX at 801-538-9495, or by Internet E-mail at krowley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R384. Health, Community and Family Health Services, Chronic Disease.

R384-100. Cancer Reporting Rule.

R384-100-10. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6 and are punishable [~~as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil money penalty of up to \$5,000 for each violation~~].

KEY: cancer, reporting requirements and procedures

Date of Enactment or Last Substantive Amendment: [~~August 16, 1999~~]**2010**

Notice of Continuation: March 25, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-5-3

Human Services, Substance Abuse
and Mental Health
R523-21
Division of Substance Abuse and
Mental Health Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33142

FILED: 11/04/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division proposes these rule changes to reflect current changes to statute and current practice. The Board of Substance Abuse and Mental Health was eliminated in the 2009 legislative session, 21 CFR no longer legislates methadone treatment, and a methadone data collection system no longer exists.

SUMMARY OF THE RULE OR CHANGE: All references to the State Board of Substance Abuse and Mental Health are being removed and replaced with the division. Reference to 21 CFR has been removed and replaced with 42 CFR. Reference to Levo Alpha Acetyl Methadol, a substance no longer used in opioid treatment, has been removed. Reference to a database has been removed and division duties in monitoring methadone treatment have been added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-105(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These rule changes neither increase nor decrease the activities and duties of the division and its staff.
- ◆ LOCAL GOVERNMENTS: Local governments do not monitor or regulate methadone treatment providers. Therefore, there are no costs or savings to local government.
- ◆ SMALL BUSINESSES: These rule changes do not alter or add requirements to methadone provider agencies that already exist. No other small businesses are affected or provide services covered by this rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other persons are affected or provide services covered by these rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes are technical in nature and reflect current practice so no compliance costs are associated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful review, the Department of Human Services has determined that these rule changes will have no financial impact on businesses in the state of Utah.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
ROOM 209
120 N 200 W
SALT LAKE CITY, UT 84103-1500

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Thom Dunford by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at tdunford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Lisa-Michele Church, Executive Director

**R523. Human Services, Substance Abuse and Mental Health.
R523-21. Division of Substance Abuse and Mental Health Rules.**

R523-21-1. Rules Governing Methadone Providers.

[+](1) The ~~Board~~Division of Substance Abuse and Mental Health under the authority granted to it by Section 62A-15-105(5), establishes the following standards for providers of methadone and ~~Levo Alpha Acetyl Methadol (LAAM)~~other opioid treatment medication services[+].

[a-](2) All Substance Abuse providers, contractors or licensed persons who dispense methadone or ~~LAAM~~other opioid treatment medications shall:

[i-](a) [C]comply with all Federal regulations, including ~~21 CFR part 291.501 and 505, April 1, 1995 edition, which is incorporated by reference within this rule~~42 CFR Part 8;

[ii-](b) [C]comply with all State, and Local requirements regulating licensing for the purchasing, possession, distribution, and dispensing of methadone or ~~LAAM~~other opioid treatment medications;

[iii-](c) [C]comply with all ~~rules in Section R523-20-2 through R523-20-12 as required~~requirements of ~~any~~licensed ~~or certified~~substance abuse treatment programs; and

[iv-](d) [C]comply with the requirements of the ~~March 18, 1996 revision of the~~ Utah Department of Human Services "Provider Code of Conduct".[

~~b. Failure to comply with these provisions shall constitute grounds for revocation of licensure or contracts with the division.]~~

R523-21-2. ~~Establishment and Maintenance of Methadone Data Collection System~~Division Duties in Monitoring Methadone Treatment.

[+](1) The Division of Substance Abuse and Mental Health, in consultation with, and receiving input from the licensed ~~methadone and LAAM providers~~Opioid Treatment Providers (OTPs) in the state, shall:

[a-] ~~establish and maintain a methadone data collection system for methadone or LAAM clients to ensure that duplication of methadone or LAAM dosing does not occur; and~~

~~b. present an annual report to the Board of the data collection system and the data obtained:]~~(a) conduct regular meetings of the licensed OTPs in the state;

(b) work with licensed OTPs and other agencies as necessary to preclude dual enrollments of clients;

- (c) disseminate current research and information pertaining to opioid treatment;
- (d) review and act on Exemption Requests to Federal Take Home regulations in accordance with 42 CFR Part 8; and
- (e) develop and promulgate a protocol for take home exceptions for long distance clients in conjunction with the Center for Substance Abuse Treatment's Division of Pharmacologic Therapies and the licensed OTPs with the state.

