UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The 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

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SPECIAL NOTICES

Alcoholic Beverage Control
Administration

Public Notice 2010 Alcohol Beverage Control Commission Meeting Schedule

Public notice is hereby given of the proposed 2010 calendar year meeting schedule for the Utah Alcoholic Beverage Control (ABC) Commission. The Commission meets monthly at the department's administrative office located at 1625 South 900 West in Salt Lake City, Utah. Meetings are normally held the fourth Tuesday of each month at 9:00 a.m. with the meetings in November and December held the third Tuesday at 9:00 a.m. to accommodate for the holiday season. ABC Commission meetings are open to the public. Meeting dates and times are subject to change.

To confirm meeting dates and times, contact Sharon Mackay at (801) 977-6801.

Commerce
Occupational and Professional Licensing

Notice of Hearing Cancellation for Rule R156-1a (DAR No. 33228)

The Division of Occupational and Professional Licensing (DOPL) provides notice that a scheduled rule hearing for Rule R156-1a on January 11, 2010, is canceled. This rule was originally published in the December 15, 2009, issue of the Utah State Bulletin under DAR No. 33228. DOPL has elected to mail a letter containing the notice of cancellation to interested parties, as well as publish the text of the letter in the Utah State Bulletin, in the interest of informing as many persons as possible (see the following).

FROM: Mark B. Steinagel, Director, Division of Occupational and Professional Licensing

TO: All Interested Parties

SUBJECT: Draft Limited Online Prescribing Permit Rule Update -- Hearing Canceled

DATE: December 28, 2009

I am writing this letter to give you a further status update regarding the Limited Online Prescribing Permit Rule that was published in the December 15, 2009 edition of the Utah State Bulletin. You can access our filing at www.dopl.utah.gov/proposed_rules.html or at www.rules.utah.gov/publicat/bulletin.htm.

By way of reminder, the 30 day public comment period on our filing is ongoing and written comments will be received until January 14, 2010.

Last week I was contacted by Senator Curtis Bramble of the Utah State Legislature. He indicated that it is his intent to sponsor legislation to further clarify the regulatory landscape of the online prescribing arena.

Senator Bramble requested that we delay taking action by rulemaking until after the upcoming 2010 Legislative Session. He further indicated that it is his intent to meet with stakeholders on the issues sometime in early January 2010. I have committed to work closely with Senator Bramble on the issues. The 2010 Legislature convenes on January 25, 2010 and adjourns on March 11, 2010.

In light of this development I have determined it is appropriate to cancel the optional public hearing that was scheduled to be held on January 11, 2010. Notice of the cancellation should appear in the January 1, 2010 Utah State Bulletin.

This action does not limit my option to finalize the rule filing no later than 120 days after the publication date, or no later than April 14, 2010. I also have the option of revising the proposed rule filing within the 120 days. This would trigger another publication, another public comment period, and optionally another public hearing.

It is my intent to await any further legislative action before determining how to proceed with the rule filing, to include rescheduling the public hearing on the filing if I consider it necessary and appropriate, filing a revised proposed rule that addresses any changes made by the Legislature, letting the current rule filing expire, filing a new rule filing, etc.

I encourage your continued participation in both the legislative and the rulemaking arena. Please understand that our rulemaking in this arena is dependant upon enabling legislation. In other words, our rulemaking authority must come from statute. Your involvement in the policy discussion at the Legislature will ensure the best end product.

Our oft-repeated goals remain the same: (1) protection of public health, safety, and welfare; (2) transparency of the regulatory scheme; (3) predictability of the application process; and (4) a level playing field.

Please contact me if you have any questions or concerns.

Thank you again for your participation.

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 Executive Order 2009-05-EO: Implementing a Statewide Budget Reduction through June 30, 2010

EXECUTIVE ORDER

Implementing a Statewide Budget Reduction through June 30, 2010

WHEREAS, global economic turmoil has significantly impacted Utah's economy and State revenues began declining at the end of State Fiscal Year 2007;

WHEREAS, the November 2009 Consensus Revenue Projection produced by the Governor's Office of Planning and Budget, the Office of the Legislative Fiscal Analyst, and the Utah State Tax Commission anticipate that revenues will be $157 million lower in State Fiscal Year 2010 than budgeted during the 2009 General Session;

WHEREAS, the rate of economic contraction is now decelerating and the State's unemployment rate remains well below the national average, leading the American Legislative Exchange Council to rank Utah as being the state positioned to emerge first from the recession;

WHEREAS, despite these positive indicators, immediate action is nonetheless necessary to lower State spending for FY 2010 and ensure that essential State services remain available to citizens of Utah.

NOW, THEREFORE, **I**, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order:

1. The director of each State department, agency or institution shall implement a budget reduction equivalent to a 3% cost of living adjustment through June 30, 2010. The director of each State department, agency or institution shall use his or her discretion regarding the implementation of the 3% reduction, including savings from items two through six, and State employee furloughs, so long as the reduction is completed by June 30, 2010.

2. All out-of-state travel funded by the State shall be approved by the director of the State department or agency administering such funds.

3. Attendance at out-of-state conventions and conferences shall be limited to only the necessary number of individuals from any single State department or agency as determined by the director. The director of each State department or agency shall further seek to cooperate with the other department or agency directors to ensure that only the necessary number of individuals represent the State at any out-of-state convention or conference.

4. Where available and appropriate, all State departments or agencies shall utilize teleconference technology to reduce the necessity of in-state or out-of-state travel.

5. All new hires within each State department or agency shall be limited to essential personnel and shall be approved by the director. The director shall report all new hiring within the department or agency to the Governor's Office on a monthly basis.

6. The director of each State department or agency shall review spending and eliminate all nonessential expenditures. As part of this plan, each director shall:

(a) Reduce meetings of boards, councils and commissions where practicable and where permitted by statute;

(b) Consolidate all online and print subscriptions, and reduce, where appropriate, the number of printed reports through the implementation of online resources;

(c) Delay all computer and information technology purchasing, where such delay would not unreasonably interfere with the department or agency' core purpose and function;

(d) Review all cell phone plans, usage and policies, eliminate all unnecessary employee cell phone accounts, and ensure employees who require cell phones have appropriate plans;

(e) Review and, where possible, reduce or eliminate fleet usage by State employees within the department or agency; and

(f) Eliminate purchasing of all non-critical office supplies and amenities such as food, bottled water, and soft drinks.

7. This Order shall be effective immediately, and unless extended by a subsequent executive order, shall remain in effect until June 30, 2010.

IN WITNESS 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 11th day of December 2009.

(State Seal)

Gary R. Herbert
Governor

Attest:

Greg Bell
Lieutenant Governor

2009/05/EO

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 December 02, 2009, 12:00 a.m., and December 15, 2009, 11:59 p.m. are included in this, the January 01, 2010 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 February 1, 2010. 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 May 1, 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** or 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

Commerce, Consumer Protection
R152-11-1
Purposes, Rules of Construction

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33238
FILED: 12/02/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to include a definition of "express authorization" for clarification of Section R152-11-5.

SUMMARY OF THE RULE OR CHANGE: A definition of "express authorization" is set forth and subsequent definitions are renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-2-5 and Section 63G-4-3 and Title 13, Chapter 11

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected by defining the term "express authorization".
♦ LOCAL GOVERNMENTS: Local government does not administer this agency's rules, thus, local governments' budgets will not be affected.
♦ SMALL BUSINESSES: It is difficult to ascertain the cost impact to suppliers who must take more care in documenting a consumer's express authorization for services.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is difficult to ascertain the cost impact to suppliers who must take more care in documenting a consumer's express authorization for services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is difficult to ascertain the cost impact to suppliers who must take more care in documenting a consumer's express authorization for services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies definitions and sets forth specific acts or practices that violate the deceptive act or practices statute. As indicated in the rule summary, it is difficult to ascertain the cost impact to suppliers who must take more care in documenting a consumer's express authorization for services and take other steps to comply with the rules against deceptive practices.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act.
R152-11-1. Purposes, Rules of Construction.

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules are intended to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

B. Definitions.

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Express Authorization" means the agreement of the consumer expressed in a form that is evidenced by a written agreement signed by the consumer or by any electronically transferred authorization from the consumer that is stored, recorded, or retained by the supplier, such as a facsimile transmission, e-mail, telephonic, or other electronic means.

[~~(3)~~](4) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

[~~(4)~~](5) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

[~~(5)~~](6) "Service" means performance of labor or any act for the benefit of another.

[~~(6)~~](7) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

[~~(7)~~](8) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.[

~~(8) "Service" means performance of labor or any act for the benefit of another.~~]

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

KEY: advertising, bait and switch, consumer protection, negative options
Date of Enactment or Last Substantive Amendment: [~~December 22, 2006~~]2010
Notice of Continuation: February 1, 2007
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-11

Commerce, Consumer Protection
R152-11-5
Repairs and Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33239
FILED: 12/02/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the types of repairs and services that are governed by the administrative rule.

SUMMARY OF THE RULE OR CHANGE: The amendment specifies which acts and practices are deceptive in connection with repairs and maintenance and which are deceptive in connection with other types of services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-11-9 and Subsection 13-11-8(2) and Subsection 13-2-5(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected by clarifying the types of acts and practices in connection with consumer transactions that are deceptive.
♦ LOCAL GOVERNMENTS: Local government does not administer this agency's rules, thus, local governments' budgets will not be affected.
♦ SMALL BUSINESSES: It is difficult to ascertain the cost impact to small businesses who must take steps to comply with the rules against deceptive practices.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is difficult to ascertain the cost impact to persons who must take steps to comply with the rules against deceptive practices.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is difficult to ascertain the cost impact to persons who must take steps to comply with the rules against deceptive practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing sets forth specific acts or practices that violate the deceptive act or practices statute. As indicated in the rule summary, it is difficult to ascertain the cost impact to suppliers who must take steps to comply with the rules against deceptive practices.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
CONSUMER PROTECTION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act.
R152-11-5. Repairs and Service[s].

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs, inspections, or other similar services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of [~~$25~~]$50, [~~the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, ~~]a transcript or copy of [~~which~~]the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. [~~The consumer's express authorization for such additional repairs, inspections, or other services shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a~~]A transcript or copy of [~~which~~]the consumer's express authorization shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of repairs, inspections, or other services performed and the reason for such repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

B. It shall be a deceptive act or practice in connection with a consumer transaction involving all other services not covered under Section A for a supplier to:

(1) Intentionally understate or misstate the estimated cost of the services to be provided;

(2) Fail to obtain the consumer's express authorization prior to performing services that exceed a value of $50;

(3) Fail to obtain the consumer's express authorization for any change orders, cost increases, or other amendments to the parties' contract;

(4) Fail to give the consumer written documentation containing the terms of any warranty made with respect to labor, services, products, or materials furnished;

(5) Misrepresent that the supplier has the particular license, bond, insurance, qualifications, or expertise that is related to the work to be performed;

(6) Misrepresent that the consumer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement;

(7) Fail to timely complete performance under the contract as represented unless the cause for the delay is beyond the supplier's control or the supplier obtains the consumer's express authorization to the supplier's delay;

(8) Wrongfully refuse to perform any obligation under a contract with the intent to induce the consumer to agree to pay a higher price than originally agreed to in the contract; or

(9) Misrepresent or mislead the consumer into believing that no obligation will be incurred because of the signing of any document, or that the consumer will be relieved of some or all obligations under a contract by the signing of any document.

KEY: advertising, bait and switch, consumer protection, negative options
Date of Enactment or Last Substantive Amendment: [~~August 19, 2009~~]2010
Notice of Continuation: February 1, 2007
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-11

Commerce, Occupational and Professional Licensing
R156-31b-701a
Delegation of Nursing Tasks in a School Setting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33266
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Board of Nursing reviewed this rule and determined that amendments are necessary to amend the rule regarding delegation of medications in the school setting to indicate when delegation is appropriate based on the effects of the medication. The proposed amendments require any unlicensed person who administers medication to be trained annually by a school nurse. Specific requirements for insulin and glucagon were deleted because the information is subsumed in the nonspecific language in the section. Having specifically addressed two drugs, school nurses were unsure how to deal with drugs not mentioned in this section. It was determined that it would be better to address the issue of medications and medication administration in the school setting in general rather than pointing out specific drugs. Also, the language concerning specific requirements for the student health plan were deleted to reflect the move toward a more generalized rule.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-31b-701a(1), the amendment requires any unlicensed person who administers medications in a school setting must have annual training from a school nurse. In Subsection R156-31b-701a(2), the amendment indicates that the action of a medication determines whether or not it can be delegated. In Subsection R156-31b-701a(3), the amendment clarifies that medications that require monitoring a student before, during, or after administration cannot be administered by an unlicensed person. In Subsections R156-31b-701a(5) and (6), the amendment combines current language and allows an unlicensed person to provide a scheduled or corrective dose of insulin. Existing language specific to insulin and glucagon is deleted but additions are made to include all types of medications and also includes current specific information related to insulin and glucagon that is not generalizable to other medications.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: There could be an effect on local school districts if a student needs a medication administered that requires a licensed nurse. The school district could utilize existing school nurses if possible or may need to hire a home health agency or private duty nurse to administer the medication. Exact costs to a school district are unknown. It is generally known that Utah as a whole is experiencing a shortage of school nurses. These proposed amendments could intensify that shortage if more and more students are attending school and requiring medication administration.
♦ SMALL BUSINESSES: There should be no effect on small businesses. If a school qualifies as a small business, it most likely would fall under the exemption in education statutes for private schools and there would be no school nurse involved.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is a potential effect in that a student may need a licensed nurse to administer a medication rather than an unlicensed person. It would be the decision of the school nurse whether or not to delegate the administration of a medication to an unlicensed person based on the effects of the medication, need for monitoring the student and whether

or not the administration requires nursing knowledge. The exact costs are unknown. The positive effect is that medications which can be life-threatening cannot be delegated to an unlicensed person to administer and a life may be saved.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unlicensed people accepting the delegated task to administer a medication will require annual training to ensure competency. This training should already be in effect; therefore no additional costs are anticipated for the annual training. It is possible a school may have to make arrangements for a medication to be administered by a nurse and not an unlicensed person. The extent of that possibility is unknown to the Division and any resulting cost is also unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing beyond those already addressed in the rule summary.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-701a. Delegation of Nursing Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of nursing tasks in a school setting is further defined, clarified, or established as follows:

(1) Any task being delegated by the school nurse shall be identified within a current IHP. The IHP is limited to a specific delegatee for a specific time frame. Any unlicensed person who administers medication to a student as a delegatee of a school nurse, must receive training from a school nurse at least annually.

(2) [~~In accordance with Section 53A-11-601 and an IHP, it is appropriate for a nurse to provide training to unlicensed assistive personnel, which training includes the routine, scheduled or correction injection of insulin (via actual injection or pump) or the administration of glucagon in an emergency situation, provided that any training regarding the injection of insulin and the administration of glucagon is updated at least annually. The selection of the type of insulin and dosage levels shall not be delegated.~~]The action of a medication shall determine if the drug is appropriate to delegate the administration to an unlicensed person. Any medication with known, frequent side effects that can be life threatening shall not be delegated.

(3) [~~In accordance with an IHP, and except as provided herein and in R156-31b-701, a nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to injection or administration. The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order and specified in the IHP, shall not be considered actions that require nursing assessment or judgment prior to administration and therefore, can be delegated to a delegatee.~~]Medications that require the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug shall not be administered by an unlicensed person.

(4) A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

(5) [~~An IHP shall be developed for any student receiving insulin in a school. By example, but not limited to the following list, the IHP may include:~~

~~(a) carbohydrate counting;~~
~~(b) glucose testing;~~
~~(c) activation, suspension, or bolus of an insulin pump;~~
~~(d) usage of insulin pens, syringes, and an insulin pump;~~
~~(e) copy of the medical orders; and~~
~~(f) emergency protocols related to glucagon administration.~~]A nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to or immediately after administration.

(6) The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP:

(a) are not actions that require nursing assessment or judgment prior to administration; and

(b) may be delegated to a delegatee. Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.[~~Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.~~

~~(a) Dosages of insulin may be injected by the delegatee as designated in the IHP.~~

~~(b) Non-routine, correction dosages of insulin may be given by the delegatee only after:~~

~~(i) following the guidelines of the IHP; and~~

~~(ii) consulting with the delegator, parent or guardian, as designated in the IHP, and verifying and confirming the type and dosage of insulin being injected.~~

~~(c) Under Subsection (6), insulin and glucagon injections by the delegatee is limited to a specific delegatee, for a specific student and for a specific time.~~

~~(7) A student who is capable of administering his own insulin may self-administer insulin as provided in the IHP. A delegatee may verify the insulin dose of a student who self-administers insulin, if such verification is required in the IHP.~~

~~(8) When the student is not capable of self-administration, scheduled and routine correction doses of insulin may be administered, and the administration of glucagon may be performed, by a delegatee as provided in Subsection R156-31b-701a(2).~~]

KEY: licensing, nurses
Date of Enactment or Last Substantive Amendment: [~~July 9, 2009~~]2010
Notice of Continuation: April 1, 2008
Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing
R156-37-301
License Classifications - Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33264
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2008 Legislative Session in S.B. 56, the Naturopathic Physician Practice Act was amended to extend the scope of prescribing to testosterone. The Controlled Substances Act was also amended to reflect the naturopathic physician as a prescribing practitioner. However, this rule was not previously changed to include naturopathic physicians as a licensee who is qualified to be issued a controlled substance license. This rule change also moves the license category of certified registered nurse anesthetist to the advanced practice registered nurse category to better reflect changes made to the Nurse Practice Act in 2007 in S.B. 45. (DAR NOTES: S.B. 56 (2008) is found at Chapter 238, Laws of Utah 2008, and was effective 05/05/2008. S.B. 45 (2007) is found at Chapter 57, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: Subsection R156-37-301(1)(i) is amended to move the certified registered nurse anesthetist under the advanced practice registered nurse category. Subsection R156-37-301(1)(k) is amended to add a naturopathic physician as a license category who is qualified to be issued a controlled substance license.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-37-6(1)(a) and Subsection 58-37-7.5(7)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed advanced practice registered nurse-certified registered nurse anesthetists and naturopathic physicians and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed advanced practice registered nurse-certified registered nurse anesthetists and naturopathic physicians and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. A licensed naturopathic physician could be a small business owner and the ability to obtain a controlled substance license and Drug Enforcement Administration (DEA) registration to prescribe testosterone may increase the number of patients for whom the naturopathic physician can provide services thus providing a positive effect on the practice/business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed advanced practice registered nurse-certified registered nurse anesthetists and naturopathic physicians, applicants for licensure in those classifications and patients who may utilize the services of a naturopathic physician. A client of a naturopathic physician who needs testosterone therapy may be able to receive a prescription from the naturopathic physician and not incur the unknown costs of seeing another prescribing practitioner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed advanced practice registered nurse-certified registered nurse anesthetists and naturopathic physicians, applicants for licensure in those classifications and patients who may utilize the services of a naturopathic physician. A naturopathic physician who chooses to obtain a controlled substance license and a DEA registration to prescribe testosterone will incur the cost of a state controlled substance license ($90 initial application fee and $45 renewal fee every two years) and a DEA registration ($390 every three years). It is unknown whether these costs will be recovered by increasing the cost of a patient visit. It is also unknown how many

licensed naturopathic physicians will apply for a controlled substance license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing beyond those already considered by the Legislature in passing statutory amendments to permit naturopathic physicians to prescribe testosterone.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;
(j) certified nurse midwife;
(k) [~~certified registered nurse anesthetist~~]naturopathic physician;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door;
(ii) hospital clinic pharmacy;
(iii) methadone clinics;
(iv) nuclear;
(v) branch;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility;
(viii) pharmaceutical administration facility; and
(ix) sterile product preparation facility.
(n) Class C pharmacy located in Utah engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling; and
(iv) distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases providers; and
(ii) analytical laboratories.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

KEY: controlled substances, licensing
Date of Enactment or Last Substantive Amendment: [~~April 21, 2009~~]2010
Notice of Continuation: March 15, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37-7.5(7)

Commerce, Occupational and Professional Licensing
R156-77-102
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33263
FILED: 12/14/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to a rule hearing, the Licensed Direct-Entry Midwife Administrative Rules Committee had

recommended changes to the definition of "weeks gestation" which Hunter Finch (from the Governor's Office of Planning and Budget, rules analyst), in his review deemed to be a substantive change. As result of Mr. Finch's review and comments to the Division, this rule filing is made.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-77-102(20) is amended to further clarify the definition of "weeks gestation" to indicate how the age of pregnancy is calculated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-77-202(4) and Subsection 58-77-601(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification and patients who utilize the services of a direct-entry midwife. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification and patients who utilize the services of a direct-entry midwife. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification and patients who utilize the services of a direct-entry midwife. The Division does not anticipate any costs or savings as result of this rule amendment since the amendment is clarifying how the age of a pregnancy is calculated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed direct-entry midwives, applicants for licensure in that classification and patients who utilize the services of a direct-entry midwife. The Division does not anticipate any costs or savings as result of this rule amendment since the amendment is clarifying how the age of a pregnancy is calculated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing which clarifies a definition.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-77. Direct-Entry Midwife Act Rule.
R156-77-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 77, as used in Title 58, Chapter 77 or this rule:

(1) "Accredited school", as used in this rule, includes any midwifery school that has been granted pre-accredited status by MEAC.

(2) "Apgar score", as used in Section R156-77-601, means an index used to evaluate the condition of a newborn based on a rating of 0, 1, or 2 for each of the five characteristics of color, heart rate, response to stimulation of the sole of the foot, muscle tone, and respiration with 10 being a perfect score.

(3) "Appropriate provider", as used in Sections R156-77-601 and 602, means a licensed provider who is an appropriate contact person based on the provider's level of education and scope of practice.

(4) "Approved continuing education", as used in Subsection R156-77-303(3)(c), means:

(a) continuing education that has been approved by a nationally recognized professional organization that approves health related continuing education;

(b) a course offered by a post-secondary education institution that is accredited by an accrediting board recognized by the U.S. Department of Education, an MEAC approved midwifery program or accredited midwifery school, or an MEAC approved program or course; or

(c) continuing education that is sponsored or presented by MANA or any subgroup thereof, a government agency, a recognized direct-entry midwifery or health care association.

(5) "Collaborate", as used in Section R156-77-601, means the process by which an LDEM and another licensed health care provider jointly manage a specific condition of a client according to a mutually agreed-upon plan of care. The LDEM continues midwifery management of the client and may follow through with the medical management as agreed upon with the provider.

(6) "Consultation", as used in Section R156-77-601, means the process by which the LDEM discusses client status with an appropriate licensed health care provider by phone, written note,

or in person. The provider may give a recommendation for management, but does not assume the management of the client.

(7) "CPR", as used in this rule, means cardiopulmonary resuscitation.

(8) "C-section", as used in this rule, means a cesarean section.

(9) "LDEM", as used in this rule, means a licensed direct entry midwife licensed under Title 58, Chapter 77.

(10) "LDEM Outcome Database", as used in Section R156-77-604, means a web based application created by the Division to collect data regarding the outcome of pregnancies and deliveries managed by an LDEM.

(11) "MANA", as used in this rule, means the Midwives Alliance of North America.

(12) "MEAC", as used in this rule, means the Midwifery Education Accreditation Council.

(13) "Midwifery Care", as used in this rule, has the same meaning as the practice of direct-entry midwifery as defined in Subsection 58-77-102(8).

(14) "NARM", as used in this rule, means the North American Registry of Midwives.

(15) "Refer", as used in Section R156-77-601, means the process by which an LDEM directs the client to an appropriate licensed health care provider for management of a specific condition. The LDEM continues midwifery management of the client.

(16) "TOLAC", as used in Section R156-77-602, means a trial of labor after cesarean section.

(17) "Transfer", as used in Section R156-77-601, means the process by which an LDEM relinquishes management of a client to an appropriate licensed health care provider. The LDEM may provide on-going support services as appropriate.

(18) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 77, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-77-502.

(19) "VBAC", as used in this rule, means a vaginal birth after cesarean section.

(20) "Weeks gestation", as used in this rule, means the age of a pregnancy calculated using accepted pregnancy dating criteria such as menstrual or ultrasound dating, to determine an estimated date of delivery which equals 40 weeks 0 days gestation and is noted as 40.0.[~~ A gestation week starts at the beginning of that week; therefore, 36 weeks gestation is the start of the 36th week of pregnancy.~~]

KEY: licensing, midwife, direct-entry midwife
Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-77-202(4) 58-77-601(2)

Commerce, Occupational and Professional Licensing
R156-79
Hunting Guides and Outfitters Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33265
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Hunting Guides and Outfitters Licensing Board further reviewed the rule and determined that additional changes need to be made to clarify the first aid and CPR course and to change the experience requirements to on-the-job training.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-79-102(2), an amendment is made to add any other organization that offers a substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board. Similar amendments with respect to the first aid and CPR courses are also made in Section R156-79-601 and Subsection R156-79-602(13). In Section R156-79-302e, amendments are made to remove the term "experience" and replace it with the term "on-the-job training" and to define the amount of on-the-job training that is acceptable for hunting guides and outfitters.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-79-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. The proposed amendments do not make any changes that will cause any cost or savings impact to citizens of the state or to licensed hunting guides and outfitters.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed hunting guides and outfitters and applicants for licensure in those classifications. The proposed amendments do not make any changes that will cause any cost or savings impact to licensed hunting guides and outfitters.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated in this rule filing which further clarifies the experience requirement and the standards for CPR and first aid training.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-79. Hunting Guides and Outfitters Licensing Act Rule.
R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:

(a) the American Red Cross; [~~or~~]

(b) the American Heart Association; or

(c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board, to denote the individual whose name and signature appear [~~thereon~~]on the certificate has successfully completed [~~an~~]the applicable [~~American Red Cross or American Heart Association~~]first aid and CPR course.

(3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-302e. Qualifications for Licensure - [~~Experience~~]Equivalent Training Requirements.

(1) For the purposes of this rule, to show an applicant meets the training requirements as a hunting guide, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic hunting guide training program pursuant to Section R156-79-601; or

(b) documentation of 100 days of [~~experience as a hunting guide~~]on-the job training that is substantially equivalent to the basic hunting guide training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2) To show an applicant meets the training requirements as an outfitter, the applicant shall produce the following:

(a) documentation showing certification of completion of a basic outfitter training program pursuant to Section R156-79-602; or

(b) documentation of 100 days of [~~experience as an outfitter~~]on-the-job training that is substantially equivalent to the basic outfitter training program. No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) The documentation required in Subsections (1)(b) and (2)(b) shall include:

(a) an affidavit by either a hunting guide or outfitter attesting to the [~~experience~~]on-the-job training as a hunting guide or an outfitter claimed by the applicant;

(b) self-authenticating guarantees of reliability include, but are not limited to:

(i) federal land agency records;[~~and~~]

(ii) approved training program records; or

(iii) client affidavits or letters.

([~~3~~]4) Three days of [~~experience~~]on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school approved by the Division in collaboration with the Board.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;
(2) horsemanship;
(3) packing skills;
(4) transporting livestock;
(5) shoeing skills;
(6) use of a crosscut saw and ax;
(7) use of a chain saw;
(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) hunting guide regulations;
(13) [~~an~~]first aid and CPR training provided by:
(a) the American Red Cross;
(b) [~~or~~]the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board[~~ first aid and CPR course~~];
(14) orienteering and map reading;
(15) a basic off highway vehicle safety course;
(16) basic survival skills;
(17) trophy judging skills;
(18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;
(2) horsemanship;
(3) packing skills;
(4) transporting livestock;
(5) shoeing skills;
(6) use of a crosscut saw and ax;
(7) use of a chain saw;
(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) outfitter regulations;
(13) [~~an~~]first aid and CPR training provided by:
(a) the American Red Cross;
(b) [~~or~~]the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board[~~ first aid and CPR course~~];
(14) a basic off highway vehicle safety course;
(15) supervising clientele;
(16) hiring and supervising personnel;
(17) outfitter advertising;
(18) booking clientele;
(19) going into business for oneself;
(20) wilderness and back country manners;
(21) applying federal and state land use policies;
(22) obtaining all necessary licenses and permits and permissions for the client;
(23) providing staff and facilities for hunting;
(24) providing a hunting guide;
(25) orienteering and map reading;
(26) basic survival skills;
(27) trophy judging skills;
(28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters
Date of Enactment or Last Substantive Amendment: [~~December 8, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 58-79-101; 58-1-106(1)(a); 58-1-202(1)(a)

Community and Culture, Housing and Community Development, Community Services

R202-101

Qualified Emergency Food Agencies Fund (QEFAF)

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33252
FILED: 12/08/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to clarify allowable and non-allowable expenses under the Qualified Emergency Food Agencies Fund (QEFAF) program.

SUMMARY OF THE RULE OR CHANGE: Rules and regulations of allowable and non-allowable expenditures for the QEFAF program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-1409

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed rule is meant to clarify the statute and provide greater understanding on the use of QEFAF funds. The proposed rule will not create any additional compliance requirements, as such the proposed rule will not cause any cost to the state budget. No savings are anticipated either, as the proposed rule simply clarifies the use of funds appropriated for the QEFAF program.
♦ LOCAL GOVERNMENTS: Associations of local government may qualify for the QEFAF program. The proposed rule simply provides clarification of the existing statute. As such, the proposed rule does not require any additional requirements for local government and will not result in an increased cost. The proposed rule does clarify how the funds may be used but this is not expected to create any savings to local government as the funds are limited to storing, distributing, or directly providing food to low-income persons.
♦ SMALL BUSINESSES: No costs or savings are expected to small businesses. In order to qualify for the QEFAF program, the agency must be a 501(c)(3), or an association of governments which operates a program to store, distribute, or directly provide food to low-income persons. Small businesses pay federal taxes and are not classified as a 501(c)(3), nor are they an association of governments, therefore they cannot qualify for the QEFAF program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In order to qualify for the QEFAF program, the agency must be a 501(c)(3) or an association of governments which operates a program to store, distribute, or directly provide food to low-income persons. The proposed rule will only provide qualified agencies with clarification on the use of QEFAF funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule will not create any compliance costs, it is meant to provide clarification on how QEFAF funds may be used. Agencies are currently complying with statute for the QEFAF program, the proposed rule simply provides great direction and clarification on the use of QEFAF funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will pose no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
HOUSING AND COMMUNITY DEVELOPMENT,
COMMUNITY SERVICES
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jonathan Hardy by phone at 801-538-8650, by FAX at 801-538-8888, or by Internet E-mail at jhardy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Palmer DePaulis, Executive Director

R202. Community and Culture, Housing and Community Development, Community Services.
R202-101. Qualified Emergency Food Agencies Fund (QEFAF).
R202-101-1. Designation as a Qualified Emergency Food Fund Agency.

A. A qualified emergency food agency is an organization that is: a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or b) an association of governments which, as part of its activities operates a program that has as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons. For initial designation, an organization shall file an application with the State Community Services Office (SCSO) and must be approved as a qualified emergency food agency before receiving distributions under Utah Code Section 9-4-1409. The application form and instructions are available on the SCSO Website at http://housing.utah.gov/_scso/qefaf.html

B. After initial designation as a qualified emergency food agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments must continue to operate a program which has, as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons.

C. All organizations shall submit a current Board Roster and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Memorandum of Understanding each year.

R202-101-2. Use of Funds.

Funds received from the Qualified Emergency Food Agency Fund must be expended by the Qualified Agency only for purposes related to: a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or b) providing food and food ingredients directly to low-income persons.

R202-101-3. Allowable Expenditures.

A. Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food

ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

B. Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

C. Providing - Expenditures directly related to providing food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

D. Direct staff costs - is defined as salaries and wages, employer's payroll taxes, and fringe benefits for staff directly involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-QEFAF supported activities must be supported by time and activity reports.

E. Food and food ingredients - reasonable and necessary purchases of food and food ingredients that are warehoused, distributed, and/or provided directly to eligible low-income individuals and households is allowable.

F. Administrative Expenditures - QEFAF funds expended for administrative costs shall not exceed 5% of the total distributions received under the QEFAF program for any fiscal year. Any QEFAF funds unexpended as of the end of Qualifying Agency's fiscal year should be clearly identified and treated as temporarily restricted funds.

R202-101-4. Non-Allowable Expenditures.

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs mentioned above, are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients are not allowed. Any other expenditure not specifically listed under the sections above not allowed.

R202-101-5. Submission of Claims.

A. Claims shall be submitted no more frequent than monthly. Claims must be submitted by the Qualified Agency online using the Web Grants system at the following website address: http://www.webgrants.community.utah.gov

B. Claims shall be based on the eligible pounds of food donated to Qualified Agency during the fiscal year beginning July 1, 2009 and ending June 30, 2010 valued at the rate of $0.12 per pound.

R202-101-6. Limited Funds Available.

Funds available under the Qualified Emergency Food Agency Fund are limited. In the event funds deposited into the Qualified Emergency Food Agency Fund are insufficient to meet the claims for distribution received, the State Community Services Office (SCSO) shall make distributions to Qualified Agencies in the order that SCSO receives the claims. The time submitted as recorded in the Web Grants system shall be used to determine the order in which claims are received by SCSO.

R202-101-7. Eligible Pounds.

Eligible pounds shall mean the aggregate number of pounds of food and food ingredients, as defined in Utah Code Section 59-12-102 that are a) donated to Qualified Agency on or after July 1, 2009; and b) for which Utah sales or use tax was paid by the person donating the food or food ingredients.

R202-101-8. Recordkeeping Requirements.

A. Qualified Agency agrees to maintain receipts and other original records for donations of food and food ingredients, including schedules and work papers supporting claims made under the Qualified Emergency Food Agency Fund program. Such records must be maintained for a period of three years following the date of the last refund for fiscal year ending June 30, 2010.

B. Qualified Agency agrees to maintain a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all QEFAF funds, including accounting records that are supported by source documentation sufficient to determine that QEFAF funds were expended only for purposes as stated in Utah Code 9-4-1409 and the Use of Funds section above.

C. Qualified Agency agrees to maintain effective control and accountability for all QEFAF funds and all property, equipment, and other assets acquired with QEFAF funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the last refund for fiscal year ending June 30, 2010.

R202-101-9. Monitoring.

SCSO will monitor Qualified Agency's claims and may conduct one or more site visits to inspect records supporting the pounds of food and food ingredients claimed. SCSO may also review financial records to determine that distributions received are expended in accordance with Utah Code Section 9-4-1409(8). Qualified Agency agrees to provide all information needed by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

R202-101-10. Overpayment Recoupment.

A. Amounts claimed by Qualified Agency under this agreement that are determined by audit to be ineligible for reimbursement because a) such claims were based on ineligible

food or food ingredient donations; or b) lack of adequate documentation to support the total poundage of food or food ingredient donations claimed shall be immediately returned to the State.

B. Expenditures of QEFAF funds determined by audit to be unallowable because 1) funds were used for purposes not specified above under Use of Funds; or 2) expenditures not supported by adequate source documentation shall be a) immediately returned to the State; or b) properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purposed specified under Use of Funds above.

R202-101-11. Training and Technical Assistance.

SCSO agrees to provide training and technical assistance to Qualified Agency in regards to accessing and submitting a claim online using the Web Grants system. Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

KEY: Qualified Emergency Food Agencies Fund, QEFAF, antipoverty programs, community action programs
Date of Enactment or Last Substantive Amendment: January 8, 2010
Authorizing, and Implemented or Interpreted Law: 9-4-1409

Environmental Quality, Air Quality
R307-101-3
Version of Code of Federal Regulations Incorporated by Reference

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33251
FILED: 12/07/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R307-101-3 incorporates by reference the version of the Code of Federal Regulations (CFR) used in a majority of rules adopted by the Air Quality Board. This allows rules that reference Section R307-101-3 to update the incorporation date with only one rule amendment. The most current version of the CFR for Environmental regulations has been updated from 07/01/2008, to 07/01/2009; therefore it is necessary to change Section R307-101-3.

SUMMARY OF THE RULE OR CHANGE: The following is a list of changes to 40 CFR from 07/01/2008, to 07/01/2009, that affect rules which reference Section R307-101-3. (NOTE: References that refer to "Vol. XX, No. YY/Pages ZZZZ" refer to the Federal Register.) In Vol. 74, No. 12 / Pages 3437-41: Air Quality: Revision to Definition of Volatile Organic Compounds--Exclusion of Propylene Carbonate and Dimethyl Carbonate. This action revised EPA's definition of volatile organic compounds (VOCs) for the purposes of preparing state implementation plans to attain the national ambient air quality standard for ozone under Title I of the Clean Air Act (Act). This revision added the compounds propylene carbonate and dimethyl carbonate to the list of compounds which are excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation. Section 51.100 was amended at the end of paragraph (s)(1) introductory text by removing the words "and perfluorocarbon compounds which fall into these classes:" and adding in their place a semi-colon and the words "propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:". In Vol. 74, No. 56, Page 12575-93: Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions. EPA promulgated Performance Specification (PS) 16 for predictive emissions monitoring systems (PEMS). Performance Specification 16 provides testing requirements for assessing the acceptability of PEMS when they are initially installed. Currently, there are no federal rules requiring the use of PEMS; however, some sources have obtained Administrator approval to use PEMS as alternatives to continuous emissions monitoring systems (CEMS). Other sources may desire to use PEMS in cases where initial and operational costs are less than CEMS and process optimization for emissions control may be desirable. Performance Specification 16 will apply to any PEMS required in future rules in 40 CFR Parts 60, 61, or 63, and in cases where a source petitions the Administrator and receives approval to use a PEMS in lieu of another emissions monitoring system required under the regulation. This action also finalized minor technical amendments. In Vol. 74, No. 102, Page 25666-9: Update of Continuous Instrumental Test Methods; Correction. EPA promulgated revisions to continuous instrumental test methods on 05/22/2008, where a number of technical amendments were made to five test methods. Several of the revisions were added to the text in the wrong places and in some cases duplicate insertions were made. The definition for system bias was also inadvertently revised. This action corrected those publication errors. In Vol. 73, No. 246, Page 78199-219: Alternative Work Practice To Detect Leaks From Equipment. Numerous EPA air emissions standards require specific work practices for equipment leak detection and repair. On 04/06/2006, EPA proposed a voluntary alternative work practice for leak detection and repair using a newly developed technology, optical gas imaging. The alternative work practice is an alternative to the current leak detection and repair work practice, which was not revised. The proposed alternative was amended in this final rule to add a requirement to perform monitoring once per year using the current Method 21 leak detection instrument. This action revises the General Provisions to incorporate the final alternative work practice. In Vol. 73, No. 241, Page 75954-9: Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program

Rules. EPA took direct final action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO2) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the Federal Register notices that also finalized the Clean Air Interstate Rule (CAIR) and the Federal Implementation Plans for CAIR (CAIR FIPs). The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming--pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301--the promulgation of these revisions in this interim final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program. In Vol. 73, No. 241, Page 75959-68: Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules. EPA took interim action to reaffirm the promulgation of certain revisions of the Acid Rain Program rules in order to prevent disruption of this program, which has achieved significant, cost-effective reductions in SO2 emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the Federal Register notices that also finalized the CAIR and the CAIR FIPs. The U.S. Court of Appeals for the District of Columbia Circuit recently issued a decision vacating and remanding CAIR and the CAIR FIPs. EPA and other parties have petitioned for rehearing, and the Court has not yet issued a mandate in the case. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is reaffirming--pursuant to its authority under Title IV of the CAA and CAA section 301--the promulgation of these revisions in this interim final rule in order to remove any uncertainty about their legal status because they have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program. In Vol. 74, No. 57, Page 13124: Promulgation of Revisions of the Acid Rain Program Rules. Because EPA received an adverse comment, EPA withdrew the direct final rule for "Rulemaking to Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules," which was published in the Federal Register on 12/15/2008 (73 FR 75954). In Vol. 74, No. 112, Page 27940-4: Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules. In this action, EPA reaffirmed the promulgation of certain revisions of the Acid Rain Program rules. These revisions have been in effect since mid-2006. Most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program, which has achieved significant, cost-effective reductions in SO2 emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the Federal Register notices that also finalized the CAIR and the final CAIR FIPs. On 07/11/2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. On 12/23/2008, in response to petitions for rehearing, the Court modified its 07/11/2008 decision and remanded CAIR and the CAIR FIPs but without a vacatur. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is treating the Court's remand as covering these revisions and, in response to the remand, is finalizing the rule reaffirming--pursuant to its authority under Title IV of the CAA and CAA section 301--the promulgation of these revisions on their merits and in order to remove any uncertainty about their regulatory status. With this action, the existing Acid Rain regulations continue in effect, and the Acid Rain Program continues to operate, unchanged and uninterrupted. In Vol. 73, No. 214, Page 65554-6: Stay of the Effectiveness of Requirements for Air Emission Testing Bodies. EPA took final action to stay the effectiveness of requirements for air emission testing bodies (AETBs). On 01/24/2008, final amendments to regulations on competency requirements for air emission testing bodies were published in the Federal Register. The AETB provision generally requires stack testers and stack testing companies to meet certain minimum competency requirements described in ASTM D 7036 by 01/01/2009. On 03/25/2008, the Utility Air Regulatory Group (UARG) filed a Petition for Review primarily claiming that EPA could not by the AETB requirement hold utilities responsible for something they cannot control. While EPA is considering revisions to the requirements to address UARG's concerns, it cannot propose and complete any such revision through notice and comment rulemaking before the compliance date contained in the existing rule, thus necessitating this action. EPA needs to complete this action staying effectiveness of the AETB requirements in order to secure an extension of an Order Granting Abeyance of Further Proceedings which expires on 10/29/2008, when the Agency must file Motions to Govern Further Proceedings.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because these revisions do not create new requirements, no change in costs is expected for the state budget.
♦ LOCAL GOVERNMENTS: Because this revision does not create new requirements, no change in costs is expected for local governments.

♦ SMALL BUSINESSES: Because this revision does not create new requirements, no change in costs is expected for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this revision does not create new requirements, no change in costs is expected for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this revision does not create new requirements, no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment does not create new requirements. Therefore, no additional costs are expected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/20/2010 01:00 PM, Division of Air Quality, Main Conference Room, 150 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/03/2010

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2009[~~8~~].

KEY: air pollution, definitions
Date of Enactment or Last Substantive Amendment: [~~July 2, 2009~~]2010
Notice of Continuation: July 2, 2009
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

Environmental Quality, Radiation Control
R313-25-8
Technical Analyses

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33267
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The U.S. Nuclear Regulatory Commission (NRC) has acknowledged the inadequacy of NRC's current rules regarding depleted uranium (DU) and has therefore recommended, while it considers a revision to those rules, that regulators review site-specific performance assessments for facilities that accept DU for land disposal, prior to the disposal of significant quantities of DU. The purpose of this rule is to implement that recommendation. For more information, see the Utah Radiation Control Board's "Statement of Basis for Administrative Rulemaking Regarding Disposal of Significant Quantities of Depleted Uranium," at the Division of Radiation Control (DRC) website.

SUMMARY OF THE RULE OR CHANGE: The proposed rule would require facilities that wish to land dispose of DU to complete and have approved a site-specific performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met. Therefore, the Utah Radiation Control Board, at its 12/08/2009 meeting, voted to amend Section R313-25-8 that requires EnergySolutions or any facility that land disposes significant quantities of DU to submit for review and approval a site specific performance assessment prior to disposal of significant quantities of DU.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-03-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The State of Utah receives fees from licensees that dispose of radioactive waste, including DU, Section 19-3-106. EnergySolutions, L.L.C. is a Utah radioactive waste disposal facility that has stated that it will seek to dispose of DU; if this rule is promulgated, it will be unable to do so until it has completed a site specific performance assessment and had it approved. The financial impacts on waste fees received by the State of Utah, if this rule is promulgated, could be potentially substantial, but are difficult to specify because the impact depends on the following information that is not known that this time: when the rule takes effect; when EnergySolutions will submit a site specific performance assessment and when it will be

approved; when EnergySolutions would otherwise have received shipments of DU for disposal; whether DU waste receipts by EnergySolutions would simply be delayed, or whether there are competitors for DU disposal space such that EnergySolutions could lose receipts altogether.
♦ LOCAL GOVERNMENTS: Tooele County collects impact fees from waste facilities, including EnergySolutions. Tooele County's budget is therefore likely to be affected, but for the reasons described above the specific impact cannot be known at this time.
♦ SMALL BUSINESSES: No small business in Utah will be directly impacted. The only potential sources of substantial quantities of DU for disposal--the United States Department of Energy and privately-held uranium enrichment facilities--are not small businesses and are not located in Utah.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Board is not aware of any direct impact on other entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A radioactive waste disposal facility will have to incur the cost of preparing a site-specific performance assessment under this rule, and may also bear the cost of the DRC's review of that performance assessment. The cost of a performance assessment is likely to be over $1,000,000. EnergySolutions had stated, prior to the initiation of this rulemaking, that it was planning to complete such a performance assessment anyway, since NRC rules are likely to require one in the future.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If a rule is promulgated, one Utah business--EnergySolutions, L.L.C.--will be unable to dispose of DU until it has submitted a site specific performance assessment and the performance assessment has been approved. The financial impacts on EnergySolutions are potentially substantial, but are difficult for the Board to specify because the impact depends on the following information not known to the Board at this time: when the rule takes effect; when EnergySolutions will submit a site specific performance assessment and when it will be approved; when EnergySolutions would otherwise have received shipments of DU for disposal; and whether DU waste receipts by EnergySolutions would simply be delayed, or whether there are competitors for DU disposal space such that EnergySolutions could lose receipts altogether. The financial impacts of this on the state's budget are potentially substantial but, as described above, are difficult to specify. EnergySolutions will also bear the cost of carrying out, preparing, and submitting a performance assessment. The company has budgeted over $1,000,000 for this work.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROLROOM 212
168 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dane Finerfrock by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dfinerfrock@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/02/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/26/2010 06:00 PM, Environmental Quality, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/01/2010

AUTHORIZED BY: Dane Finerfrock, Director

R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-8. Technical Analyses.