KEY: methadone programs

Date of Enactment or Last Substantive Amendment: ~~July 19, 1996~~**2010**

Notice of Continuation: April 6, 2006

Authorizing, and Implemented or Interpreted Law: 62A-15-105(5)

**Public Safety, Driver License
R708-41
Requirements for Acceptable
Documentation, Storage and
Maintenance**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33143
FILED: 11/05/2009**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change to this rule is the federal law that requires an electronic verification of an applicant's social security number during every license and identification card application will likely be repealed. If the federal law is not repealed, the division will write a policy and procedure to address this requirement. However, the division does not want to incur the transaction fees for every application if it is not required by federal law.

SUMMARY OF THE RULE OR CHANGE: The change will give the division the discretion to electronically verify an applicant's social security number during every application process rather than require the verification during every application process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Social Security Administration office currently charges \$0.06 for each electronic social

security number verification. The division will save approximately \$12,000 per year by only verifying the social security number for original applicants and not those applicants' social security numbers that have been previously verified by the division.

♦ **LOCAL GOVERNMENTS:** Local governments are not involved in providing license or identification cards.

♦ **SMALL BUSINESSES:** Small businesses are not involved in providing license or identification cards.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons are not affected because they are not charged the transaction fee for the electronic social security verification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Other persons are not affected because they are not charged the transaction fee for the electronic social security verification.

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

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

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:

♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.

R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.

R708-41-1. Authority.

This rule is authorized by Section 53-3-104.

R708-41-2. Purpose.

The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

R708-41-3. Definitions.

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

(i) United States citizen;

(ii) National; or

(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;

(iv) Pending or approved application for temporary protected status in the United States;

(v) Approved deferred action status; or

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status; or

(F) Pending application for adjustment of status to legal permanent resident or conditional resident.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and ~~must~~ may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed and has not been laminated or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;
 (c) Current mortgage or rental contract;
 (d) Major credit card bill (dated within 60 days);
 (e) Property tax notice (statement or receipt dated within one year);
 (f) School transcript (dated within 90 days);
 (g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;
 (h) Valid Utah vehicle registration or title;
 (i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL [e]Certificate, Limited-Term CDL [e]Certificate, Identification [e]Card, or Limited-[t]Term Identification [e]Card.

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or
 (b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or
 (c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and
 (d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and
 (e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and
 (d) Evidence of their current Utah residence address as outlined in definition (17); and
 (e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.
 (f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and
 (d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and
 (c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a CDL must provide their Social Security card for every application; and
 (d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and
 (b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and
 (c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and
 (d) Evidence of their current Utah residence address as outlined in definition (17); and
 (e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for a limited-term CDL must provide their Social Security card for every application; and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6) (c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

R708-41-5. Exceptions.

This rule does not apply when issuing driver license certificates or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

R708-41-6. Document Storage.

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access.

KEY: license certificate, limited-term license certificate, identification card, acceptable documents

Date of Enactment or Last Substantive Amendment: ~~January 1,~~ 2010

Authorizing, and Implemented or Interpreted Law: 53-3-104, 53-3-205, 53-3-214, 53-3-410, 53-3-804

Regents (Board of), University of Utah, Administration

R805-4

Illegal, Harmful and Disruptive Behavior on University of Utah Property

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33146

FILED: 11/12/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to identify activities and behaviors that are prohibited on the University of Utah campus and its properties. The rule also identifies possible sanctions for individuals who engage in such behaviors and the processes for enforcement and discipline.

SUMMARY OF THE RULE OR CHANGE: The rule provides a list of illegal, harmful, and disruptive activities and behaviors that are prohibited on the University of Utah campus and its properties. The rule identifies possible sanctions for individuals who engage in such activities. The rule notes that employees and students of the University who violate the rule will be disciplined through University disciplinary proceedings. The rule notes that members of the public who violate the rule may be subject to citation, temporary eviction, or lengthier eviction after an informal adjudicative proceeding.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53B-2-106 and Section 63G-4-102 and Section 76-8-701 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The university anticipates no costs or savings to the state budget as a result of the rule because the state will have no obligations for implementation of the rule. The rule will, however, result in savings to the University of Utah because the university will have better tools to effectively deal with illegal and disruptive conduct on its properties.