(1) The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

[~~(1)~~](a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

[~~(2)~~](b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

[~~(3)~~](c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

[~~(4)~~](d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(2)(a) Any facility that proposes to land dispose of significant quantities of depleted uranium, more than one metric ton in total accumulation, after the effective date of this change shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions

of Utah rules will be met for the total quantities of depleted uranium and other wastes, including wastes already disposed of and the quantities of depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period will be a minimum of 10,000 years. Additional simulations will be performed for a qualitative analysis for the period where peak dose occurs.

(b) No facility may dispose of significant quantities of depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R313-25-8(2)(a).

(c) For purposes of this R313-25-8(2) only, depleted uranium means waste with depleted uranium concentrations greater than 5% by weight.

KEY: radiation, radioactive waste disposal, depleted uranium
Date of Enactment or Last Substantive Amendment: [~~March 16, 2007~~]2010
Notice of Continuation: October 5, 2006
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-306
Program Benefits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33259
FILED: 12/09/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove provisions in the rule that other administrative rules already cover. The other purpose is to require the Department to coordinate with other programs to assure enrollment and to provide information to Medicaid applicants and recipients on the availability of services.

SUMMARY OF THE RULE OR CHANGE: This change removes provisions in the rule that other administrative rules already cover. It also requires the Department to coordinate with other programs to assure enrollment and to provide information to Medicaid applicants and recipients. It further removes and updates incorporated materials and makes other minor corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

TITLE OF MATERIALS INCORPORATED BY REFERENCES:

- ♦ Updates Section 1616(a) through (d) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2009
- ♦ Removes 42 CFR 440.240, published by Office of the Federal Register, 01/01/1999
- ♦ Removes 42 CFR 441.56, published by Office of the Federal Register, 01/01/1999
- ♦ Removes 42 CFR 431.625, published by Office of the Federal Register, 01/01/1999

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no expected impact to the state budget because this change does not increase or decrease services and does not change eligibility criteria.
♦ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide Medicare and Medicaid services.
♦ SMALL BUSINESSES: There is no expected impact to small businesses because this change does not increase or decrease services and does not change eligibility criteria.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected impact to persons other than small businesses, businesses, or local government entities because this change does not increase or decrease services and does not change eligibility criteria.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid client or provider because this change does not increase or decrease services and does not change eligibility criteria.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The requirement to coordinate benefits may have a positive impact on recipients, but the amount of any benefit cannot be quantified. No adverse fiscal impact is expected since service levels and eligibility will not change.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-306. Program Benefits and Date of Eligibility.
R414-306-1. Medicaid Benefits and Coordination with Other Programs.

(1) [~~The Department adopts 42 CFR 440.240, 441.56, and 431.625, 1999 ed., which are incorporated by reference.~~]The Department provides medical benefits to Medicaid recipients as outlined in Section R414-1-6.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

[~~(3) The Department is responsible for defining emergency services which will be paid for by Medicaid for aliens who do not meet citizenship requirements for full Medicaid coverage. Emergency services include medical services given to prevent death or permanent disability. Emergency services do not include prenatal or postpartum services, prolonged medical support, long term care, or organ transplants. Prior authorization is required if the client applies for medical assistance before receiving medical services.~~

~~]~~([~~4~~]3) [~~Workers must~~]The Department must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

(4) The Department must coordinate with the Children's Health Insurance Program to assure the enrollment of eligible children.

(5) The Department must coordinate with the Women, Infants and Children Program to provide information to applicants and recipients about the availability of services.

R414-306-2. QMB, SLMB, and QI[~~-1~~] Benefits.

(1) The Department [~~adopts~~]must provide the services outlined under [~~Subsection 1905(p) and Section 1933 of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.~~]42 U.S.C. 1396d(p) and 42 U.S.C. 1396u-3 for Qualified Medicare Beneficiaries.

(2) The Department provides the benefits outlined under 42 U.S.C. 1396d(p)(3)(ii) for Specified Low-Income Medicare Beneficiaries and Qualifying Individuals. Benefits for Qualifying Individuals are subject to the provisions of 42 U.S.C. 1396u-3.

([~~2~~]3) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

[~~R414-306-5. Availability of Medical Services.~~

~~(1) The Department adopts 42 CFR 431.52, 2001 ed., which is incorporated by reference.~~

~~(2) A person may receive medical services from an out-of-state provider if that provider accepts the Utah Medicaid reimbursement rate for the service.~~

~~(3) If a medical service requires prior approval for reimbursement in-state, the medical service will require prior approval if received out-of-state.~~

~~(4) If a person has a primary care provider, the person shall receive medical services from that provider, or obtain authorization from the primary care provider to receive medical services from another medical provider.~~

~~(5) If a person is enrolled in a Medicaid Health Plan, the person shall receive medical services from a provider within the Medicaid Health Plan's network, or obtain authorization from the Medicaid Health Plan or Utah Medicaid to receive medical services from an out-of-network medical provider.~~

]**R414-306-[6]5. Medical Transportation.**

(1) The Department [~~adopts~~]provides non-emergency medical transportation as required by 42 CFR 431.53[~~, 2001 ed., which is incorporated by reference~~].

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in [~~s~~]Subsection R414-306-5(1[~~3~~]4) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of

its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of $0.18 per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed $150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If two or more Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or $50[~~.00~~] per night, whichever is less. Reimbursement for food costs shall be no more than $25 of the $50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in [~~s~~]Subsection R414-306-5(9). The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.

(b) Fees are established using the methodology [~~as~~] described in the Utah Medicaid State Plan, Attachment 4.19-B Section R, Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's

medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if para[~~r~~]transit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

R414-306-[~~7~~]6. State Supplemental Payments for Institutionalized SSI Recipients.

(1) The Department [~~adopts~~]incorporates by reference [~~Subs~~]Section 1616(a) through (d) of the Compilation of the Social Security Laws, [~~2001~~]January 1, 2009 ed.[~~, U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.~~]

(2) A State Supplemental payment equal to $15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the $15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to $30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

KEY: effective date, program benefits, medical transportation
Date of Enactment or Last Substantive Amendment: [~~October 1, 2009~~]2010
Notice of Continuation: January 25, 2008
Authorizing, and Implemented or Interpreted Law: 26-18

Health, Health Systems Improvement, Emergency Medical Services
R426-2-7
Statutory Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33240
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-2. Air Medical Service Rules.
R426-2-7. Statutory [~~p~~]Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23[~~, which provides for a penalty of up to $5,000 per violation or a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense~~].

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~January 23, 2001~~]2010
Notice of Continuation: October 26, 2007
Authorizing, and Implemented or Interpreted Law: 26-8

Health, Health Systems Improvement, Emergency Medical Services
R426-5-11
Statutory Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33244
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-5. Statewide Trauma System Standards.
R426-5-11. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23[~~, which provides for a civil money penalty of up to $10,000 for each violation~~].

KEY: emergency medical services, trauma, reporting
Date of Enactment or Last Substantive Amendment: [~~June 8, 2009~~]2010
Notice of Continuation: July 18, 2007
Authorizing, and Implemented or Interpreted Law: 26-8a-252

Health, Health Systems Improvement, Emergency Medical Services
R426-7-5
Penalty for Violation of Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33245
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-7. Emergency Medical Services Prehospital Data System Rules.
R426-7-5. Penalty for Violation of Rule.

As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years is a violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~July 31, 2008~~]2010
Notice of Continuation: January 24, 2006
Authorizing, and Implemented or Interpreted Law: 28-8a

Health, Health Systems Improvement, Emergency Medical Services
R426-12-1400
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33246
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-12. Emergency Medical Services Training and Certification Standards.
R426-12-1400. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~July 29, 2009~~]2010
Notice of Continuation: July 29, 2009
Authorizing, and Implemented or Interpreted Law: 26-8a-302

Health, Health Systems Improvement, Emergency Medical Services
R426-14-600
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33247
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-14-600. Penalties.
As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~January 1, 2004~~]2010
Notice of Continuation: July 28, 2009
Authorizing, and Implemented or Interpreted Law: 26-8a

Health, Health Systems Improvement, Emergency Medical Services
R426-15-700
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33248
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-15. Licensed and Designated Provider Operations.
R426-15-700. Penalties.

As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~June 24, 2008~~]2010
Notice of Continuation: July 28, 2009
Authorizing, and Implemented or Interpreted Law: 26-8a

Health, Health Systems Improvement, Emergency Medical Services
R426-16-3
Penalty for Violation of Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33249
FILED: 12/03/2009

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 the 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: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.

♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-16. Emergency Medical Services Ambulance Rates and Charges.
R426-16-3. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: emergency medical services
Date of Enactment or Last Substantive Amendment: [~~April 1, 2007~~|2010
Notice of Continuation: July 28, 2009
Authorizing, and Implemented or Interpreted Law: 26-8a

Human Resource Management, Administration
R477-7-2
Holiday Leave

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33278
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is in response to Governor Herbert's announcement that the 4-10s work schedule will be the ongoing standard work schedule for the State. The effective date for the 4-10s to become the standard work schedule is 02/06/2010. Once the effective date passes, all subsequent holidays will accrue at a maximum of nine hours.

SUMMARY OF THE RULE OR CHANGE: In order to prevent confusion, the phrase "not to exceed ten hours" in Subsection R477-7-2(2) will be amended to "not to exceed nine hours."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-1-301 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendment is administrative and no state budget impact is anticipated.
♦ LOCAL GOVERNMENTS: No local budget impact anticipated.
♦ SMALL BUSINESSES: No small business impact anticipated.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other impact anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance cost is anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible

impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Veterans' Day -- November 11

(i) Thanksgiving Day -- fourth Thursday of November

(j) Christmas Day -- December 25

(k) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed nine[~~ten~~] hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Notice of Continuation: June 29, 2007
Authorizing, and Implemented or Interpreted Law: 34-43-103; 49-9-203; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4

Human Services, Child and Family Services
R512-10
Youth Advocate Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33256
FILED: 12/09/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section, update the name of the program, and make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties, update the name of the program, and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
♦ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
♦ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government

entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Duane Betournay, Director

R512. Human Services, Child and Family Services.
R512-10. Youth [~~Advocate~~]Mentor Program.
R512-10-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for a Youth Mentor Program.

(2) This rule is authorized by Section 62A-4a-102.

R512-10-[~~1~~]2. Definition.

[~~A.~~](1) Level One: The Youth [~~Advocate~~]Mentor Program is an advocacy service for youth and families which provides support[~~,~~] and socialization activities, and assists in building self-esteem of youth who are at risk of or have been neglected or abused or who are ungovernable.

[~~B.~~](2) Level Two: In areas of the state where parent [~~aide~~]education programs do not exist, the [~~Y~~]youth [~~Advocate~~]mentor funds may pay for [~~a~~]parent [~~aide~~]education services. The parent [~~aide~~]education services would be [~~responsible to work~~]used for the purpose of working with a parent(s) who [~~are~~]is lacking in parenting, socialization, and homemaking skills. [~~The parent aide program policy requirements shall be the same as the youth advocate program.~~]

[~~C.~~](3) Level Three: This level of the Youth [~~Advocate~~]Mentor Program is characterized by providing intensive services to youth who may be seriously out of control, may have serious behavioral or emotional problems, may be substance abusers, may be preparing for independent living, or may require stringent costly out-of-home placements if less restrictive interventions are not provided. Intensive youth [~~advocate workers~~]mentors provide one-on-one intensive supervision that may include assistance to the out-of-home provider in monitoring of behavior, [~~client advocacy,~~]basic living skills training, crisis intervention[~~; also~~], as well as linkage to educational, vocational, employment, and recreational services.

R512-10-[~~2~~]3. Conditions for Approval.

(1) The youth [~~advocate worker~~]mentor shall meet the following standards:

[~~A.~~](a) The [~~Y~~]youth [~~advocate worker~~]mentor shall submit fingerprints to be cleared through the Bureau of Criminal Investigation (BCI) as authorized by Section 62A-4a-[~~413~~]202.4. This check must show that the applicant has not been convicted of a felony or certain misdemeanors, which may have an impact in working with children. The [~~DCFS~~]Child and Family Services [~~D~~]database (USSDS or SAFE) shall be checked for any occurrences of child abuse. If the applicant has a substantiated child abuse report, this information, along with other information, will be taken into consideration during the application process.

[~~B.~~](b) The youth [~~advocate worker~~]mentor will receive a copy of the Department of Human Services "Code of Conduct" and will act accordingly. A signed copy of the Statement of Understanding will be included in the youth [~~advocate worker's~~]mentor's file.

[~~C.~~](c) The youth [~~advocate worker~~]mentor will sign a Motor Vehicle Insurance Certification form in which the youth [~~advocate workers~~]mentor will certify that no-fault property damage and liability coverage insurance will be maintained on any automobile used in the program.

[~~D.~~](d) Compliance with these standards will be monitored by Child and Family Services' regional staff and/or the youth mentor coordinator[~~ the Division of Child and Family Services (DCFS)~~], based on interviews, collateral contacts, and other appropriate documentation.

R512-10-[~~3~~]4. Characteristics and Requirements of Youth [~~Advocate Worker~~]Mentor.

[~~A.~~](a) The youth [~~advocate worker~~]mentor shall not discriminate against the youth because of race, color, national origin, sex, religion, or handicap. The youth [~~advocate worker~~]mentor shall respect the religious and cultural practices of the [~~child~~]youth.

[~~B.~~](b) The youth [~~advocate worker~~]mentor shall have the physical health necessary to perform the responsibilities of the position.

[~~C.~~](c) The youth [~~advocate worker~~]mentor shall have no unresolved emotional or mental health needs which impede the [~~worker~~]youth mentor in performing the responsibilities of the position.

[~~D.~~](d) The youth [~~advocate worker~~]mentor shall be 21 years of age or older.

[~~E.~~](e) While working with youth, the youth [~~advocate worker~~]mentor shall demonstrate maturity, flexibility, the ability to modify expectations and attitudes, and the ability to accept and respond to the needs of youth.

[~~F.~~](f) The youth [~~advocate worker~~]mentor shall respect the relationship the youth has with the natural parents and [~~the~~

~~agency~~]Child and Family Services, and shall encourage those relationships.

[~~G.~~](g) The youth [~~advocate worker~~]mentor shall have experience fostering the development of children or shall have the personal characteristics and temperament suited to working with children.

[~~H.~~](h) The youth [~~advocate worker~~]mentor shall not be dependent on the youth [~~advocate~~]mentor payments as the primary source of household income.

[~~I.~~](i) A [~~DCFS~~]Child and Family Services employee shall not be approved as a youth [~~advocate worker~~]mentor.

[~~J.~~](j) The youth [~~advocate worker~~]mentor shall not be on probation, parole, or under indictment for a criminal offense, and shall have no history of [~~violent~~]crimes involving youth.

[~~K.~~](k) The youth [~~advocate worker~~]mentor shall work cooperatively with [~~DCFS~~]Child and Family Services, the Juvenile Court, the Guardian ad Litem, the Attorney General, and law enforcement officials as authorized by the supervising caseworker.

[~~L.~~](l) The youth [~~advocate worker~~]mentor shall understand and abide by the requirements that information must be kept confidential.

[~~M.~~](m) The youth [~~advocate worker~~]mentor shall notify the caseworker and guardian of concerns.

[~~N.~~](n) The youth [~~advocate worker~~]mentor shall be trained to provide for the needs of the [~~children~~]youth they work with. The training shall be approved by [~~DCFS~~]Child and Family Services and may be provided by [~~the Division~~]the youth mentor coordinator or by other educational or social agencies in the community.

[~~O.~~](o) The youth [~~advocate worker~~]mentor shall not use any type of corporal punishment in working with [~~a child~~]youth. Infliction of bodily pain, discomfort, or degrading/humiliating punishment shall be prohibited.

R512-10-[4]5. Revocation of the Youth [~~Advocate~~]Mentor Agreement.

(1) [~~DCFS~~]Child and Family Services may revoke certification upon any of the following grounds:

[~~A.~~](a) Violation of standards, agreement conditions, or the Department of Human Services Code of Conduct.

[~~B.~~](b) Conduct in the provision of service that is or may be harmful to the health or safety of persons receiving the service.

(2) If the above conditions exist, the immediate suspension or revocation of the Youth Mentor [~~a~~]Agreement shall be ordered. Written notice shall be sent to the youth [~~advocate worker~~]mentor and shall contain a statement of the basis for the order. The letter must also inform the youth [~~advocate worker~~]mentor of the right and procedure to request a reconsideration of the action.

KEY: child welfare, youth [~~advocate~~]mentor
Date of Enactment or Last Substantive Amendment: [~~October 1, 1997~~]2010
Notice of Continuation: January 3, 2007
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-106

Human Services, Child and Family Services
R512-31
Foster Parent Due Process

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33257
FILED: 12/09/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section and to make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-206 and Section 63G-4-201 and Section 78A-6-318

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
♦ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
♦ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-4424, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Duane Betournay, Director

R512. Human Services, Child and Family Services.
R512-31. Foster Parent Due Process.
R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-[~~1~~]2. Due Process Rights.

[~~A.~~](1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from [~~a foster~~]their home if the foster parent disagrees with the decision, except if the child is being returned to the natural parent.

R512-31-[~~2~~]3. Definitions.

[~~A.~~](1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

[~~1.~~](b) "Emergency foster care" means temporary placement of a child in a foster home or [~~shelter~~]crisis placement.

[~~2.~~](c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

[~~3.~~](d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-[~~3~~]4. Notice to Foster Parents.

[~~A.~~](1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-[~~3.D~~]4(4). The foster parent shall be notified by personal communication and by Notice of Agency Action.

[~~B.~~](2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

[~~C.~~](3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the foster parent conflict resolution procedure, and notice regarding the ability of the foster parent to petition the juvenile court directly if the child has been in the foster home for 12 months or longer in accordance with Section 78A-6-318.

[~~D.~~](4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-[4]5. Request for Due Process.

[~~A.~~](1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-[~~3.D~~]4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

[~~B.~~](2) If the child was removed as specified in Rule R512-31-[~~3.D~~]4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

[~~C.~~](3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-[~~5.A.1~~](6)(1)(a) and Rule R512-31-[~~5.A.2~~](6)(1)(b).

R512-31-[5]6. Foster Parent Conflict Resolution Procedure.

[~~A.~~](1) The Foster Parent Conflict Resolution Procedure consists of the following:

[~~1.~~](a) A foster parent must first attempt to resolve a conflict with [~~the Division~~]Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

[~~2.~~](b) The foster parent shall have the opportunity to provide written and oral comments to [~~the Division~~]Child and Family Services in an agency conference chaired by the regional director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

[~~3.~~](c) If the foster parent is not satisfied with the results of the agency conference with [~~the Division~~]Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by Subsection 62A-4a-206(2)(b)(ii).

R512-31-[6]7. Administrative Hearing.

[~~A.~~](1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The Administrative Law Judge

shall determine if [~~the Division~~]Child and Family Services has abused its discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

[~~B.~~](2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

[~~C.~~](3) If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-[~~7~~]8. Removal of a Foster Child.

[~~A.~~](1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-[~~5~~]6 is completed, unless the child was removed as specified in Rule R512-31.[~~3.D~~]4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

[~~B.~~](2) If the child was removed as specified in Rule R512-31.[~~3.D.~~]4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by Subsection 62A-4a-206(2)(c).

KEY: child welfare, foster care, due process
Date of Enactment or Last Substantive Amendment: [~~November 19, 2003~~]2010
Notice of Continuation: August 7, 2007
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-206; 63G-4-201; [~~62A-4a-101;~~]78A-6-318

Human Services, Child and Family Services
R512-42
Adoption by Relatives

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33258
FILED: 12/09/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section and to make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 78A-6-307 and Section 78B-6-102 and Section 78B-6-117 and Section 78B-6-128 and Section 78B-6-137

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
♦ LOCAL GOVERNMENTS: There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
♦ SMALL BUSINESSES: There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-4424, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Duane Betournay , Director

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102.

R512-42-[~~1~~]2. Adoption by Relatives.

(1) A relative who has a relationship with a child available for adoption may apply to adopt a particular child. The application and home study will be handled in accordance with the [~~Division of~~]Child and Family Services[~~,~~] Adoption [~~Policy~~]Practice Guidelines, and in accordance with [~~Title 78B, Chapter 6~~]Section 78B-6-128, based upon the best interest of the child.

KEY: adoption
Date of Enactment or Last Substantive Amendment: [~~1992~~]2010
Notice of Continuation: August 7, 2007
Authorizing, and Implemented or Interpreted Law: 62a-4a-102; 78A-6-307; 78B-6-102; 78B-6-117; [~~78B-6-102; ~~]78B-6-128; 78B-6-137[~~; 78A-6-307~~]

Human Services, Recovery Services
R527-35
Non-IV-A Fee Schedule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33277
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is to add the department and office authority for creating, amending, and enforcing administrative rules. In addition, the date of the Federal citation was updated to reflect the most recent available version of this section of the Federal Code. The implemented Federal citation was added to the list of Authorizing, Implemented, or Interpreted laws at the end of the rule.

SUMMARY OF THE RULE OR CHANGE: The change is to add an authority and purpose section to the existing rule. Section 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary. A purpose section was added to provide specific information regarding fees that may be charged by ORS on Non-IV-A cases and the exact amount of the fee for a specific situation on a case. In addition, the date of the Federal citation was updated to reflect the most recent available version of this section of the Federal Code. The implemented Federal citation was added to the list of Authorizing, Implemented, or Interpreted laws at the end of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-11-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The propose changes to the rule are for clarification purposes only and do not affect the current procedures or fee amounts. There is no anticipated change in cost or savings due to this amendment.
♦ LOCAL GOVERNMENTS: There is no anticipated change in cost or savings due to this amendment since administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.
♦ SMALL BUSINESSES: There will be no financial impact for small businesses due to the amendment of this rule since the basic requirements of the current rule will not change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no financial impact for other persons due to the amendment of this rule since the basic requirements of the current rule will not change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no change in compliance costs due to this amendment since the procedures and costs are not changing with the amendment of the current rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not addressed in the rule or in the proposed changes, and it is not anticipated that the changes will create any fiscal impact on them.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-35. Non-IV-A Fee Schedule.
R527-35-1. Authority and Purpose.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

2. The purpose of this rule is to provide information regarding the ORS/CSS fee schedule for Non-IV-A cases which is authorized by Federal Regulations found at 45 CFR 302.33. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

R527-35-2. Non-IV-A Fee Schedule.

Pursuant to 45 CFR 302.33 [~~(2001)~~](2008) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of $122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of $20.00. This fee is waived if the case was closed within the last 12 months for the reason CTF (cannot find the non-custodial parent) or AFC (non-custodial parent lives in a foreign jurisdication);

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. an administrative fee of $5.00 per payment processed, not to exceed $10.00 per month;

4. a fee of $25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is $50.00 or more. If the refund is more than $25.00 but less than $50.00, the fee is the refund amount minus $25.00;

5. the Child Support Lien Network (CSLN) fee of $52.00, to be paid at the time the levy is processed.

KEY: child support
Date of Enactment or Last Substantive Amendment: [~~February 22, 2006~~]2010
Notice of Continuation: January 16, 2007
Authorizing, and Implemented or Interpreted Law: 45 CFR 302.33; 62A-11-107

Human Services, Recovery Services
R527-332
Unreimbursed Assistance Calculation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33261
FILED: 12/10/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add the purpose and authority to the rule and the Section 62A-1-11 citation to the Authorizing, and Implemented or Interpreted Law section of the rule.

SUMMARY OF THE RULE OR CHANGE: Section R527-332-1 was changed to the Authority and Purpose. The subsequent sections were renumbered accordingly. Section 62A-1-111 was added to the Authorizing, and Implemented or Interpreted Law section of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 302.32 and 45 CFR 302.51 and Section 62A-1-111 and Section 62A-11-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.
♦ LOCAL GOVERNMENTS: Administrative rule of the Office of Recovery Services do not affect local government. There are no anticipated costs or savings for any local businesses due to this amendment.
♦ SMALL BUSINESSES: Because the proposed amendment does not affect the current procedures, there is no financial impact for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the proposed amendment does not affect the current procedures, there is no financial impact for other persons due to the amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there is no financial impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-332. Unreimbursed Assistance Calculation.
R527-332-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to meet the requirements of 45 CFR 302.32 and 45 CFR 302.51, which require the office to refund collections in excess of the unreimbursed assistance amount (URA) to the family within two calendar days of the end of each month that assistance was received.

R527-332-2. Definitions.

1. IV-A Assistance means cash assistance which was issued based upon Title IV-A funding of AFDC or FEP programs.

2. Unreimbursed Assistance means the total lifetime amount of IV-A assistance that the State has expended on behalf of the IV-A household for which the State/Federal government have not been reimbursed.

R527-332-[~~2~~]3. Unreimbursed Assistance Calculation.

The Office of Recovery Services shall calculate the amount of unreimbursed assistance. The calculation shall compare the amount of IV-A child support payments plus the amount of IV-A overpayment payments against the lifetime IV-A benefit amount.

In the event that the unreimbursed assistance amount becomes zero, or greater than zero, collection of the IV-A overpayment amount will be suspended.

KEY: assistance, overpayments, child support
Date of Enactment or Last Substantive Amendment: [~~August 1, 2000~~]2010
Notice of Continuation: July 14, 2005
Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 45 CFR 302.32; 45 CFR 302.51

Human Services, Recovery Services
R527-412
Intercept of Unemployment Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33243
FILED: 12/03/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add the purpose and authority to the rule and the citations to Sections 62A-1-11 and 62A-11-107 to the Authorizing, and Implemented or Interpreted Law section of the rule.

SUMMARY OF THE RULE OR CHANGE: Section R527-332-1 was changed to the Authority and Purpose statement. The subsequent section was renumbered accordingly. Sections 62A-1-111 and 62A-11-107 legal citations were added to the Authorizing, and Implemented or Interpreted Law section of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111 and Section 62A-11-107 and Section 62A-11-401 and Subsection 35A-4-103(5)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.
♦ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services do not affect local government. There are no anticipated costs or savings for any local businesses due to this amendment.
♦ SMALL BUSINESSES: Because the proposed amendment does not affect the current procedures, there is no financial impact for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the proposed amendment does not affect the current procedures, there is no financial impact for other persons due to the amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there is no financial impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Mark Brasher , Director

R527. Human Services, Recovery Services.
R527-412. Intercept of Unemployment Compensation.
R527-412-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to create rules necessary to fulfill its duties by Section 62A-11-107.

2. The purpose of this rule is to define the conditions under which the Office of Recovery Services may collect child support from unemployment compensation and the legal limitations on those amounts.

R527-412-2. Intercept of Unemployment Compensation.

1. Unemployment compensation shall be subject to income withholding if the case meets the criteria in R527-300. If for any reason the unemployment compensation is not subject to income withholding, the unemployment compensation may be subject to garnishment.

2. The obligor may volunteer but shall not be required to pay more than 50% of his gross Unemployment Compensation benefit, or the maximum amount permitted under Section 303(b), Consumer Credit Protection Act, 15 USC 1673(b). If the obligor volunteers to pay more than 50% of the Unemployment Compensation benefit or more than the maximum amount permitted under Section 303(d), Consumer Credit Protection Act, 15 USC 1673(b), that agreement shall be in writing.

KEY: child support, unemployment compensation
Date of Enactment or Last Substantive Amendment: [~~1992~~]2010
Notice of Continuation: September 5, 2007
Authorizing, and Implemented or Interpreted Law: 35A-4-103(5); 62A-1-111; 62A-11-107; 62A-11-401

Insurance, Administration
R590-255
Utah NetCare Alternative Coverage Notification Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33260
FILED: 12/10/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to adopt a model letter as required by Section 31A-22-724, for insurers to provide to employers as required by Section 31A-22-716 of the code to notify an employee of the employee's options for alternative health coverage.

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to adopt a model letter as required by Section 31A-22-724, for insurers to provide to employers as required by Section 31A-22-716 of the code to notify an employee of the employee's options for alternative health coverage.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-724

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule will have no fiscal impact on the Insurance Department or the state since the requirement in the rule is for the insurer to provide a letter to employers they insure. It does not require that this letter be filed with the department so it will not impact the department's workload, nor will it impact the department's revenues or expenses.
♦ LOCAL GOVERNMENTS: The only way this rule will affect local governments is if their health insurance is provided by a licensed health and accident insurer licensed to do business in Utah. The only way they would be affected is in the requirement to forward the alternative coverage notification letter to their employees, which could in most cases be done electronically with no mailing charges or paper costs.
♦ SMALL BUSINESSES: The rule adopts a model alternative coverage letter that health and accident insurers are required to provide to employers they insure, whether large or small.

The small business employer would be required to forward the Alternative Coverage Notification letter to their employees which could in most cases be done electronically resulting in no mailing charges or paper costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule adopts a model alternative coverage letter that health and accident insurers are required to provide to employers they insure, whether large or small. The employer would be required to forward the Alternative Coverage Notification letter to their employees which could in most cases be done electronically resulting in no mailing charges or paper costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The insurers cost will be the letter they provide to employers they insure. Employers will have to provide a letter to employees, which could be provided via email and eliminate any cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create a cost in paper and mail expense to insurers and may or may not create a cost to the employers who have to forward it along to their employees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/19/2009 09:00 AM, State Office Building, 450 N Main, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-255. Utah NetCare Alternative Coverage Notification Rule.
R590-255-1. Authority.
This rule is promulgated pursuant to Section 31A-22-724 wherein the commissioner shall develop a model letter.

R590-255-2. Purpose and Scope.
(1) The purpose of this rule is to adopt a model letter for insurers to provide to employers as required by Section 31A-22-716 to notify an employee of the employee's options for alternative coverage.
(2) This rule applies to all accident and health insurers doing business in Utah that are required to offer alternative coverage pursuant to Section 31A-22-724.

R590-255-3. General Instructions.
(1) An insurer shall provide an employer:
(a) a letter that explains alternative coverage; or
(b) the Utah NetCare: Utah's Alternative Coverage letter.
(2) The letter required by this Subsection (1) shall be provided:
(a) to an employer at renewal;
(b) when requested by an employer; and
(c) when requested by an employee.

R590-255-4. Enforcement Date.
The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-255-5. Penalties.
A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-255-6. Severability.
If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance alternative coverage, NetCare
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 31A-22-724

Natural Resources, Forestry, Fire and State Lands
R652-9-400
Filing Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33269
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to establish consistency with Subsection 65A-1-4-6(a) and eliminate confusion with deadline to appeal a Division action.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies the procedure for filing a consistency review for a Division action. Currently, the statute states that an aggrieved party may appeal that action within 20 days of the action. The rule states an appeal must be received 20 days after the decision document is mailed. The rule change will reflect the statutory requirement of appealing within 20 days after the decision document in signed, not mailed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 65A-1-4(5)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no costs associated with the rule change for the state budget. Appeals can still be filed with this proposed rule change. The rule amendment merely clarifies when the appeal period begins.
♦ LOCAL GOVERNMENTS: There are no costs associated with the rule change for local government. Appeals on Division actions can still be filed as long as they are timely.
♦ SMALL BUSINESSES: There are no costs associated with the rule change or small businesses. Appeals on Division actions can still be filed as long as they are timely.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs associated with the rule change or persons other than small business, businesses, or local government entities. Appeals on Division actions can still be filed as long as they are timely.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with the rule change. Appeals on Division actions can still be filed as long as they are timely.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dave Grierson by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov
♦ Jennifer Sullivan by phone at 801-538-5495, by FAX at 801-533-4111, or by Internet E-mail at jennifersullivan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Richard Buehler, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-9. Consistency Review.
R652-9-400. Filing Procedure.

1. The petition shall be submitted to the director of the Division of Forestry, Fire and State Lands. The petition must be received at the director's office within 20 calendar days of the action[~~date the record of decision was mailed as evidenced by the certified mail posting receipt (Postal Service Form 3800)~~].

2. The director shall review the petition form as soon as reasonably possible to assure completeness and, upon determination that the petition is complete, shall promptly forward the petition to the executive director.

3. Incomplete petitions shall be returned with written notice of the deficiencies in the petition. If an incomplete petition is not completed and resubmitted within ten working days of the mailing of notice of incompleteness to the petitioner, the petition will be denied.

4. Upon receipt of a petition, the director shall suspend division actions with respect to the matter for which consistency review is being sought by the petitioner.

KEY: right of petition, administrative procedure
Date of Enactment or Last Substantive Amendment: [~~February 15, 1996~~]2010
Notice of Continuation: June 28, 2006
Authorizing, and Implemented or Interpreted Law: 65A-1-4(6)

Natural Resources, Forestry, Fire and State Lands
R652-70-700
Permit Rates

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33268
FILED: 12/14/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the process by which public agencies may have the permit application and rental fee's waived.

SUMMARY OF THE RULE OR CHANGE: This change discusses the permit rates for sovereign land use. The previous rule was unclear on how application and rental fees could be waived for public agencies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-10-1

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There should be no change in the state budget. The rule merely clarifies current practice and no policy or budget changes will take place.
♦ LOCAL GOVERNMENTS: There should be no change in local government budgets. The rule clarifies current practice and no policy or budget changes will take place with this rule change.
♦ SMALL BUSINESSES: Small businesses would not have any costs associated with the rule change since fees waived only apply to public agencies.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities would not have any costs associated with the rule change since fees waived only apply to public agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for affected persons since this rule changes only affects public agencies and does not reflect any policy or budget changes in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennifer Sullivan by phone at 801-538-5495, by FAX at 801-533-4111, or by Internet E-mail at jennifersullivan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Richard Buehler, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-700. Permit Rates.

1. An application fee may be waived if it is[~~No application fee shall be charged~~] for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is[~~No rental shall be charged~~] for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

KEY: sovereign lands, permits, administrative procedures
Date of Enactment or Last Substantive Amendment: [~~May 26, 2009~~]2010
Notice of Continuation: April 2, 2007
Authorizing, and Implemented or Interpreted Law: 65A-10-1

Natural Resources, Forestry, Fire and State Lands
R652-90-600
Public Review

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33276
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment isto clarify to the public how they can get a Record of Decision or other document summarizing Division action on any planning process.

SUMMARY OF THE RULE OR CHANGE: This rule allows the public to receive a Record of Decision or other document summarizing Division action on any planning process upon request. The previous rule was ambiguous on how a member of the public can get a copy of the Record of Decision for a comprehensive planning process, or a resource planning process. Under Division policy, posts the Record of Decision on the planning processes for comprehensive and resource planning processes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-2-2 and Section 65A-2-4

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There might be some minor costs associated with copying and mailing a copy of the Record of Decision to those requesting it. The Division will absorb those costs within its normal budget.
♦ LOCAL GOVERNMENTS: Local government would not have any costs associated with the rule change. If the local government wanted a copy of the Record of Decision it would merely request a copy.
♦ SMALL BUSINESSES: Small businesses would not have any costs associated with the rule change. If the small business wanted a copy of the Record of Decision it would merely request a copy.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small business, businesses, or local government entities would not have any costs associated with the rule change. If they wanted a copy of the Record of Decision they would merely request a copy. The costs would be borne by the state.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no costs for affected persons. The planning process is a public process, affecting the public lands, and any member of the public who wanted a copy of the Record of Decision can ask for a copy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should have no effect on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dave Grierson by phone at 801-538-5504, by FAX at 801-533-4111, or by Internet E-mail at davegrierson@utah.gov
♦ Jennifer Sullivan by phone at 801-538-5495, by FAX at 801-533-4111, or by Internet E-mail at jennifersullivan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Richard Buehler, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-90. Sovereign Land Management Planning.
R652-90-600. Public Review.

1. Comprehensive management plans shall be published in draft form and sent to persons on the mailing list established under R652-90-400, the Governor's Office of Planning and Budget, and other persons upon request.

(a) A public comment period of at least 45 days shall commence upon receipt of the draft in the Governor's Office of Planning and Budget.

(b) All public comment shall be acknowledged pursuant to 65A-2-4(2).

(c) The division's response to the public comment shall be summarized in the final comprehensive management plan.

(d) Comments received after the public comment period shall be acknowledged but need not be summarized in the final plan.

2. Resource plans shall be published and made available upon request.

(a) Persons wishing to comment on these plans may do so at any time.

(b) The division shall acknowledge all written comments.

3. Upon completion of any [~~site-specific~~] planning process, the Record of Decision or other document summarizing final division action and relevant facts shall be provided to any persons requesting notice from the division.

KEY: management, public meetings, environmental assessment, land use
Date of Enactment or Last Substantive Amendment: [~~May 26, 2009~~]2010

Notice of Continuation: April 2, 2007
Authorizing, and Implemented or Interpreted Law: 65A-2-4

Natural Resources, Wildlife Resources
R657-5-13
Areas With Special Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33271
FILED: 12/15/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revision to the above listed rule removes the firearm restriction in Salt Lake County.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment removes the firearm restriction in Salt Lake County, it does not make any changes to division processes therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since this amendment has no impact on individual hunters or the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: This amendment removes the firearm restriction in Salt Lake County and does not have the potential to generate a cost or savings impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment removes the firearm restriction in Salt Lake County and does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not have a potential to create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not[~~:~~
~~(a)~~] hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon[~~;~~
~~(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or~~

~~(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people~~].

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

KEY: wildlife, game laws, big game seasons
Date of Enactment or Last Substantive Amendment: [~~July 27, 2009~~|2010
Notice of Continuation: November 21, 2005
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6

Natural Resources, Wildlife Resources
R657-37-9
Permit Allocation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33272
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the Cooperative Wildlife Management Unit (CWMU) program for big game.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to this rule will allow a landowner association to donate a CWMU voucher that has not been redeemed during the previous year to donate that voucher to a 501(c)(3) tax exempt organization providing certain criteria are met. The criteria is outlined in Subsections R657-37-9(10)(a), (b), and (c).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-23-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to this rule are for the purpose of clarification for both the CWMU operators and the Division of Wildlife Resources (DWR) as to when a voucher can be donated and to what type of group. The DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.
♦ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR pertaining to the donation of CWMU vouchers to tax exempt groups. DWR determines that these amendments do not create a cost or savings impact to small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR pertaining to the donation of CWMU vouchers to tax exempt groups. DWR determines that these amendments do not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule are for the purpose of clarification of donating CWMU vouchers to tax exempt groups, for both the CWMU operators and DWR. DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule are for the purpose of clarification for both the CWMU operators and DWR. DWR determines that there is no compliance costs associated with this amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.
R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with Subsection (4), determine:

(a) the total number of permits to be issued for the CWMU; and

(b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(4)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b) During a three year management plan period, permit allocations for moose permits available in the public draw will not drop below 40% for bull moose and 60% for antlerless moose.

([~~b~~]c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

([e]d) Permits shall not be issued for spike bull elk.

([~~d~~]e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share		
Option	Bucks/Bulls	Does/Antlerless
1	60%	40%

Public's Share		
Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share		
Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share		
Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(5)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(10)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) The voucher donation is approved by the Wildlife Board prior to transfer;

(ii) No more than one voucher is donated per year by a landowner association;

(iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iv) The recipient of the voucher is identified prior to obtaining the Wildlife Board's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before April 1st the year the CWMU voucher is to be redeemed.

([~~10~~]11)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to

list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

KEY: wildlife, cooperative wildlife management unit
Date of Enactment or Last Substantive Amendment: [~~November 21, 2007~~]2010
Notice of Continuation: May 8, 2008
Authorizing, and implemented or Interpreted Law: 23-23-3

Transportation, Preconstruction
R930-5
Establishment and Regulation of At-Grade Railroad Crossings

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 33274
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this repeal and reenactment of Rule R930-5 are to: 1) eliminate prescriptive design solutions; 2) eliminate specific design criteria and incorporate the information by reference from appropriate state, federal, and industry practice; 3) to update definitions and references; 4) consolidate appropriate sections; and 5) eliminate redundant, confusing, and conflicting language.

SUMMARY OF THE RULE OR CHANGE: The repeal and reenactment eliminates prescriptive design solutions and specific design criteria and instead, incorporates the information by reference to appropriate state and federal statutes and Industry manuals. The new rule updates definitions and references, consolidates appropriate sections, and eliminates redundant, confusing, and conflicting language. More specifically, Section R930-5-2 "Authority" was combined with the new Section R930-5-1; Section R930-5-3 "Purpose" was combined with the new Section R930-5-1; Section R930-5-13 "Apportionment of Costs" was combined with the new Section R930-5-9; Section R930-5-15 "Clearances" was eliminated. No new substantive provisions are added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1205 and Section 54-4-14 and Section 54-4-15 and Section 72-1-201 and Title 63G, Chapter 3

TITLE OF MATERIALS INCORPORATED BY REFERENCES:

- ♦ Adds A Policy on Geometric Design of Highway and Streets, published by American Association of State Highway and Transportation Officials,
- ♦ Adds 49 CFR 209, published by Federal Register,
- ♦ Adds 23 CFR 924, published by Federal Register,
- ♦ Adds 23 CFR 646, published by Federal Register,
- ♦ Adds 49 CFR 212, published by Federal Register,
- ♦ Adds Manual for Railway Engineering, Chapter 28, published by American Railway Engineering and Maintenance-of-Way Association,
- ♦ Adds 23 CFR 148, published by Federal Register,
- ♦ Adds Standard Drawing ST-7 Pavement Marking and Signs at Railroad Crossings, published by Utah Department of Transportation,
- ♦ Adds 49 CFR 222, published by Federal Register,
- ♦ Adds 49 CFR 659, published by Federal Register,
- ♦ Adds Preemption of traffic Signals Near Railroad Crossings, published by Institute of Traffic Engineers,
- ♦ Adds 23 CFR 655, published by Federal Register,
- ♦ Adds Railroad-Highway Grade Crossing Handbook, published by Federal Highway Administration,

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department does not anticipate any cost or savings to the state budget resulting from the repeal and reenactment of this rule because any required maintenance is being covered by existing budgets.

♦ LOCAL GOVERNMENTS: The Department does not anticipate any cost or savings to local government resulting from the repeal and reenactment of this rule because any costs are being covered by existing budgets.

♦ SMALL BUSINESSES: The Department does not anticipate any cost or savings to small business resulting from the repeal and reenactment of this rule because the rule does not directly involve small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any cost or savings to persons other than small businesses, businesses, or local government resulting from the repeal and reenactment of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be compliance costs for those proposing developments affecting a railroad crossing. Those costs will be substantially the same as under the previous rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have no new fiscal impacts on businesses.

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

TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Maureen Short by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: John Njord, Executive Director

R930. Transportation, Preconstruction.