◆ **LOCAL GOVERNMENTS:** The university anticipates no costs or savings to local government as a result of the rule because the rule does not apply to local governments and local governments will have no obligations for implementation of the rule.

◆ **SMALL BUSINESSES:** The university anticipates no costs or savings to small businesses as a result of the rule. The rule governs the conduct of individuals, not businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The only persons who will be affected by the rule are those individuals who violate the rule and who may receive criminal or civil sanctions as a result of their actions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons who violate the rule may be subject to civil and criminal sanctions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule applies to individuals who engage in inappropriate activities and conduct on the university's property. The rule does not apply to business entities. Therefore, the rule should have no fiscal impact on businesses.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH, ADMINISTRATION
ROOM 309 PARK BLDG
201 S PRESIDENTS CIR
SALT LAKE CITY, UT 84112-9009
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Robert Payne by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2010

AUTHORIZED BY: Robert Payne, Associate General Counsel

R805. Regents (Board of), University of Utah, Administration.

R805-4. Illegal, Harmful, and Disruptive Behavior on University of Utah Property.

R805-4-1. Purpose.

1. To identify activities and behaviors that are prohibited on the University of Utah campus and its properties.

2. To identify possible sanctions for persons who engage in such behaviors and the process for enforcement and discipline.

R805-4-2. Definitions.

1. "University of Utah Community Member" means a University of Utah faculty member, staff member, student or any other person who is invited to participate in University of Utah events and activities.

2. "University property" means the university campus and any other property owned, operated or controlled by the University of Utah and specifically includes the University's grounds, buildings and roadways.

R805-4-3. Prohibited Activities.

A. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that violate state or federal criminal laws.

B. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that violate the policies, procedures, regulations and rules of the University of Utah.

C. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that are violent, obscene or disorderly.

D. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that obstruct, disrupt or otherwise interfere with the University's educational process, including but not limited to its academic, business, administrative and recreational meetings and processes.

E. No person may enter onto, or remain upon, University property that is not open to the general public absent a specific authorization or invitation by a University of Utah Community Member authorized to allow such entry.

F. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, stealing or using without authorization any real or personal property owned by the University of Utah or owned by a University of Utah Community Member.

G. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that injure, deface, damage or destroy any real or personal property owned by the University of Utah or owned by a University of Utah Community Member.

H. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that cause injury to a University of Utah Community Member.

I. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, verbal or physical conduct of a sexual nature toward a University of Utah Community Member that has the purpose or effect of unreasonably interfering with the individual's employment or education performance or creates an intimidating, hostile, or offensive environment for that individual's employment, education, living environment, or participation in a university activity.

J. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that interfere with another person's lawful and authorized access, ingress and egress to University property, including its grounds, buildings and roadways.

K. No person may enter upon or remain upon University property for the purpose of, or in the actual commission of, activities that incite, support, encourage, aid or abet others to commit one or more of the activities listed in the paragraphs A-J above.

R805-4-4. Sanctions.

1. University students, university staff and university faculty who violate this rule may be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

2. Members of the public who violate this rule may be subject to one or more of the following sanctions:

a. Issuance of a citation for criminal trespass pursuant to Section 76-6-206;

b. Issuance of citation and temporary eviction from, and denial of access to, University property pursuant to Sections 76-8-701 through 76-8-718; and

c. Eviction from, and denial of access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

KEY: illegal behavior, disruptive behavior, harmful behavior, trespassing

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, Implemented, or Interpreted Law: 53B-2-106; 63G-4-102; 76-8-701 et seq.

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.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends December 31, 2009.

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.