[~~R930-5. Establishment and Regulation of At-Grade Railroad Crossings.~~

~~R930-5-1. Policy.~~

~~(1) At regular intervals, the Department: (a) reviews for safety all existing public at-grade highway/railway crossings in the state in accordance with the Manual on Uniform Traffic Control Devices; (b) evaluates and approves the location of new crossings; (c), prescribes the types of at-grade crossing railroad warning devices; and (d) determines maintenance and funding apportionments for all highway/railway projects.~~

~~(2) Highway/railway projects that use federal railroad safety funds shall be carried out in accordance with 23 CFR Part 646 Subpart B.~~

~~R930-5-2. Authority.~~

~~This rule is authorized by Utah Code Ann. Section 54-4-15. Additional sections in the Utah Code and Federal rules supporting this rule are found in sections 10-8-34, 10-8-82, 41-6-19, 72-1-102, 72-2-112; 23 CFR 924 and 23 CFR 646.~~

~~R930-5-3. Purpose.~~

~~(1) Department oversees all at-grade public highway/railway crossings in the state of Utah and provide for the safe, efficient operation of vehicles and pedestrians through highway/railway intersections. Department also promotes elimination of at-grade highway/railway crossings when possible, elimination of hazards to improve at-grade crossings, and recommends the construction of grade separation structures to replace at-grade crossings pursuant to this rule.~~

~~(2) This rule describes procedures for the selection of highway/railway crossings for improvement, the selection of passive and active railroad warning devices, design, maintenance operations and the funding sources for the improvement of crossings.~~

~~R930-5-4. Incorporation by Reference.~~

~~The following federal law, federal agency manuals and association standards, and technical requirements are adopted and incorporated by reference:~~

~~(1) 23 CFR 646 "Railroads" (2005);~~

~~(2) 23 CFR 924 "Highway Safety Improvement Program" (2005);~~

~~(3) "A Policy on Geometric Design of Highway and Streets", American Association of State Highway and Transportation Officials (AASHTO) (2004);~~

~~(4) Preemption of traffic signals near railroad crossings, Institute of Traffic Engineers (ITE) (2004); and~~

~~(5) Guidance for traffic control devices at Highway/Railroad Grade Crossings, FHWA (2000).~~

~~R930-5-5. Definitions.~~

~~(1) "Active warning devices" means those types of traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train;~~

~~(2) "At-Grade Crossing" means the crossing of a highway and railway at approximately the same elevation;~~

~~(3) "Clear zone" means an area along the road that is clear of obstructions and required by the Department in order to make the roadway safer for errant vehicles;Department~~

~~(4) "Company" means any railroad, special transit district, or utility company including any wholly owned or controlled subsidiary thereof;~~

~~(5) "Diagnostic/Surveillance team" means an appointed group of knowledgeable representatives of the parties of interest in a highway/railway crossing or group of crossings;~~

~~(6) "FHWA" means the Federal Highway Administration, an agency within the United States Department of Transportation~~

~~(7) "Local Agency" means a local governmental entity that owns a highway;~~

~~(8) "Main line railroad track" means a track of a principal line of a railroad, including extensions through yards, upon which trains are operated by timetable, train order or both, or the use of which is governed by block signals or by centralized traffic control;~~

~~(9) "MUTCD" means the Manual of Uniform Traffic Control Devices as adopted in Utah Code Ann. Section 41-6a-301;~~

~~(10) "Passive warning devices" means those types of traffic control device, including signs, markings and other devices located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train;~~

~~(11) "Preliminary engineering" means the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work;~~

(12) "PSC" means the Public Service Commission of the State of Utah;

(13) "Roadway" means that portion of the highway, including shoulders, intended for vehicular use;

(14) "Railroad" means all rail carriers, whether publicly or privately owned, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as rapid transit, commuter and street railroads;

R930-5-6. Types of Projects.

(1) Projects for the elimination of hazards for both vehicles and pedestrians at highway/railway crossings may include the following:

(a) Elimination of at-grade highway/railway crossings by combining multiple crossings;

(b) Elimination of at-grade highway/railway crossings by the relocation of a highway;

(c) Elimination of an at-grade crossing by the construction of a new grade separation where full access control is required regardless of the volume of train or highway vehicles;

(d) Improvements to existing at-grade highway/railway crossings;

(e) Reconstruction of an existing highway/railway grade separation structure;

(f) Construction of raised median curb islands or other channelizing devices;

(g) Installation of lighting to improve visibility of crossings or safety devices;

(2) Other projects that require Department approval prior to construction include, but are not limited to the following projects:

(a) Highway/railway projects that use railroad properties or involve adjustments to railroad facilities required by highway construction, but do not involve the elimination of hazards of railway/highway crossings;

(b) Construction of new highway crossings over a railroad track where a new street or highway is proposed that is not essentially a relocation of an existing street;

(c) Construction of a new railroad crossing of an existing highway or street.

R930-5-7. Diagnostic/Surveillance Review Team.

(1) The Department shall have a program for the identification of highway/railway crossings for improvement. Crossings may be identified for improvement upon recommendation from the diagnostic/surveillance review team, or by formal finding of the Department. The role of the Diagnostic/Surveillance Review Team is to make recommendations to the Department for changes needed at railroad crossings. The team serves as a venue where different agencies and railroads may come together and discuss options and alternatives for safety improvement. The Department shall consider all recommendations made by the team members, and input received from the public at large (in accordance with section R930-5-14) before issuing final orders for the improvement of grade crossings. Suggested improvements at all highway/railway intersection crossings are evaluated by a Diagnostic/Surveillance Review Team. The team reviews railroad crossings when requested by local agencies, when significant changes in highway traffic patterns are proposed, or when railroad traffic is proposed to significantly increase. The Department may also make formal findings and rulings as part of its routine inspection of railroad crossings, independent of the Diagnostic/Surveillance Review Team.

(2) The Diagnostic/Surveillance Team is composed of the following team members:

(a) Chief Railroad Engineer for the , Department;

(b) Representatives from the railroad company;

(c) Representatives from the local government agency (preferably from engineering or public works), and when available the local law enforcement groups where the highway/railway crossing is located and

(d) Representatives from the local school district, if the crossing is located on an approved school walking route.

(3) The Diagnostic/Surveillance Team shall, when appropriate:

(a) Recommend the elimination of at-grade highway/railway crossings;

(b) Recommend that passive railroad warning devices be installed at crossings in accordance with the MUTCD;

(c) Recommend installation of active railroad warning devices at highway/railway crossings. Active warning devices include flashing lights, flashing lights with gates, flashing lights with gates and overhead cantilever lights, three- or four-quadrant gates with gate management system, or other active warning device as defined in the MUTCD;

(d) Recommend the type of railroad crossing materials to be installed at highway/railway crossings;

(e) Recommend the improvement of the highway approach grades to the tracks to improve sight distance;

(f) Recommend removal of trees, brush and foliage from the highway and railroad rights-of-way and private properties to provide better sight distance for motor vehicles;

(g) Recommend changes needed to improve pedestrian safety, and to comply to the extent possible with the Americans with Disabilities Act;

(h) Review all requests for new at-grade crossings of existing railroads. The highway agency making the request for a new crossing shall provide a master street plan showing the agency's plan to eliminate or combine existing railroad crossings before new crossings will be approved;

(i) Review change of use of highway/railway crossings. The local agency shall verify the permitted use, public or private, of any highway/railway crossing in writing from the authorized owner of the track prior to approval of new development or change in land use or ownership;

(j) Recommend new overpass or other grade separation structures;

(k) Recommend the installation of street lighting to improve visibility;

(l) Recommend any other safety mitigation requirements in order to improve vehicle and pedestrian safety.

(4) Duties of individual Diagnostic/Surveillance Team members include:

(a) The Chief Railroad Engineer shall:

(i) notify team members who are to attend the review;

(ii) conduct the reviews and issue team reports within two weeks after the review and send copies to all those attending the review;

(iii) establish requirements for horizontal and vertical alignments of the roadway;

(iv) determine passive and active railroad warning device locations on the roadway;

(v) determine funding apportionments on federal railroad safety projects;

(vi) initiate all Notices of Intended Action for railroad projects;

(vii) review the plans and contractual agreement requirements on projects demanding federal funds from local agencies;

(viii) obtain all necessary field data for plan site maps and take photographs of the existing conditions of all quadrants of the intersection.;

(b) The Railroad Company Representative shall provide train volumes, accident data, and any other pertinent data regarding the railroad crossing;

(c) The Local Agency Representative shall provide highway traffic volumes, proposed road construction activities on the highway, or an approved master plan for the highway, in addition to any other pertinent data regarding the crossing;

(d) The Local School District Representative shall provide school-age pedestrian traffic counts and school routing plan information.

(5) Where a new railroad crosses an existing highway, the Department will consider the new crossing in conformance with Section 54-4-15. Public notice will be made in conformance with R930-5-14, Notice of Intended Action. If approved, the required separation or railroad warning devices, and any pavement work at the crossing shall not be considered to be of benefit to the road user and 100 percent railroad participation shall be required. The determination as to separation of type of warning devices shall be according to classification and traffic volume of the highway crossed and the predicted traffic hazard and as recommended by the Surveillance Team.

R930-5-8. Design of At-Grade Highway/Railway Crossings.

(1) The Department shall oversees and approves the design of all highway/railway at-grade crossings. Facilities that are the responsibility of the railroad for maintenance and operation shall conform to the specifications and design standards used by the railroad in its normal practice. At-Grade crossings that are the responsibility of the local agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice subject to approval by the Department. Where a local agency does not have an approved standard, Department standard drawings for the design of railroad crossings apply. Traffic control devices at all grade crossing improvements shall comply with the MUTCD. Required clearances for all devices shall conform to the MUTCD, or as approved by the Department. All design plans shall include USDOT identification numbers, street addresses, railroad subdivision and railroad milepost for at-grade crossings.

(2) Railroad crossing surface materials shall be designed as follows:

(a) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks;

(b) The approach grades of the roadway to the railroad crossing material shall conform to standard drawings published by the Department, to the extent practical;

(c) When the existing railroad crossing material is to be extended but the existing material is too old and cannot be connected to the new material, complete replacement of the railroad crossing material is required;

(d) New railroad crossing materials shall use insulated concrete panels. Other materials may be used, if approved by the Department.

(3) Active railroad warning devices shall be designed as follows:

(a) The railroad company is responsible for the design of the railroad activation circuitry, hardware, and software necessary to comply with requirements of the Department. Clearances for active warning devices shall comply with requirements of the MUTCD, unless otherwise specifically authorized by the Department;

(b) Three- and four-quadrant gate systems: Designs for these systems shall be in conformance with the MUTCD. Exit gates for these systems shall be designed to fail in the upright position. Time-delayed exit gates shall not be used in these systems, except for locations with a single track that is nearly perpendicular to the highway. In these cases, where practical, the exit gate shall be placed at a distance from the track to allow for a single design vehicle to exit the crossing area safely. The Diagnostic/Surveillance Review Team shall recommend delay times to be used in these applications. For all other installations (single track skewed crossings, multi-track crossings, etc.) a dynamic exit gate system shall be used. The exit gate system shall employ a method (as approved by the Department) of detecting vehicles stalled on the tracks and shall raise exit gates to allow for vehicles to exit the crossing area. When the active warning devices are placed within the roadway clear zone, appropriate attenuation devices shall be installed;

(c) When an existing roadway is to be widened, the new location of the active railroad warning devices shall be determined by the railroad and highway agency. The railroad company shall relocate the devices;

(d) When active warning devices are within 200 feet of a traffic signal, the local authority shall provide the type and amount of preemption time needed to the Diagnostic Review Team. The railroad company shall design the crossing per the specification of the local authority. The local authority shall provide an interconnect to the traffic signal controller. The local authority is responsible for programming traffic signal controller;

(e) Design plans shall show the location of active devices by both highway station and railroad milepost.

(4) The following passive warning devices shall be designed, installed, and maintained by the railroad company in accordance with the MUTCD:\

(a) Sign R15-1 (crossbuck);

(b) Sign R15-2 (number of tracks);

(c) Sign R1-1 (STOP);

(d) Sign R1-2 (Yield);

(e) Sign R15-3 (Exempt);
(f) Sign R8-9 (Tracks out of Service)
(5) Design, installation, and maintenance of all other passive railroad warning devices, signs, and pavement markings is the responsibility of the highway agency that crosses the railroad tracks. Design and location of the devices shall be in accordance with the MUTCD and as engineering studies indicate necessary, or as required by the Diagnostic Review Team.

R930-5-9. Responsibility to Arrange for the Installation of Railroad Materials and Devices.
(1) Responsibility for installation of railroad crossing material is as follows:
(a) When a roadway is widened by a local agency, the local agency shall be responsible to arrange by agreement with the railroad company to install the railroad crossing extension.
(b) When local agencies reconstruct a roadway and new railroad crossing material is required, the local agency shall arrange by agreement with the railroad company for the complete replacement of the railroad crossing material when material cannot be extended.
(2) Responsibility for installation of active warning devices is as follows:
(a) When a local agency widens a roadway which changes the existing conditions of the highway/railway crossing and it requires active warning devices, the local agency shall be responsible to arrange by agreement with the railroad company for the installation of the active railroad warning devices after their plans are approved by the Department.
(b) When a local agency widens a roadway that has existing active railroad warning devices, the local agency shall have their plans approved by the Department and arrange by agreement with the railroad company for the relocation of the devices.
(c) Prior to approving new residential, commercial or industrial development within 1000 feet of a railroad crossing, the local agency shall request a Diagnostic/Surveillance Review of the proposed development to assess the potential traffic impacts at the railroad crossing. When a local agency approves increased development that changes the conditions of a highway/railway at-grade crossing by increasing traffic volumes and/or by adding new access openings onto a highway within 250 feet, the agency plans shall be approved by the Department. The local agency shall arrange by agreement with the railroad company for any required railroad changes.
(d) When a highway/railway at-grade crossing is listed in the Department's Annual High Accident Prediction List and active warning devices are required, the Department shall arrange by agreement with the railroad company for the installation of the active railroad warning devices.
(e) When a local agency requests a surveillance review of a highway/railway intersection or a corridor of intersections and the Diagnostic/Surveillance Team recommends that a crossing or crossings can be eliminated and other crossings can be upgraded, the Department shall determine if Federal Railroad Safety Funds (also know as "Section 130 funds") may be used for any or all of the improvements. If Federal funding is available, the Department shall also arrange by agreement with the railroad company for the installation of the active railroad warning devices.
(3) The Local Agency is responsible for the installation of all passive railroad warning devices.

R930-5-10. Maintenance.
(1) Responsibility for maintenance is as described in this section unless a separate agreement has been executed between the railroad and the owner of the road.
(2) The maintenance of automatic signal devices and the pavement area from end of tie to end of tie, including space between multiple tracks if the railroad company owns the easement rights between the multiple tracks, and two feet beyond each outside rails is the responsibility of the railroad company.
(3) Signals and pavement between end of ties on temporary highway detours shall in all cases become the responsibility of the railroad company at the expense of the highway agency owning the roadway.
(4) Maintenance of the crossing approaches up to end of tie is the responsibility of the agency owning the roadway. When the railway is raised due to track and ballast maintenance, the railroad company shall coordinate their work with the agency owning the roadway so the pavement on the approaches can be adjusted to provide a smooth ride for motorists. When the agency owning the roadway changes the road profile (through construction or maintenance activities) the approaches to the tracks must be adjusted to provide a smooth and level crossing surface.
(5) Responsibility for maintenance of a grade separation structure is as follows:
(a) Where a separation facility overpasses a railroad, maintenance responsibility for the entire structure and approaches is assumed by the agency owning the structure and roadway.
(b) When a grade separation structure underpasses a railroad and the railroad owns the right of way fee title, maintenance of the roadway and the entire structure below and including the deck plate, girders, handrail, and parapets, is the responsibility of the owner of the roadway. Maintenance of the waterproofing, ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets is the responsibility of the railroad company. If the owner of the roadway owns the right of way fee title, the railroad is responsible for the maintenance of the entire structure.
(c) Cost of repairing damages to a highway or a highway structure, occasioned by collision, equipment failure or derailment of the railroad's equipment shall be borne by the railroad company.
(6) Responsibility for maintenance of private industrial trackage not owned by a railroad company that crosses public highways shall be as follows:
(a) When a facility, plant or property owner receives goods and services from a railroad company train over private industrial trackage that crosses a public highway, maintenance of the crossing shall be the responsibility of those companies receiving the goods and services.
(b) When the highway/railway crossing becomes a safety hazard to vehicles and is not maintained, the Department and the railroad company shipping the goods and services shall notify the facility, plant or property owners in writing to maintain or replace the railroad crossing material.
(c) If the owner of the private trackage does not maintain or replace the crossing material by a specified date, the Department

shall order the railroad company to cease and desist operations across the highway/railway crossing.

(d) If the owner still does not respond to the order to maintain or replace the railroad crossing material the following action shall be taken by the highway agency owning the roadway. The highway agency shall arrange to have the crossing replaced, and bill the facility owner of the trackage for the expenses to repair the trackage.

R930-5-11. FHWA Authorizations.

(1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved program and authorized by FHWA are eligible for federal participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by the railroad prior to authorization by FHWA, although not reimbursable, may be included as part of the railroad share of the project cost where such share is required.

(2) Prior to issuance of authorization by FHWA either to advertise the physical construction for bids, to proceed with force account construction for railroad work or for other construction affected by railroad work the following must be accomplished:

(a) Plans and specifications and estimates must be approved by FHWA.

(b) A proposed agreement between the state and the railroad company must be found satisfactory by FHWA. Before Federal funds may be used to reimburse the state for railroad costs the executed agreement must be approved by FHWA.

R930-5-12. Railroad Agreements.

(1) Where construction of a federal aid project requires use of railroad properties or adjustments to railroad facilities, the Department shall prepare an agreement between it and the railroad company.

(2) Master agreements between the Department and a railroad company on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations and provisions required in conjunction with work performed on all projects.

(3) On a project-by-project basis, the written agreement between the Department and the railroad company shall, as a minimum, include the following, where applicable:

(a) Reference to appropriate federal regulations;

(b) detailed statement of the work to be performed by each party;

(c) Method of payment shall be actual cost;

(d) For projects which are not for elimination of hazards of highway/railway crossings, the extent to which the railroad is obligated to move or adjust facilities at the expense of the agency owning the roadway;

(e) The railroad's share of the project cost;

(f) An itemized estimate of the cost of the work to be preformed by the railroad;

(g) Method to be used for performing the work, either by railroad forces or by contract;

(h) Maintenance responsibility;

(i) Form, duration, and amounts of any needed insurance;

(j) Appropriate reference to or identification of plans and specifications.

(4) On matching fund agreements between the Department and the Local Agency, on a project-by-project basis the written agreement shall include the following:

(a) Description of work and location, city, county, state;

(b) Reference to federal regulations that matching funds will be provided by the agency having jurisdiction over the street or highway right-of-way where improvements are desired;

(c) Detailed statement of work to be preformed by each party regarding design engineering, agreements, inspection and maintenance;

(d) Statement of finances of project and matching funds to be provided by local agency, deposits, invoices and cost overruns or underruns.

(5) Agreements prepared for local government and industrial trackage crossing are prepared between the agency owning the street or highway right-of-way and the industry on forms furnished by the railroad companies.

(6) In order that a highway/railway project shall not become unduly delayed, the Department shall consider a six-month period of time from issuance of the railroad agreement to be adequate for completion of execution by the railroad company involved. Should more than the specified period of time elapse, the Department shall require the railroad to proceed with the work covered by the agreement under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

R930-5-13. Apportionment of Costs.

(1) Paragraphs 2-7 of this section apply when highway projects are constructed in whole or in part with Federal funds.

(2) Apportionment of costs for installation, maintenance, and reconstruction of active and passive railroad warning devices at highway/railway intersections shall be in accordance with 23 CFR 646.

(3) When a roadway is widened by the state or local governmental agency, that agency shall fund all passive and active warning devices as recommended by the Diagnostic/Surveillance Team and as determined necessary by the Department.

(4) When a roadway is widened by a local agency, and the existing railroad crossing material is old and cannot be attached to the new material, the local agency shall fund the replacement of all new existing crossing material.

(5) When a highway/railway at-grade crossing is listed on the Department's Annual High Accident Prediction List, and it is determined by the Department that the crossing shall be upgraded, it shall be funded by federal railroad safety funds and local highway agency matching funds.

(6) If approved construction of a separation structure or the installation of a signal device at such crossing is not considered a benefit to the railroad, railroad participation shall not be required.

(7) A project to reconstruct an existing overpass or underpass shall include the entire structure and railway and the highest approaches thereto. Since there is no railway liability for such projects, it is considered that there shall be no benefit to the railroad and railroad participation shall not be required.

(8) This paragraph applies when no federal funds are used on a project to reconstruct an existing overpass or underpass. The project shall include the entire structure and railway and the highest approaches thereto. If the railroad owns the fee title right of

~~way, no railroad participation is required. If the railroad does not own the fee title right of way, all costs will be the responsibility of the railroad.~~

~~R930-5-14. Notice of Intended Action Process.~~

~~(1) Public notification is required when the Department is considering proposals to close public streets at crossings, removal of tracks from crossings, addition of tracks at crossings, or construction of new public at-grade crossings. The Department shall advertise a notice of its intended action in a newspaper of general circulation, and if available, a newspaper of local circulation in the area affected, at least twice with a provision that written protests may be filed with the Department 15 days from the date of the last publication of the notice. The local public authority shall provide written notice to all property owners within one-half mile of the crossing area. The notice shall identify the project, briefly describe the changes proposed, who to contact for information, where to file complaints or comments, and contain general information relating to the proposed action.~~

~~(2) Construction of a new highway crossing of a railroad track where a new street or highway is proposed which is not essentially a relocation of an existing street, the the Department will consider the new crossing in conformance with Section 54-4-15. Public notice will be made in conformance with this rule.~~

~~(3) All requests for a public meeting shall be in writing and shall detail how a proposed action will adversely affect a group of people, firm or corporation, and if it appears that the adverse affect cannot be alleviated by the Department. Such a hearing will be conducted informally by the Department. Any party aggravated by any determination made by the Department shall have their statutory right under Section 54-4-15, as amended, to petition the PSC for a hearing to be governed by the procedures of the PSC.~~

~~(4) In instances where the action proposed by the Department does not substantially affect the general public, The Department may waive the requirement to public notice, provided all parties affected concur in writing with the action proposed. For the purposes of this section, parties affected shall mean railroads or other common parties, state, county, city or other environmental agencies, boards or commissions, having jurisdiction over any property rights of facilities, and private persons or directly affected.~~

~~R930-5-15. Clearances.~~

~~(1) Unless otherwise noted, all clearances apply to tracks carrying freight or passengers.~~

~~(a) Overhead clearances. Overhead clearance is measured as the minimum clearance from the top of rail to the lowest point on a structure.~~

~~(i) For tracks carrying freight cars, 23'6";~~

~~(ii) For tracks carrying only passenger cars, 14';~~

~~(b) Side Clearances. Side clearance is measured from the centerline of tangent standard gauge tracks. Increase clearances on all structures adjacent to curved track by 12 inches.~~

~~(i) Posts, pipes, warning signs, other small obstructions, 10';~~

~~(ii) Freight platforms, 8 inches or less above top of rail, 4'8";~~

~~(iii) Freight platforms, between 8 inches and 21 inches above top of rail, 5'8";~~

~~(iv) Freight platforms, between 21 inches and 48 inches above top of rail, 7'3";~~

~~(v) Refrigerated freight platforms, between 48 inches and 54 inches above top of rail, 8'0";~~

~~(vi) All other structures, near freight tracks, 8'6";~~

~~(vii) Poles supporting electrical conductors for use in supplying motive power to tracks, 7'6";~~

~~(viii) All other poles supporting cables or wires, 8'6";~~

~~(ix) Through bridges and tunnels supporting track affected, 8'0";~~

~~(x) Switch boxes, operating mechanisms, and appurtenances necessary for the operation of switches, turnouts, or interlocking devices, less than 4 inches above top of rail, 3'0";~~

~~(xi) Block signals and switch stands, three feet or less above top of rail and located between tracks, 6'0";~~

~~(xii) Block signals and switch stands, used in operation of Light Rail Transit, 7'6";~~

~~(xiii) All other block signals and switch stands, 8'6";~~

~~(xiv) Water and oil columns, 8'0";~~

~~(xv) Hand rails on bridges or trestles, less than four feet above top of rail, 7'6";~~

~~(xvi) Fences of cattle guards, 6'9";~~

~~(xvii) Doors and entrances to repair shops or maintenance buildings, 7'6";~~

~~(xix) All other objects and articles, 8'6.(c) Overhead and side clearances. Minimum overhead and side clearances may be decreased to the extent defined by the radius of a circle with the appropriate side clearance, with the center-point of the circle set at the appropriate minimum clearance height. Overhead and side clearances do not apply to shops and buildings in which rail equipment is moved for repairs~~

~~(d) Clearances for parallel tracks. Clearance is measured from centerline of tracks.~~

~~(i) Tracks used for freight transportation, mainline or siding tracks, 15';~~

~~(ii) Tracks used for passenger transportation, mainline or siding tracks, 15';~~

~~(iii) Tracks used as team or freight house tracks may be reduced to 11'6" provided that all other side clearances are maintained;~~

~~(iv) Between adjacent ladder or yard tracks, 20'. Between ladder or yard tracks and other (mainline or siding) tracks, 17.~~

~~(e) Minimum clearances for public roads, highways, and streets.~~

~~(i) Where railroads cross overhead, 17';~~

~~(ii) Where railroads cross overhead, side clearances are based on the width of the road and the number of lanes crossing under the structure. Minimum widths are determined by the Department of Transportation on a case-by-case basis;~~

~~(iii) Where roads cross overhead, use the minimum clearances as provided in this rule.~~

~~R930-5-16. Accident Reporting.~~

~~Railroad companies are required to report all accidents occurring at highway-rail grade crossings to the Department's Chief Railroad Engineer within 2 hours of the incident. Initial notification must include the USDOT crossing number, street address, municipality, time of incident, train identifier, and contact phone number for further information. Written accident reports shall be~~

~~submitted to the Department within 30 days of the incident. Current Federal Railroad Administration (FRA) form F 6180.57 shall be used to report accidents.~~

~~**R930-5-17. Exemption of Railroad Crossings.**~~

~~Under Section 41-6a-1205, Utah Code, certain vehicles are required to stop at all railroad crossings, unless a crossing is signed as exempt from this requirement. Recommendation to exempt a crossing is made by the Diagnostic/Surveillance team to the Department. Certain crossings are not eligible for exemption from Section 41-6a-1205:~~

~~(1) Mainline crossings with passive protective devices only;~~

~~(2) Crossings within approved quiet zones;~~

~~(3) Crossings where insufficient sight distance exists;~~

~~(4) Notification under section R930-5-14 shall be performed prior to authorization of exempting crossings.~~

~~**KEY: railroads, transportation, safety**~~
~~**Date of Enactment or Last Substantive Amendment: June 10, 2008**~~
~~**Notice of Continuation: November 29, 2006**~~
~~**Authorizing, and Implemented or Interpreted Law: 10-8-34; 10-8-82; 41-6-19; 54-4-15; 72-1-102; 72-2-112]**~~

R930-5. Establishment and Regulation of At-Grade Railroad Crossings.

R930-5-1. Purpose and Authority.

(1) The Utah Department of Transportation (the "Department") oversees all Public Highway-Rail Grade Crossings ("Crossings") in the state of Utah. Railroads have jurisdiction over and are responsible for the safety of private crossings. The Department's goals are to improve the safety for all users of a Crossing and provide for the efficient operation of trains and vehicles and pedestrians access through those Crossings. As part of this effort, the Department promotes the elimination of Crossings and at regular intervals, the Department:

(a) Reviews all existing Crossings in the state for safety deficiencies;

(b) Evaluates and approves the location of a new Crossing;

(c) Prescribes the type of improvements at a Crossing;

(d) Defines maintenance responsibility for a Crossing; and

(e) Determines funding apportionments for all Section 130 Crossing Projects.

(2) This rule describes procedures for evaluating and selecting a Crossing for improvement as well as for evaluating and selecting the type of improvements at a Crossing. Such improvements include, but are not limited to:

(a) The evaluation and selection of the type of Passive and Active Warning Devices;

(b) The process for evaluating and determining whether a Crossing should be grade separated; and

(c) The process for evaluating Quiet Zones as outlined in 49 CFR 222.

(3) This Rule outlines the responsibilities of the various parties with respect to the design, maintenance and funding for Crossing improvements.

(4) This Rule is authorized by Section 54-4-15 "Establishment and Regulation of Grade Crossings," Section 54-4-14, Section 72-1-201, Section 41-6a-1205 and Title 63G, Chapter 3 "Utah Administrative Rulemaking Act."

R930-5-2. Incorporation by Reference.

The following federal law, state law, federal agency manuals, association standards and UDOT technical requirements are incorporated by reference:

(1) 23 CFR 148 "Highway Safety Improvement Program" (2005);

(2) 23 CFR 646 "Railroads" (2009);

(3) 23 CFR 655 "Traffic Operations" (2009) "Manual of Uniform Traffic Control Devices (MUTCD)" (2003, with revisions 1 and 2 incorporated, dated 2007);

(4) 23 CFR 924 "Highway Safety Improvement Program" (2009);

(5) 49 CFR 209 "Accidents and Incidents" (2009);

(6) 49 CFR 212 "State Safety Participation Regulations" (2009);

(7) 49 CFR 222 "Use of Locomotive Horns at Public Highway-Rail Grade Crossing" (2009)

(8) 49 CFR 659 "Rail Fixed Guideway Systems; State Safety Oversight" (2009);

(9) "A Policy on Geometric Design of Highway and Streets", American Association of State Highway and Transportation Officials (AASHTO) (2004);

(10) "Railroad-Highway Grade Crossing Handbook", Federal Highway Adminstration (FHWA) (August 2007);

(11) "Preemption of traffic signals near Railroad Crossings", Institute of Traffic Engineers (ITE) (2004);

(12) "Manual for Railway Engineering", Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007; and

(13) "Standard Drawing ST-7 Pavement Marking and Signs at Railroad Crossings", Utah Department of Transportation (UDOT) (2008).

R930-5-3. Definitions.

(1) "Active Warning Device" means traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and Crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

(2) "Company" means any local district or utility company.

(3) "Diagnostic Team" means an appointed group of knowledgeable representatives of the parties of interest in a Crossing or group of Crossings.

(4) "FHWA" means the Federal Highway Administration, an agency within the United States Department of Transportation.

(5) "FRA" means the Federal Railroad Administration, an agency within the United States Department of Transportation.

(6) "FTA" means the Federal Transit Administration, an agency within the United States Department of Transportation.

(7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made

public in an action for the partition of real property, including the area within the right-of-way.

(8) "Highway-Rail Grade Crossing" ("Crossing") means the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.

(9) "Highway Authority" means the Department or local governmental entity that owns or has jurisdiction over a Highway.

(10) "MUTCD" means the Manual of Uniform Traffic Control Devices as adopted in Section 41-6a-301.

(11) "Neutral Quadrant" means the quadrant that minimizes sight distance conflicts with immediate on-coming auto traffic. Generally, the neutral quadrant is on the far side of the tracks from the direction of vehicular travel.

(12) "Passive Warning Device" means those types of traffic control devices, including signs, markings and other devices located at or in advance of a Crossing to indicate the presence of a Crossing but which do not change aspect upon the approach or presence of a train.

(13) "Preliminary Engineering" means the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work.

(14) "PSC" means the Public Service Commission of the State of Utah.

(15) "Quiet Zone" means a section of a rail line at least one half mile in length that contains one or more consecutive public Crossings at which locomotive horns are not routinely sounded, see 49 CFR 222.

(16) "Railroad" means all rail carriers, whether publicly or privately owned, and common carriers, including line haul freight and passenger railroads, public transit districts, switching and terminal railroads, passenger carrying railroads such as rapid transit, and commuter and street railroads.

(17) "Section 130 Crossing Project" means a project that eliminates hazards and improves the safe operation of trains, vehicles, and pedestrians through a crossing and is authorized and funded by United State Code, Title 23, Section 130 Program funds.

R930-5-4. Type and Selection of Crossing Projects.

(1) Section 130 Crossing Projects:

(a) Section 130 Crossing Project types include, but are not limited to:

(i) Elimination of a Crossing by combining multiple Crossings;

(ii) Elimination of a Crossing by the relocation of a Highway;

(iii) Elimination of a Crossing by the construction of a new grade separation;

(iv) New safety improvements;

(v) Reconstruction of a Crossing grade separation structure; and

(vi) Repair of Crossing material, that would otherwise be the responsibility of the Railroad as prescribed in Subsection R930-5-8-(1)(b), if the repair of the Crossing material affects or is an integral part of the Crossing safety devices.

(b) The Department has established a process for the evaluation and selection of Section 130 projects that considers the potential reduction in the number and/or severity of collisions, the cost of the Crossing projects, and available resources. Specific methods for selecting and prioritizing Crossings for improvement include:

(i) The collection and maintenance of data utilizing the USDOT Grade Crossing Inventory to record Crossing data including, but not limited to the current physical condition, average daily traffic, and collision data associated with a Crossing.

(ii) An engineering study conducted on a Crossing at the request of a Highway Authority, Railroad, or company or using a priority list developed using the USDOT Accident Prediction Model. The purpose of the engineering study is to review the Crossing and its environment, identify the nature of any deficiencies and recommend alterative improvements. Specifically, an engineering study reviews Crossing characteristics, the existing traffic control system, and the Highway and Railroad characteristics. Based on the review of these conditions, an assessment of existing and potential hazards is made, deficiencies are identified and countermeasures are recommended.

(iii) System or corridor evaluations consider a Crossing as a component of a larger transportation system. The objective is to improve both safety and operations of the total system or segments of the system. In such cases, all Crossings within a corridor are evaluated and can be programmed for improvements. The optimal outcome of a corridor study involves a combination of engineering improvements and closures such that both safety and operations are highly improved.

(2) Non-Section 130 Crossing Projects:

(a) Non-Section 130 Crossing Project types include, but are not limited to:

(i) Crossing projects that use Railroad properties or involve adjustments to Railroad facilities required by Highway construction, but do not involve the elimination of hazards at a Crossing; and

(ii) Construction of a new Crossing at or over a Railroad track where the new Highway is not a relocation of an existing Highway.

(b) Non-Section 130 Crossing Projects will be evaluated and selected as part of the Department's normal STIP evaluation and approval process.

R930-5-5. Diagnostic Team.

(1) The role of the Diagnostic Team is to make recommendations to the Department for needed safety improvements at a Crossing.

(2) The Diagnostic Team reviews and evaluates proposed improvements for all Section 130 Crossing Projects and Non-Section 130 Crossing Projects. The Diagnostic Team reviews a Crossing when requested by a Highway Authority, Railroad, or Company when changes in Highway traffic patterns are proposed, when proposed Railroad traffic is determined to increase significantly, when complaints are made about a Crossing, when safety concerns arise, or when the Department receives a closure request. The Department will consider all recommendations made by the Diagnostic Team and, if appropriate, input received from the public at large (in accordance with Section R930-5-13) before issuing orders for the improvement of Crossings.

(3) The Department may also make formal findings and rulings as part of its process for evaluating Crossing improvements

or during routine inspection of Crossings, independent of the Diagnostic Team.

(4) The Diagnostic Team is usually composed of the following team members:

(a) Chief Railroad Engineer for the Department;

(b) Representative from the Railroad;

(c) Representative from the appropriate Company, if applicable; and

(d) Representative from the Highway Authority (preferably from engineering or public works), and when available, and where appropriate public school district, law enforcement agency and invites with an interest in the Crossing.

(5) The role of the Diagnostic Team is to:

(a) Recommend the elimination of a Crossing;

(b) Recommend the type of safety improvements including, but not limited to Passive Warning Devices, Active Warning Devices, the type of Crossing material, improvements to Highway approaches, removal of foliage and brush, pedestrian facilities (including compliance with ADA requirements), and improvements to street lighting;

(c) Review all requests for a new Crossing;

(d) Review all requests to reclassify a Crossing from private to public;

(e) Recommend the Department conduct an engineering study to evaluate the need for a new overpass or other grade separation structure(s); and

(f) Recommend any other safety related changes to improve vehicle and pedestrian safety.

(6) Duties of Diagnostic Team members generally include participating in Crossings reviews and providing input into the Diagnostic Team recommendations. Specific duties include, but are not limited to the following:

(a) The Chief Railroad Engineer will, when applicable:

(i) Select a Section 130 Crossing Project from a corridor study, or based on a Highway Authority, Railroad, or Company request;

(ii) Schedule and notify Diagnostic Team members, and the FHWA, of the date and time of an upcoming review;

(iii) Conduct Crossing review and issue related reports in a reasonable time after the review and send copies to all those attending the review;

(iv) Review and approve Crossing improvements recommended by the Diagnostic Team;

(v) Determine Section 130 apportionments for Crossing projects;

(vi) Initiate all Notices of Intended Action for Crossing projects, as appropriate;

(vii) Review and approve the contractual requirements for Crossing projects using Section 130 Program funding;

(viii) Review all necessary field data obtained for the Crossing, including but not limited to site plan maps and photographs of the existing Crossing conditions.

(b) The Railroad representative shall provide all relevant data related to the Crossing, including, but not limited to train volumes, accident data and any other pertinent data regarding the Crossing;

(c) The Highway Authority representative shall:

(i) Provide relevant data regarding the Crossing including, but not limited to Highway traffic volumes, planned road construction activities, and an approved master street plan for the Highway;

(ii) Invite local school district if appropriate and request that the local school district representative provide child access and bus routing plan information; and

(iii) Invite local law enforcement agency if appropriate and request that the law enforcement agency provide relevant data, including, but not limited to any safety concerns about the Crossing.

R930-5-6. Design of a Highway-Rail Grade Crossing.

(1) The Department shall approve or disapprove, as appropriate, the design of all Crossing improvements, including the addition of a new Crossing and treatments for a closed Crossing. All design plans shall include, if available:

(i) USDOT identification numbers;

(ii) Street addresses;

(iii) Highway milepost;

(iv) Railroad subdivision; and

(v) Railroad milepost for the Crossing.

(2) Design of Crossing related facilities that are the responsibility of the Railroad shall conform to the specifications and design standards of the Railroad.

(3) Design of Crossing related Highway approaches, those areas two feet outside of rail that are the responsibility of the Highway Authority shall conform to the specifications and design standards of the Highway Authority, subject to approval by the Department. Where a Highway Authority does not have an approved standard, Department standard drawings for the design of the Crossing approaches apply.

(4) Traffic control devices installed as part of any Crossing improvements shall comply with the MUTCD. Required clearances for all devices shall conform to the MUTCD and any variances from MUTCD requirements must be approved by the Department.

(5) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks.

(6) The Railroad is responsible for the design of Railroad Active Warning Devices, including the location, activation circuitry, hardware, and software in accordance with MUTCD.

(a) When Active Warning Devices are within 200 feet of a traffic signal, the Highway Authority and the Railroad shall coordinate the design of the interconnect between the traffic signal and Automatic Warning Device to ensure sufficient preemption time to clear potential vehicle stacking across a Crossing.

(b) Signal houses for Active Warning Devices shall be located in the Neutral Quadrant unless approved by the Department.

(7) The Railroad is responsible for the design of all required Railroad Passive Warning Devices located within the Railroad road right-of-way in accordance with the MUTCD, specific Passive Warning Devices include:

(a) Sign R15-1 (Crossbuck);

(b) Sign R15-2 (Number of tracks);

(c) Sign R1-1 (STOP);
(d) Sign R1-2 (Yield);
(e) Sign R15-3 (Exempt);
(f) Sign R8-9 (Tracks out of Service).
(8) Design and installation of all other Passive Warning Devices, signs, and pavement markings is the responsibility of the Highway Authority. Design and location of the devices shall be in accordance with the MUTCD.
(9) For clearances, refer to the Manual for Railway Engineering, Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007.

R930-5-7. Highway Authority and Railroad Responsibility to Request Approval and Arrange for the Installation of Crossing Improvements.
(1) When a Highway Authority widens or constructs a new Highway, the Highway Authority shall be responsible to request a Diagnostic Team review of the Crossing and arrange by agreement with the Railroad to design and install all required improvements concurrent with its request for approval from the Department:
(2) Prior to approving new residential, commercial, or industrial development within 1000 feet of a Crossing, the Highway Authority shall request a Diagnostic Team review to assess the potential traffic impacts at the Crossing.
(3) Before a Highway Authority approves increased development that changes the conditions of a Crossing by significantly increasing traffic volumes, the Highway Authority plans shall be approved by the Department.
(a) No new access openings can be opened within 250' of a Crossing unless approved by the Department.
(b) The Highway Authority shall arrange by agreement with the Railroad for any required Railroad facility changes ordered by the Department.
(4) The Highway Authority is responsible for the installation of all Passive Warning Devices outside the Railroad right-of-way, excepting those signs listed in Section R930-5-6.6, or unless a separate agreement applies.
(5) Before a Railroad modifies any safety related devices or the physical layout of a Crossing, the Railroad shall request a Diagnostic Team review of the proposed changes and request Department approval of all Crossing related designs.
(6) A Highway Authority, Railroad, or Company making a request for a new Crossing or the reclassification of a Crossing from private to public shall provide the Department with an approved master street plan from the appropriate jurisdiction showing the elimination or combination of existing Crossings and/or other safety improvements that enhance the overall safety of the corridor before a new Crossing or reclassification of a Crossing from private to public will be approved.
(a) A Highway Authority, Railroad, or Company requesting a new Crossing or reclassification of a Crossing from private to public will mutually arrange by agreement for the proposed new Crossing or reclassification of a Crossing before seeking Department approval of the change.

R930-5-8. Maintenance.
(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.
(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.
(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.
(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.
(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.
(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.
(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.
(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.
(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a separate agreement applies.
(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.
(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:
(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.
(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.
(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

R930-5-9. Funding Authorization and Apportionment of Cost for Section 130 Crossing Projects.

(1) Funding Authorization.

(a) Section 130 Crossing Projects:

(i) Costs associated with a FHWA authorized and approved program are eligible for federal participation. Eligible costs incurred in an approved program prior to authorization by FHWA are not reimbursable, but may be included as part of the Railroad share of the project cost where such a share is required. Eligible costs include, but are not limited to cost associated with environmental clearance, Preliminary Engineering, and right-of-way acquisition.

(ii) Prior to FHWA issuing its authorization to advertise the construction of a Crossing project, the Crossing project must receive environmental clearance; the plans, specifications and estimates must be approved by FHWA; and any proposed agreement between the Railroad and the Department must be reviewed and approved by FHWA, as per FHWA's stewardship agreement with the Department.

(b) Non-Section 130 Crossing Projects:

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

(2) Apportionment of Costs.

(a) Section 130 Crossing Projects:

(i) Apportionment of costs for installation, maintenance, and reconstruction of safety related improvements at a Crossing shall be in accordance with 23 CFR 646 and Section 54-4-15.

(ii) When a Highway Authority widens a Highway, the Highway Authority shall fund all improvements including, but not limited to Passive Warning Devices, Active Warning Devices, Crossing material, and other improvements as ordered by the Department in consultation with the Diagnostic Team.

(iii) The Department will evaluate each Crossing project to determine the extent to which, if any, the Crossing projects benefits the respective parties. If a Crossing project is determined not to benefit a party, the party will not be required to participate in the funding.

(b) Non-Section 130 Crossing Projects.

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

R930-5-10. Railroad and Highway Authority Agreements.

(1) Where construction of a Section 130 Crossing Project requires use of Railroad properties or adjustments to Railroad facilities, the Department will prepare an agreement with the Railroad.

(2) Master agreements between the Department and a Railroad on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations, and provisions required in conjunction with work performed on all Crossing projects.

(3) On a project-by-project basis, the written agreement between the Department and the Railroad shall include the following minimum requirements:

(a) Reference to appropriate federal regulations;

(b) Detailed statement of the work to be performed by each party;

(c) The extent to which the Railroad is required to adjust its facilities;

(d) The Railroad's share of the project cost;

(e) An itemized estimate of the cost of the work to be performed by the Railroad;

(f) Method to be used for performing the work, either by Railroad forces or by contract;

(g) Maintenance responsibility;

(h) Form, duration, and amounts of any needed insurance; and

(i) Appropriate reference to or identification of plans and specifications.

(4) On matching fund agreements between the Department and a Highway Authority, the written agreement shall include the following minimum requirements:

(a) Description of work and location, city, county, and state;

(b) Reference to federal regulations that matching funds will be provided by the Highway Authority;

(c) Detailed statement of work to be preformed by each party regarding design, agreements, inspection, and maintenance;

(d) Statement of finances of project and matching funds to be provided by Highway Authority, deposits, invoices, and cost overruns or under runs.

(5) Agreements for industry track Crossings are prepared between the Highway Authority and the industry.

(6) In order that a Crossing project shall not become unduly delayed, the Department shall consider a six-month period from issuance of the Railroad agreement to be adequate for completion of work by the Railroad involved. Should more than the specified period elapse, the Department shall require the Railroad to proceed with the work covered by the agreement under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

R930-5-11. Crash Reporting.

A Railroad is required to report crashes resulting in injury or death to an individual or damage to equipment, roadbed, or autos occurring at a Crossing to the Department's Chief Railroad Engineer within 2 hours of the incident. Initial notification must include the USDOT Crossing number, street address, municipality, time of incident, train identifier, and contact phone number for further information. Written crash reports shall be submitted to the Department within 30 days of the incident. Current Federal Railroad Administration (FRA) form F 6180.57 shall be used to report a crash.

R930-5-12. Exemption of Railroad Crossings.

Under Section 41-6a-1205, certain vehicles are required to stop at all Crossings unless a Crossing is signed as exempt. Recommendation to exempt a Crossing is made by a Diagnostic Team and the Department is responsible for issuing the exemption

order. The following Crossings are not eligible for exemption under this Section:

(1) Mainline Crossings with Passive Warning Devices only;

(2) Crossings within approved Quiet Zones; and

(3) Crossings where insufficient sight distance exists.

R930-5-13. Notice of Intended Action.

(1) Public notification of a public hearing opportunity is required, in conformance with Section R930-2, when the Department is considering a proposal to close a Crossing, add a track at a Crossing, or construct a new Crossing. It is the responsibility of the Highway Authority, Railroad, or Company requesting the proposed action, in consultation with the Department, to carry out the requirements of this section unless otherwise agreed to by the Department.