From the end of the 30-day waiting period through March 31, 2010, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; 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, Solid and Hazardous Waste

R315-2

General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 32967

FILED: 11/12/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to adopt equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This change in proposed rule revises a proposed change that was published in the October 1, 2009, issue of the Utah State Bulletin. This rule change was originally proposed so that Utah rules would be equivalent with corresponding federal rules. During the public comment period, the state received a comment that the U.S. EPA will withdraw this proposed rule from the federal regulations. The state therefore does not want to adopt this rule change. The rule that is being deleted would have expanded the exclusion from the definition of solid waste, fuels that include certain hazardous secondary materials called "emission comparable fuel". (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the October 1, 2009, issue of the Utah State Bulletin, on page 94. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no additional costs or savings for the state budget beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

◆ **LOCAL GOVERNMENTS:** There are no additional costs or savings for local government beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

◆ **SMALL BUSINESSES:** There are no additional costs or savings for small businesses beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no additional costs or savings for other persons beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional costs or savings for affected persons beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no additional costs or savings for businesses beyond those associated with implementing and complying with the federal hazardous waste regulations previously promulgated by EPA and which are part of this proposed rule change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Susan Toronto by phone at 801-538-6776, by FAX at 801-538-6715, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2009

THIS RULE MAY BECOME EFFECTIVE ON: 01/15/2010

AUTHORIZED BY: Dennis Downs , Director

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

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

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

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

.....

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

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

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

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

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

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

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR

63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels~~[, emission-comparable fuels,]~~ or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation, provided that:

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

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

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

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

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner

which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

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

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

(vi) For purposes of R315-2-4(a)(7), mineral processing spent materials must be the result of mineral processing and may

not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

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

.....

KEY: hazardous wastes

Date of Enactment or Last Substantive Amendment:
[2009]2010

Notice of Continuation: August 24, 2006

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Health, Medical Examiner **R448-10** Unattended Death and Reporting Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33140
FILED: 11/04/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5. It clarifies the meaning of unattended death under the provisions of Subsection 26-4-2(8) and the requirements of Section 26-4-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule clarifies the definition of what is an "unattended death." Its provisions help assure that deaths which can be appropriately certified by a treating health practitioner do not unnecessarily come to the Office of the Medical Examiner for investigation, examination, and certification. Therefore, this rule should be continued.

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

HEALTH
MEDICAL EXAMINER
48 N MEDICAL DR
SALT LAKE CITY, UT 84113-1105
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Todd Grey by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/04/2009

Health, Medical Examiner **R448-20** Access to Medical Examiner Reports

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33141
FILED: 11/04/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-1-5. It establishes who may, under the provisions of Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments received during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule clarifies the definition of "next of kin" for the purposes of who may obtain records from the Office of the Medical Examiner. Therefore, this rule should be continued.

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

HEALTH
MEDICAL EXAMINER
48 N MEDICAL DR
SALT LAKE CITY, UT 84113-1105
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Todd Grey by phone at 801-584-8410, by FAX at 801-584-8435, or by Internet E-mail at toddgrey@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/04/2009

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 32974 (AMD): R156-55a. Utah Construction Trades
Licensing Act Rule
Published: 10/01/2009
Effective: 11/10/2009

No. 32973 (AMD): R156-60b. Marriage and Family Therapist
Licensing Act Rule
Published: 10/01/2009
Effective: 11/16/2009

Real Estate

No. 32956 (AMD): R162-150. Appraisal Management
Companies
Published: 10/01/2009
Effective: 11/13/2009

Education

Administration
No. 32979 (AMD): R277-470. Charter Schools
Published: 10/01/2009
Effective: 11/09/2009

No. 32980 (AMD): R277-704-3. Financial and Economic
Literacy Student Passport
Published: 10/01/2009
Effective: 11/09/2009

No. 32981 (AMD): R277-733. Adult Education Programs
Published: 10/01/2009
Effective: 11/09/2009

Human Services

Recovery Services
No. 32953 (AMD): R527-3. Definitions
Published: 10/01/2009
Effective: 11/10/2009

No. 32952 (AMD): R527-3. Definitions
Published: 10/01/2009
Effective: 11/10/2009

No. 32951 (AMD): R527-201. Medical Support Services
Published: 10/01/2009
Effective: 11/10/2009

No. 32890 (AMD): R527-258. Enforcing Child Support When
the Obligor is an Ex-Prisoner or in a Treatment Program
Published: 09/15/2009
Effective: 11/03/2009

Workforce Services

Employment Development
No. 32910 (AMD): R986-200-244. TANF Needy Family
(TNF)
Published: 09/15/2009
Effective: 11/03/2009

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2009, including notices of effective date received through November 16, 2009. 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 is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: <http://www.rules.utah.gov/research.htm>

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).