(2) In instances where the action proposed by the Department does not substantially affect the public, the Department may waive the requirement to notice a public hearing opportunity, provided the affected Diagnostic Team members concur in writing.

KEY: railroad, crossing, transportation, safety
Date of Enactment or Last Substantive Amendment: 2010
Notice of Previous Continuation: November 29, 2006
Authorizing, Implemented, or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

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 February 1, 2010.

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 May 1, 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

Public Service Commission, Administration
R746-312
Electrical Interconnection

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 32881
FILED: 12/09/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule implements standards for interconnection of electrical generating facilities to public utilities under the jurisdiction of the Public Service Commission. The proposed rule specifies the application procedures, technical requirements, evaluations, inspections and maintenance requirements, fees and time lines which pertain to interconnection of facilities to public utilities. The changes to the proposed rule addresses points raised in comments submitted to the proposed rule published September 1, 2009.

SUMMARY OF THE RULE OR CHANGE: The proposed rule implements standards for interconnection of electrical generating facilities to public utilities under the jurisdiction of the Public Service Commission. The proposed rule specifies the application procedures, technical requirements, evaluations, inspections and maintenance requirements, fees and time lines which pertain to interconnection of facilities to public utilities. The changes to the proposed rule are made to clarify proposed rule language due to comments made on the original proposed rule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the September 1, 2009, issue of the Utah State Bulletin, on page 40. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-12-2 and Section 54-15-106 and Section 54-4-14 and Section 54-4-7

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None are anticipated relative to the day-to-day operations of a state agency. To the extent a state agency may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.
♦ LOCAL GOVERNMENTS: None are anticipated relative to the day-to-day operations of local governments. To the extent a local governmental entity may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.
♦ SMALL BUSINESSES: None are anticipated relative to the day-to-day operations of other entities. To the extent a small business customer may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None are anticipated relative to the day-to-day operations of small businesses. To the extent a customer may desire to install an electrical generating facility and interconnect with a public utility, this rule clarifies costs and procedural requirements. It is not anticipated that this rule will alter or change costs associated with interconnection as it follows general practices currently followed for installation of equipment and procedures used by entities operating in this state, in neighboring states or follows federal agency terms applicable to interconnection of customer-owned generating facilities with public utilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: See "Persons other than small businesses, etc." above. This rule generally mirrors the interconnection requirements set by the U.S. Federal Energy Regulatory Commission for utilities under its jurisdiction and which are generally followed by investor-owned utilities. Reporting requirements are minor and records required are similar to those which would be captured by a prudent public utility or may be required for compliance with a renewable energy portfolio standard imposed by state law. Specific portions of the rule may be waived for good cause. Required studies reflect those already necessary to ensure a safe, reliable interconnection. It is anticipated that compliance costs are similar to costs already incurred to do the same functions and activities already done to interconnect the generating resources which are the subject of the proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utah law encourages the development of alternative and independent electric generation resources. The proposed rule establishes greater uniformity in the process and the means through which electricity generating resources, not owned by a public utility, may be connected with a public utility's electricity distribution system. It follows existing practices of affected utilities, the requirements of federal regulatory interconnection terms, or processes and procedures reasonably expected for safe and efficient interconnection of the size of resources subject to the proposed rule. As it provides for greater consistency on the terms and conditions for interconnection, it is expected to reduce transactions costs associated with interconnecting these types of facilities and represents a reasonable balancing of the interests of those individuals who wish to interconnect their facilities and public utilities with whom interconnection is sought. The changes made to the proposed rule are to clarify the original proposed rule in light of the comments made to the proposed rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sandy Mooy by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at smooy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2010

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.
R746-312. Electrical Interconnection.

. . . . . .

R746-312-2. Definitions.

(1) "Adverse system impact" means the negative effects due to technical or operational limits on conductors or equipment being exceeded which may compromise the safety and reliability of the electric distribution system.

(2) "Affected system" means an electric system other than a public utility's electric distribution system which may be affected by the proposed interconnection.

(3) "Building code official" means the city or local official whose responsibility includes inspecting facilities for compliance with the city or local jurisdiction electrical code requirements.

(4) "Business day" means Monday through Friday, excluding Federal holidays.

(5) "Confidential information" means any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." For the purposes of this rule, all design, operating specifications, and metering data provided by the interconnection customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities, or necessary to be divulged in an action to enforce these procedures.

(6) "Electric distribution system" means that portion of an electric system which delivers electricity from transformation points on the transmission system to the point or points of connection at a customer's premises.

(7) "Equipment package" means, for certification purposes, a group of components connecting a generating facility[~~generator~~]'s device for the production electricity (e.g., a generator) with an electric distribution system, and includes all interface equipment including switchgear, inverters, or other interface devices. An equipment package may include an integrated generator or electric production source. An equipment package does not include equipment provided by the utility.

(8) "Fault current" means electrical current that flows through a circuit and is produced by an electrical fault, such as to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. A fault current is several times larger in magnitude than the current that normally flows through a circuit.

(9) "Facilities study" means a study conducted to determine the additional or upgraded distribution system facilities necessary to interconnect a generating facility with a public utility, the cost of those facilities, and the time schedule required to interconnect the generating facility to the public utility's distribution system.

(10) "Feasibility study" means a preliminary evaluation of the system impact and the cost of interconnecting a generating facility to the public utility's electric distribution system.

(11) "Generating facility" means the interconnection customer's device for the production of electricity and all associated components up to the point of common coupling identified in the interconnection request, but shall not include the interconnection customer's interconnection facilities.

(12) "Generation capacity" means the nameplate capacity of the power generating device(s) of a generating facility. Generation capacity does not include the effects caused by inefficiencies of power conversion or plant parasitic loads.

(13) "Good utility practice" means [~~a practice, method, policy, or action engaged in or accepted by a significant portion of the electric industry in a region during the relevant time period, which a reasonable utility official would expect, in light of the facts reasonably discernable at the time, to accomplish the desired result reliably, safely and expeditiously. Good utility practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.~~]any of the

practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the public utility.

(14) "Governing Authority" means

(a) For a distribution electrical cooperative, its board of directors; and

(b) for each other electrical corporation, the Public Service Commission, otherwise referred to as the commission.

(15) "IEEE standards" means the standards published in the 2003 edition of the Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, entitled "Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 12, 2003, and in the 2005 edition of the IEEE Standard 1547.1, entitled "IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems," approved by the IEEE SA Standards Board on June 9, 2005.

(16) "Interconnection agreement" means a standard form agreement between an interconnection customer and a public utility, which governs the connection of a generating facility to the electric distribution system, as well as the ongoing operation of the generating facility after it is connected to the system.

(17) "Interconnection customer" means any entity, including a public utility, which proposes to interconnect its generating facility with the public utility's distribution system.

(18) "Interconnection Facilities" means the facilities and equipment required by a public utility to accommodate the interconnection of a generating facility to the public utility's electric distribution system and used exclusively for that interconnection. Interconnection Facilities do not include upgrades.

[~~(18)~~](19) "Interconnection request" means the interconnection customer's request to interconnect a new generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the public utility. The interconnection request includes all required applications, forms, processing fees [~~or~~]and/or deposits required by the public utility.

[~~(19)~~](20) "Inverter" means a machine, device or system which changes direct-current power to alternating-current power.

[~~(20)~~](21) "Level 1 Interconnection Review" means an interconnection review process applicable to an inverter-based facility having a generation capacity of 25 kilowatts or less.

[~~(21)~~](22) "Level 2 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 2 megawatts or less and which does not qualify for or fails to meet Level 1 interconnection review requirements.

[~~(22)~~](23) "Level 3 Interconnection Review" means an interconnection review process applicable to a facility having a generation capacity of 20 megawatts or less and which does not qualify for or fails to meet Level 1 or Level 2 interconnection review requirements.

[~~(23)~~](24) "Net metering facility" means a facility eligible for net metering, or an eligible facility as defined in Subsection 54-15-102(4).

[~~(24)~~](25) "Party or parties" means the public utility and/or the interconnection customer.

[~~(25)~~](26) "Point of common coupling" means the point at which the interconnection between the public utility's system and the interconnection customer's equipment interface occurs. Typically, this is the customer side of the public utility's meter.

[~~(26)~~](27) "Public utility" has the meaning set forth in Subsection 54-2-1(16) and is limited to a public utility that provides electric service.

[~~(27)~~](28) "Queue position" means the order of a valid interconnection request, relative to all other pending valid interconnection requests, which is established based upon the date and time of receipt of a completed interconnection request, including application fees, by the public utility.

[~~(28)~~](29) "Spot network" means a type of electric distribution system that uses two or more inter-tied transformers protected by network protectors to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers.

[~~(29)~~](30) "Standard form" or "standard form agreement" means a form or agreement which follows that adopted or approved by the Federal Energy Regulatory Commission in its small generator interconnection proceedings and modified to be consistent with these rules unless the governing authority has approved an alternative form or agreement.

[~~(30)~~](31) "System Impact study" means an engineering analysis of the probable impact of a generating facility on the safety and reliability of the public utility's electric distribution system.

[~~(31)~~](32) "Telemetry" means the remote communication from a generator facility to a point on the public utility's communication network where the data can be assimilated into the public utility's grid operations if desired.

[~~(32)~~](33) "Upgrades" means the required additions and modifications to a public utility's distribution system beyond the point of interconnection. Upgrades do not include interconnection facilities.

[~~(33)~~](34) "Written notice" means a required notice sent by the utility via electronic mail if the interconnection customer has provided an electronic mail address. If the interconnection customer has not provided an electronic mail address, or has requested in writing to be notified by United States mail, or if the utility elects to provide notice by United States mail, then written notices from the utility shall be sent via First Class United States mail. The utility shall be deemed to have fulfilled its duty to respond under this rule on the day it sends the interconnection customer notice via electronic mail or deposits such notice in First Class mail. The interconnection customer shall be responsible for informing the utility of any changes to its notification address.

R746-312-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes procedures for electrical interconnection of a generating facility to a public utility's distribution system with the following exception[**s**]:

(a) All references to fees and charges in Section R746-31[~~3~~]2 do not apply to public utilities for which the [~~C~~]commission does not have ratemaking authority as identified in Subsection 54-7-12(6). Rates and charges will be determined by the public utility's governing authority in accordance with applicable law.

[~~(b) Pursuant to Subsection 54-15-106(2), a public utility whose governing authority has, after appropriate notice and opportunity for public comment, adopted by rule additional reasonable safety requirements, power quality and interconnection requirements is exempt from the disconnect switch exemption in Subsection R746-312-4(2)(a)(i) provided the public utility files with the Commission the final rule and evidence of appropriate notice and opportunity for public comment.~~

~~————~~](2) For good cause shown, the commission may waive or modify any provision of this electrical interconnection rule.

(3) A public utility and interconnection customer may mutually agree to reasonable extensions to the required times for notices and submissions of information set forth in this rule for the purpose of allowing efficient and complete review of an interconnection request. If a public utility unilaterally seeks waiver of the time lines set forth in this rule, the commission may consider the number of pending applications for interconnection review and the type of applications, including review level and facility size.

(4) A public utility shall provide to the interconnection customer information regarding options for complaint or dispute resolution during the interconnection request review process prior to or along with the results of the initial interconnection review.

(5) Complaints or disputes will be addressed as follows:

(a) residential interconnections will be addressed according to the provisions of Sections R746-200-4, R746-200-8 and R746-200-9.

(b) non-residential interconnections will be addressed according to the following procedure:

(i) In the event of a complaint or dispute, either party shall provide the other party with a written Notice of Dispute. Such notice shall describe in detail the nature of the dispute.

(ii) If the dispute has not been resolved within [~~two~~]seven business days after receipt of such notice, the dispute shall be served upon the other party and filed with the commission. A copy shall also be served upon the Division of Public Utilities.

(iii) An answer or other responsive pleading to the complaint shall be filed with the commission not more than ten business days after receipt of service of the complaint or dispute. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.

(iv) A prehearing conference shall be held not later than 15 business days after the complaint is filed.

(v) The [~~C~~]commission shall commence a hearing on the complaint not later than 25 business days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable. Parties shall be entitled to present evidence as provided by the commission's rules.

(vi) The [~~C~~]commission shall take final action on a complaint not more than 30 business days after the complaint is filed unless:

(A) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(B) the parties agree to an extension of final action by the commission.

R746-312-4. Installation, Operation, Maintenance, Testing and Modification of Generating and Interconnection Facilities.

(1) Except for generating facilities in operation or approved for operation prior to the effective date of this rule, an interconnection customer of a public utility must install, operate and maintain its generating and interconnection facilities in compliance with the IEEE standards, as applicable, and the requirements of the interconnection agreement or other agreements executed between the parties during the interconnection review and approval process. Generating facilities in operation or approved for operation prior to the effective date of this rule must be operated and maintained in accordance with the requirements of all agreements in place prior to the effective date of this rule.

(2) Disconnect Switch. Except for the exemptions listed below, an interconnection customer of a public utility must install and maintain a manual disconnect switch which will disconnect the generating facility from the public utility's distribution system. The disconnect switch must be a lockable, load-break switch that plainly indicates whether it is in the open or closed position. The disconnect switch must be readily accessible to the public utility at all times and located within 10 feet of the public utility's meter.

(a) Exemptions:

(i) For customer generating systems of 10 kilowatts or less that are inverter-based, a public utility shall not require a disconnect switch.

(ii) The disconnect switch may be located more than 10 feet from the public utility meter if permanent instructions are posted in letters of appropriate size at the meter indicating the precise location of the disconnect switch. In this case the public utility must approve in writing the location of the disconnect switch prior to the installation of the generating facility. For those instances where the interconnection customer and the public utility cannot agree to the implementation of this section, the public utility or interconnection customer may refer the matter to the [~~C~~]commission according to the designated dispute resolution process.

(iii) Nothing in this exemption precludes an interconnection customer or a public utility from voluntarily installing a manual disconnect switch.

(3) In the event that no disconnect switch is installed, the interconnection customer's electric service may be disconnected by the public utility entirely if the generating facility must be physically disconnected from the public utility's distribution system as specified in Subsection R746-312-4(5).

(4) For those public utilities whose governing authority, pursuant to Section 54-15-106, after appropriate notice an opportunity for public comment, elects to adopt by rule additional reasonable interconnection safety, power quality and interconnection requirements for net metering generating facilities and who determines that a disconnect switch for net metering generating facilities less than 10 kilowatts is necessary, those public utilities must:

(a) address the usage of the disconnect switch in the public utility's operations training requirements and standard operating procedures, including, among other things, how the disconnect switches will be managed, including tracking of switches, the procedures under which the disconnect switch must be used during normal operations, construction projects, trouble situations, and during restoration of service activities, and training on operation and usage of the disconnect switch;

(b) file a copy of the disconnect switch procedures, and any updates, along with the governing authority's documentation of appropriate notice and opportunity for public comment with the commission; and

(c) document in writing each time the public utility has utilized each specific disconnect switch and the reason for its usage and make this information available to the commission upon request.

(5) The public utility may operate the manual disconnect switch or disconnect the customer generating facility pursuant to the conditions set forth below, thereby isolating the customer generating system, without prior notice to the customer. To the extent practicable, however, prior notice shall be given. If prior notice is not given, the utility shall at the time of disconnection leave a door hanger or other such notice notifying the customer that their customer generating system has been disconnected, including an explanation of the condition necessitating such action. The public utility shall reconnect the customer generating system as soon as reasonably practicable after the condition necessitating disconnection is remedied.

(a) Any of the following conditions shall be cause for the public utility to manually disconnect a generating facility from its system:

(i) Emergencies or maintenance requirements on the public utility's distribution system;

(ii) Hazardous conditions existing on the public utility's distribution system which may affect safety of the general public or public utility employees due to the operation of the customer generating facility or protective equipment as determined by the public utility; or

(iii) Adverse electrical effects (Such as high or low voltage, unacceptable harmonic levels, or RFI interference) on the electrical equipment of the public utility's other electric consumers caused by the customer generating facility as determined by the public utility.

(6) Subsequent to becoming interconnected to a public utility the interconnection customer must notify the public utility of all proposed modifications to the generating facility or equipment package which will increase the generation capacity of a customer generation facility.

(a) Notification must be provided in the form of a new application submitted in accordance with the level of review required by this rule; and

(b) The application must specify the proposed modification(s).

(7) Aggregating Multiple Generators: If the interconnection request is for a generating facility which includes multiple generating facilities at a site for which the interconnection customer seeks a single point of interconnection, the interconnection request must be evaluated for the purposes of the interconnection on the basis of the aggregate electric nameplate capacity of the generating facilities.

R746-312-5. [~~Interconnection Facility~~]Certification<u>s</u>.

(1) To qualify for the Level 1 and the Level 2 interconnection review procedures set forth below, a generating facility must be certified as complying with the following standards, as applicable:

(a) IEEE standards; and

(b) UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems (January 2001).

(2) An equipment package will be considered certified for interconnected operation if it has been submitted by a manufacturer to a nationally recognized testing and certification laboratory, and has been tested and listed by the laboratory for continuous interactive operation with an electric distribution system in compliance with relevant codes and standards.

(3) If the equipment package has been tested and listed in accordance with this section as an integrated package, which includes a generator or other electric source, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

(4) If the equipment package includes only the interface components (switchgear, inverters, or other interface devices), an interconnection customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and consistent with the testing and listing specified for the package. If the generator or electric source being utilized with the equipment package is consistent with the testing and listing performed by the nationally recognized testing and certification laboratory, the equipment package will be deemed certified, and the public utility may not require further design review, testing or additional equipment.

R746-312-6. General Interconnection Request Provisions.

(1) Each public utility must designate an employee, office, or department from which a customer can obtain basic interconnection request standard forms, standard form agreements, and information through an informal process. Upon request, this employee, office, or department must provide all relevant forms, documents, and technical requirements for submittal of a complete application for interconnection review. Upon request, the public utility must meet with a customer who qualifies for Level 2 or Level 3 interconnection review, to assist them in preparation of the application. All standard forms and standard form agreements must be posted on the public utility's website.

(2) The interconnection customer must submit each interconnection request, and all associated forms and agreements on the public utility's standard forms and standard form agreements.

<u>(3)</u> The interconnection request may require the following types of information:

(a) the name of the applicant and basic customer information;

(b) the type, size and specifications of the generating facility;

(c) the level of interconnection review sought; e.g., Level 1, Level 2 or Level 3;

(d) the generating facility installer: i.e., for contractor installations, the name of the appropriately licensed contractor, or for self-installations, the name of the homeowner or business;

(e) equipment and/or system certifications;

(f) the anticipated date the generating facility will be operational;

(g) evidence of site control; and/or

(h) other information that the utility deems is necessary to conduct an evaluation as to whether a generating facility can be safely and reliably connected to the public utility in compliance with this interconnection rule.

[~~(3)~~](4) Each interconnect request submitted to a public utility must be accompanied by the required processing fee.

[~~(4)~~](5) An interconnection customer shall retain its original queue position for an interconnection request if the applicant resubmits its application at a higher level of review within 30 business days of a utility's denial of the application at a lower level of review.

[~~(5)~~](6) A public utility shall not be responsible for the cost of determining the rating of equipment owned or proposed by an interconnection customer or of equipment owned by other local customers.

[~~(6) At the time of application, an interconnection customer may choose to simultaneously submit an executed original of the public utility's standard form interconnection agreement.~~

~~————~~](7) Any modification to machine data or equipment configuration or to the interconnection site of the generating facility not agreed to in writing by the public utility and the interconnection customer may be deemed a withdrawal of the interconnection request and may require submission of a new interconnection request unless proper notification to each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

(8) Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without prior written authorization from the party providing that information, except to fulfill obligations under this rule, or to fulfill legal or regulatory requirements. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

R746-312-7. Level 1 and Level 2 Interconnection Review Screens.

(1) The public utility shall perform its review of Level 1 and Level 2 interconnection requests using the screens set forth below as applicable.

(a) A generating facility's point of common coupling must be on a portion of the public utility's distribution system which is under the interconnection jurisdiction of the commission and not be on a transmission line.

(b) For interconnection of a proposed generating facility to a radial distribution circuit, the aggregate generation on the distribution circuit, including the proposed generating facility, must not exceed 15 percent of the distribution circuit's total highest annual peak load, as measured at the substation. For the purposes of this subsection, annual peak load will be based on measurements taken over the 60 months previous to the submittal of the application, measured for the circuit at the nearest applicable substation.

(c) The proposed generating facility, in aggregation with other generation on the distribution circuit to which the proposed generating facility will interconnect, must not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of common coupling.

(d) If the proposed generating facility is to be connected to a single-phase shared secondary, the aggregate generation capacity connected to the shared secondary, including the proposed generating facility, must not exceed 20 kilowatts.

(e) If a proposed single-phase generating facility is to be connected to a transformer center tap neutral of a 240 volt service, the addition of the proposed generating facility must not create a current imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

(f) No construction of facilities by the public utility on its own system shall be required to accommodate the generating facility.

(g) The aggregate generation capacity on the distribution circuit to which the proposed generating facility will interconnect, including the capacity of the proposed generating facility, must not cause any distribution protective equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the electric distribution system, to exceed 90 percent of the short circuit interrupting capability of the equipment. In addition, a proposed generating facility must not be connected to a circuit which already exceeds 90 percent of the circuit's short circuit interrupting capability, prior to interconnection of the facility.

(h) Interconnection Type Screen:

(i) For a proposed generating facility connecting to a three-phase, three wire primary public utility distribution line, a three-phase or single-phase generator must be connected phase-to-phase.

(ii) For a proposed generating facility connecting to three-phase, four wire primary public utility distribution line, a three-phase or single-phase generator must be connected line-to-neutral and must be effectively grounded.

(i) If there are known or posted transient stability limitations to generating units located in the general electrical vicinity of the proposed point of common coupling, including, but not limited to within three or four transmission voltage level busses, the aggregate generation capacity, including the proposed generating facility, connected to the distribution low voltage side of the substation transformer feeding the distribution circuit containing the point of common coupling may not exceed 10 megawatts.

(j) If a proposed generating facility's point of common coupling is on a spot network, the proposed generating facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, must not exceed the smaller of five percent of a spot network's maximum load or 50 kilowatts.

R746-312-8. Level 1 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 1 interconnection review:

(a) the generating facility is inverter-based; and

(b) the generating facility has a capacity of 25 kilowatts or less.

(2) A public utility shall process, evaluate, and approve, if appropriate, all Level 1 interconnection requests according to this Subsection unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 1 interconnection request within 15 business days of receipt of the interconnection request, or the public utility completes final approval of a Level 1 interconnection request within 15 business days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 1 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt, the public utility shall evaluate the interconnection request and notify the interconnection customer whether the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer either:

(i) the generating facility meets all applicable criteria and the interconnection request is approved; or

(ii) the generation facility has failed to meet one or more of the applicable criteria, the reason for the failure, and the interconnection request is denied under the Level 1 interconnection process. If the interconnection request is denied the interconnection customer may resubmit the application under the Level 2 or Level 3 interconnection review procedure, as appropriate.

(e) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(f) The customer and the public utility may mutually agree to terms which vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(g) If a public utility does not notify a Level 1 interconnection customer in writing or by electronic mail whether the interconnection request is approved or denied within 25 business days after the receipt of an application, the interconnection request shall be deemed approved.

(3) An interconnection customer must notify the public utility of the anticipated start date for operation of the generating facility at least ten business days prior to starting operation, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/ approval indicating the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 30 business days to resolve any deficiencies. The Parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-9. Level 2 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 2 interconnection review by a public utility:

(a) the generating facility has a capacity of two megawatts or less; and

(b) the generating facility does not qualify for or fails to meet applicable Level 1 interconnection review procedures.

(2) A public utility must process, evaluate, and approve, if so determined, all Level 2 requests for interconnection according to the following steps unless a public utility has implemented a process ensuring notification of approval or denial of a completed Level 2 interconnection request within 15 business days of receipt of the interconnection request, the public utility completes final approval of a Level 2 interconnection request within 15 business

days of receipt of an interconnection request, or the public utility has received approval from the commission for an alternate Level 2 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Within 15 business days after issuing a notification of completeness, the public utility shall verify, using the screens set forth in Section R746-312-7, whether or not the proposed generating facility can be interconnected safely and reliably, and shall notify the interconnection customer either:

(i) the generation facility meets all applicable criteria and the interconnection request is approved;

(ii) although the generating facility fails one or more of the screens, the public utility has determined that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards and the interconnection request is approved; or

(iii) the generation facility has failed to meet one or more of the screens and the reason for the failure(s), the public utility has not or could not determine from the initial reviews that the generating facility may be interconnected consistent with safety, reliability, and power quality standards, or the generating facility cannot be approved without minor modifications at minimal cost and the interconnection request is denied unless the interconnection customer is willing to consider minor modifications or further study.

(e) If the interconnection request is denied, the public utility:

(i) must offer to provide the interconnection customer with the opportunity to attend an optional customer options meeting to be convened within 10 business days of the notification of denial to discuss the options available under Subsection R746-312-9(2)(e)(ii).

(A) During the customer options meeting the public utility shall review possible interconnection customer facility modification or screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably.

(ii) shall either at the time of the notification specified in Subsection R746-213-9(2)(d)(iii), or at the customer options meeting:

(A) offer to complete [~~facility modifications or~~]minor modifications to the public utility's distribution system and provide a non-binding good faith estimate of the cost and time-frame to make such modifications. If the interconnection customer agrees to such modifications, the interconnection customer shall agree in writing within 15 business days of the offer and submit payment for the estimated costs. The interconnection customer must pay any cost that exceeds the estimated costs within [~~20 business~~]30 calendar days of receipt of the invoice. If the costs to complete the modifications are less than the estimated costs, the public utility shall return such excess within [~~20 business~~]30 calendar days of the issuance of the invoice without interest;

(B) offer to perform a supplemental review in accordance with Subsection R746-312-9(3) if the public utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the Level 2 process, and provide a non-binding good faith estimate of the costs of such review; or

(C) obtain the interconnection customer's agreement to continue evaluating the interconnection request under the Level 3 process.

(f) Either along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility shall provide the procedures, requirements, and associated forms, including any required standard form interconnection agreement, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) an inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement;

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generation facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(g) The customer and the public utility may mutually agree to terms which vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) Supplemental Review:

(a) If the interconnection customer agrees to a supplemental review, the interconnection customer shall agree in writing within 15 business days of the offer, and submit a deposit of the estimated costs. [~~The interconnection customer shall be responsible for the public utility's actual costs for conducting the supplemental review.~~]The interconnection customer must pay any supplemental review costs that exceed the deposit within [~~20 business~~]30 calendar days of receipt of the invoice but such

payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such review. If the deposit exceeds the invoiced costs, the public utility shall return such excess within [~~20 business~~]30 calendar days of the invoice without interest.

(b) Within 10 business days following receipt of the deposit for supplemental review, the public utility must determine whether the generating facility can or can not be interconnected safely and reliably and shall notify the interconnection customer either:

(i) the generation facility can be safely and reliably interconnected and the interconnection request is approved and the public utility shall proceed according to Subsection R746-312-9(2)(f);

(ii) interconnection customer facility modifications are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. Upon receipt of written confirmation that the interconnection customer agrees to make the necessary changes at the interconnection customer's expense, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iii) minor modification to the public utility's distribution system are required to allow the generating facility to be interconnected consistent with safety, reliability and power quality standards. After confirmation that the interconnection customer agrees to pay the costs of such system modifications prior to interconnection, the public utility shall approve the interconnection request and proceed according to Subsection R746-312-9(2)(f);

(iv) the results of the supplemental review have not concluded that the generating facility can be interconnected consistent with safety, reliability, and power quality standards and, upon agreement by the interconnection customer, the interconnection request will continue to be evaluated under the Level 3 interconnection review process.

(4) An interconnection customer must notify the public utility of the anticipated testing and inspection date for the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(5) Within 10 business days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(6) If an application for Level 2 interconnection review is denied because it does not meet one or more of the requirements in this section, the applicant may resubmit the application under the Level 3 interconnection review procedure.

(7) Witness Test Not Acceptable. If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 45 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

R746-312-10. Level 3 Interconnection Review.

(1) A generating facility which meets the following criteria is eligible for Level 3 interconnection review:

(a) the generating facility has a capacity of greater than two megawatts but no larger than 20 megawatts;

(b) the generating facility is not certified; or

(c) the generating facility does not qualify for or failed to meet Level 1 or Level 2 interconnection review requirements.

(2) A public utility must process, evaluate, and approve, if appropriate, all Level 3 requests for interconnection according to the following steps unless the public utility has received approval from the commission for an alternate Level 3 interconnection review method:

(a) The public utility shall date and time stamp each interconnection request on the day it was received by the public utility.

(b) Within three business days after receipt of an interconnection request, the public utility shall acknowledge to the interconnection customer receipt of the interconnection request.

(c) Within 10 business days after receipt of an interconnection request, the public utility shall evaluate the interconnection request and notify the interconnection customer whether or not the interconnection request is complete.

(i) If the interconnection request is not complete the public utility must provide a list detailing all information that must be provided to complete the application.

(ii) Within 10 business days of receipt of this notification, the interconnection customer must submit the missing information to the public utility or request an extension of time to provide such information. If the interconnection customer does not provide the listed information or request an extension of time within the 10 business-day deadline, the interconnection request shall be deemed withdrawn.

(iii) An interconnection request shall be deemed complete upon submission of the listed information.

(d) Scoping Meeting. If requested, a scoping meeting shall be held as follows within 10 business days after the interconnection request is deemed complete, or as otherwise mutually agreed to by the parties:

(i) The public utility and the interconnection customer shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting;

(ii) The purpose of the scoping meeting is to:

(A) discuss the interconnection request and review existing studies relevant to the interconnection request; and

(B) discuss whether the public utility should perform a feasibility study or proceed directly to a system impact study, a facilities study, or an interconnection agreement;

(iii) Scoping meeting follow-up:

(A) If the parties agree that a feasibility study should be performed, the public utility shall provide the interconnection customer as soon as possible, but no later than five business days

after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(B) If the parties agree not to perform a feasibility study but rather proceed directly to the system impact study, the public utility shall, no later than five business days after the scoping meeting, provide the interconnection customer with a system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(iv) The scoping meeting may be omitted by mutual agreement. If the scoping meeting is omitted, the public utility, if requested by the interconnection customer, must provide information pertinent to the interconnection request, such as the available fault current at the proposed interconnection location, the peak loading on the lines in the general vicinity of the generating facility, and the configuration of the distribution lines at the proposed point of common coupling, within 10 business days after the interconnection request is deemed complete.

(e) Feasibility Study. A feasibility study shall provide a preliminary evaluation of the system impact which would result from interconnecting the generating facility and the cost of interconnecting the generating facility to the public utility's electric distribution system and shall be completed as follows:

(i) For interconnection customers opting to forego a scoping meeting and proceeding directly to the feasibility study, the public utility shall provide the interconnection customer, as soon as possible but no later than 10 business days after receipt of a completed application, a standard form feasibility study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested or requires a feasibility study, either as part of or independent of a scoping meeting, must return the executed feasibility study agreement within 30 business days of receipt. A deposit of the lesser of 50 percent of the good faith estimate or earnest money of $1,000 may be required from the interconnection customer.

(iii) Within 30 business days of receipt of an executed study agreement and payment of any required deposit, the public utility shall conduct the feasibility study and notify the interconnection customer either:

(A) the feasibility study shows no potential for adverse system impacts, no facilities are required, and the interconnection request is approved, in which case the public utility shall send the interconnection customer an executable interconnection agreement within five business days;

(B) the feasibility shows no potential for adverse system impacts however additional facilities may be required and the review process shall proceed to a facilities study, in which case the public utility shall provide the interconnection customer a standard form facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within five business days; or

(C) the feasibility study shows the potential for adverse system impacts, and the review process shall proceed to a system impact study, in which case the public utility shall provide the interconnection customer with a standard form system impact study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study within 15 business days of transmittal of the feasibility study report.

(iv) Any study fees will be invoiced to the interconnection customer after the feasibility study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(f) System Impact Study. Any required system impact study(s) must be conducted in accordance with good utility practice and shall be completed as follows:

(i) The system impact study shall:

(A) provide details on the impacts to the electric distribution system which would result if the generating facility were interconnected without modifications to either the generating facility or to the electric distribution system;

(B) identify any modifications to the public utility's electric distribution system necessary to accommodate the proposed interconnection;

(D) focus on power flows and utility protective devices, including control requirements; and

(E) include the following elements, as applicable:

(I) a load flow study;

(II) a short-circuit study;

(III) a circuit protection and coordination study;

(IV) the impact on the operation of the electric distribution system;

(V) a stability study, along with the conditions that would justify including this element in the impact study;

(VI) a voltage collapse study, along with the conditions that would justify including this element in the impact study; and

(VII) additional elements, if justified by the public utility and approved in writing by the [~~commission~~]public utility and the interconnection customer prior to the impact study.

(ii) In order to remain in consideration for interconnection, an interconnection customer who has requested a system impact study, either as part of or independent of a scoping meeting or feasibility study, must return the executed impact study agreement(s) within 30 business days of receipt of the agreement. A deposit of the good faith estimated costs for each system impact study may be required from the interconnection customer.

(iii) After the applicant executes the system impact study agreement and pays any required deposit, the public utility shall complete the impact study and distribute the results to the interconnection customer within 30 business days or 45 business days for transmission impact studies, notifying the interconnection customer either:

(A) Only minor modifications to the public utility's electric distribution and/or transmission system are necessary to accommodate interconnection. In such a case, the public utility must:

(I) provide to the interconnection customer at the same time the detail of the scope of the necessary modifications, a non-binding, good faith estimate of their cost, and an executable interconnection agreement; and

(II) approve the interconnection request upon receipt from the interconnection customer the executed interconnection agreement.

(B) Modifications to the public utility's electric distribution system and/or transmission system are necessary to accommodate the proposed interconnection in which case the public utility must provide at the same time either:

(I) a non-binding, good faith estimate of the cost of the modifications, if known, and

(II) a standard form facilities study agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study.

(iv) If the proposed interconnection may affect electric transmission or delivery systems other than those controlled by the public utility, operators of those other systems may require additional studies to determine the potential impact of the interconnection on those systems. If such additional studies are required, the public utility must coordinate the studies but will not be responsible for their timing. The applicant shall be responsible for the costs of any such additional studies required by another affected system. Such studies will be conducted only after the applicant has provided written authorization.

(v) Any study fees will be invoiced to the interconnection customer after the system impact study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(g) Facilities Study. The results of the facilities study shall specify a non-binding good faith cost estimate of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusion of the system impact study(s) in order for the interconnection customer to safely interconnect the generating facility with the public utility's electric distribution system and the time required to build and install those facilities. The following provisions apply to the facilities study:

(i) A public utility may require a deposit of the good faith estimated costs for the facilities study.

(ii) In order to remain under consideration for interconnection, the interconnection customer must return the executed facilities study agreement and any required deposit, or request an extension of time, within 30 business days.

(iii) Design for any required interconnection facilities and/or upgrades shall be performed under the facilities study agreement. The public utility may contract with consultants to perform activities required under the facilities study agreement. The interconnection customer and the public utility may agree to allow the interconnection customer to separately arrange for the design of some of the interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the public utility under the provisions of the facilities study agreement. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the public utility shall make sufficient information available to the interconnection customer in accordance with confidentiality and critical infrastructure requirements to permit the interconnection customer to obtain an independent design and cost estimate for any necessary facilities.

(iv) In cases where upgrades are required, the facilities study must be completed and the facilities study report transmitted to the interconnection customer's within 45 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed and the facilities study report transmitted to the interconnection customer in 30 business days of the public utilities receipt of the facilities study agreement from the interconnection customer. The report and any ensuing interconnection agreement must list the conditions and facilities necessary for the generating facility to safely interconnect with the public utility's electric distribution system, and must include a non-binding, good faith estimate of the cost of those facilities and the estimated time required to build and install those facilities.

([~~i~~]v) Upon completion of the facilities study and receipt of agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the public utility shall approve the interconnection request.

(vi) Any study fees will be invoiced to the interconnection customer after the facilities study is completed and delivered and will include a summary of professional time. The interconnection customer must pay any study costs that exceed the deposit without interest within 30 calendar days of receipt of the invoice or resolution of any dispute but such payment responsibility shall be limited to and not exceed 125 percent of the public utility's non-binding good faith estimate for such study. If the deposit exceeds the invoiced fees, the public utility shall refund such excess within 30 calendar days of the invoice without interest.

(h) Either prior to, along with or within five business days after notifying the interconnection customer that the interconnection request has been approved, a public utility must provide the procedures, requirements, and associated forms, for final authorization of the interconnection, as determined applicable by the public utility. These procedures and requirements may include:

(i) completion of any required inspection of the generating facility by the building code official with jurisdiction over the generating facility and transmittal to the public utility of appropriate documentation;

(ii) transmittal to the public utility of any required notice of completion, notice of start-up, and/or interconnection agreement.

(iii) installation of any required meter modification by the public utility;

(iv) completion of any required inspection of the generating facility prior to operation by the public utility; and/or

(v) the requirement that the applicant may not begin parallel operations of the generating facility until receipt of a final approval or authorization of interconnection.

(i) The customer and the public utility may mutually agree to terms which vary from the standard form interconnection agreement, but such non-standard agreement shall be subject to commission approval.

(3) An interconnection customer must notify the public utility of the anticipated testing and inspection date of the generating facility at least ten business days prior to testing, either through the submittal of the interconnection agreement, a notice of completion, or in a separate notice.

(4) Within 10 business [~~daysof~~]days of receipt of all required documentation (e.g., executed interconnection agreement, notice of completion, and/or documentation of satisfactory completion of inspections by non-company personnel), the public utility must, if it has not already done so, conduct any company-required inspection or witness test, set the new meter, if required, approve the interconnection, and provide written notification to the interconnection customer of the final interconnection authorization/ approval and that the generating facility is authorized/approved for parallel operation. If the public utility does not conduct the witness test within 10 business days or by mutual agreement of the parties, the witness test is deemed waived.

(5) Witness Test Not Acceptable: If the witness test is conducted and is not acceptable to the public utility, the interconnection customer must be granted a period of 60 business days to resolve any deficiencies. The parties may mutually agree to extend the time period for resolving any deficiencies. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the public utility within the agreed upon time period, the interconnection request is deemed withdrawn.

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R746-312-16. Public Utility Maps, Records and Reports.

(1) Each public utility shall maintain current records of interconnection customer generating facilities showing size, location, generator type, and date of interconnection authorization.

(2) By July 1 of each year, the public utility shall submit to the commission an annual report with the following summary information for the previous calendar year:

(a) the total number of generating facilities approved and their associated attributes including resource type, generating capacity, [~~and the county~~]and zip code of generating facility location,

(b) the total rated generating capacity of generating facilities by resource type.

(c) for net metering interconnections, the total net excess generation kilowatt-hours received from interconnection customers by month.

(d) for net metering interconnections, the total amount of excess generation credits in kilowatt hours, and their associated dollar value, which have expired at the end of each annualized billing period.

. . . . . .

KEY: interconnection, generating equipment, renewable energy facilities, public utilities
Date of Enactment or Last Substantive Amendment: [~~2009~~]2010
Authorizing, and Implemented or Interpreted Law: 54-4-7; 54-4-14; 54-12-2; 54-15-106

End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a **120-Day (Emergency) Rule** when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **Proposed Rule**, a **120-Day Rule** is preceded by a **Rule Analysis**. This analysis provides summary information about the **120-Day Rule** including the name of a contact person, justification for filing a **120-Day Rule**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (**. . . . . .**) indicates that unaffected text was removed to conserve space.

A **120-Day Rule** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day Rule** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day Rules** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day Rule**, it usually files a **Proposed Rule** at the same time, to make the requirements permanent. Comments may be made on the **Proposed Rule**. Emergency or **120-Day Rules** are governed by Section 63G-3-304; and Section R15-4-8.

Administrative Services, Finance
R25-7-10
Reimbursement for Transportation

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 33275
FILED: 12/15/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Mileage reimbursement needs to be reduced from 50.5 cents a mile to 50 cents a mile due to a change in IRS rates effective 01/01/2010. If the rate is not changed, the 0.5 cents per mile above the IRS rate will be taxable to employees. This will place a significant administrative burden on the Division of Finance.

SUMMARY OF THE RULE OR CHANGE: In Section R25-7-10, mileage reimbursement needs to be reduced from 50.5 cents a mile to 50 cents a mile.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

REGULAR RULEMAKING WOULD place the agency in violation of federal or state law.
IRS notification was not received in time to follow regular rulemaking process.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: A slight savings to travel budgets could be expected due to a lower mileage reimbursement rate.
♦ LOCAL GOVERNMENTS: This rule affects state government only.
♦ SMALL BUSINESSES: This rule affects state government only.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule affects state government only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are associated with this rule. This rule affects state government only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This emergency rule will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marilee Richins by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at mprichins@utah.gov

EFFECTIVE: 01/01/2010

AUTHORIZED BY: Kimberly Hood, Executive Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 36 cents per mile or [~~50.5~~]50 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [~~50.5~~]50 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 36 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 75 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: January 1, 2010
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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, Health Systems Improvement, Licensing
R432-30
Adjudicative Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33262
FILED: 12/11/2009

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: The rule is adopted pursuant to Title 26, Chapter 21, and Title 63G, Chapter 4. Title 26, Chapter 21 outlines the responsibilities of the Department regarding the licensing of health facilities. Subsection 26-21-6(2)(c) states that the Department may: "make rules as necessary to implement the provisions of this chapter, except as authority is specifically delegated to the committee." Subsection 63G-4-102(6) states that: "This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter." The Department of Health has promulgated this rule in accordance with the citations above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received to support or oppose the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Adjudicative Procedure rule defines how the Department is to allow for fair hearings of persons affected by agency decisions. The Department still has authority over the licensing and inspection of health facilities in the state and continues to make decisions based on that authority. Affected persons require the process for fair hearings, which this rule provides. Therefore, this rule should be continued.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT, LICENSING
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:
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 12/11/2009

Human Services, Child and Family Services
R512-75
Rules Governing Adjudication of Consumer Complaints

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33236
FILED: 12/02/2009

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: Section 62A-4a-208 creates the Office of the Child Protection Ombudsman, which is the agency charged with handling consumer complaints against the Division of Child and Family Services. This rule provides procedures intended to provide for the prompt and equitable resolution of consumer complaints.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to provide procedures for persons who may have a complaint against the agency.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

AUTHORIZED BY: Duane Betournay , Director

EFFECTIVE: 12/02/2009

Human Services, Recovery Services
R527-332
Unreimbursed Assistance Calculation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33241
FILED: 12/03/2009

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: 45 CFR 302.32 and 45 CFR 302.51 require that collections in excess of the unreimbursed assistance amount (URA) be paid to the family within two calendar days of the end of the months that assistance was received. This rule defines URA and the process for making a URA calculation pursuant to 45 CFR 302.32.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Pursuant to 45 CFR 302.32, this rule provides information necessary for the Office of Recovery Services to calculate URA. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher , Director

EFFECTIVE: 12/03/2009

Human Services, Recovery Services
R527-394
Posting Bond or Security

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33242
FILED: 12/03/2009

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: Subsection 62A-11-321(1) requires the Office of Recovery Services (ORS) to establish rules for determining when it is appropriate to seek a court order requiring a noncustodial parent to post a bond or provide other security for the payment of a support debt. Federal regulation 45 CFR 303.104(c) requires each state to develop guidelines available to the public for determining when it is not appropriate to require a noncustodial parent to post security, bond, or some other guarantee of payment of overdue support. The criteria listed in this rule meet those requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary pursuant to state law and federal regulation. Also, it helps ensures that ORS only takes legal action against a noncustodial parent to post a bond or other security when the appropriate circumstances warrant it. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher , Director

EFFECTIVE: 12/03/2009

Insurance, Administration
R590-198
Valuation of Life Insurance Policies Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33270
FILED: 12/15/2009

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: Sections 31A-17-402 and 31A-17-512 authorize the commissioner to adopt a method for computing reserves for life insurance policies. Sections R590-198-5, R590-198-6, and R590-198-7 of the rule specifically set standards for determination of reserves for different types of life policies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule ensures that life insurance companies will maintain an adequate level of reserves to pay future life insurance claims. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 12/15/2009

Public Service Commission, Administration
R746-401
Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33255
FILED: 12/08/2009

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: Section 54-4-1 requires supervision and regulation of utility companies within the Commission's jurisdiction. The Commission is also directed "...to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction...." Section 54-4-7 requires "...the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation...."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The reason for continuing this rule is to allow the Commission to continue to carry out its statutory mandate under the above cited statutes. This rule provides guidelines for utilities for the reporting of construction, sale, transfer, or disposition of utility assets. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sandy Mooy by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at smooy@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy , Legal Counsel

EFFECTIVE: 12/08/2009

Workforce Services, Unemployment Insurance
R994-305
Collection of Contributions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33250
FILED: 12/03/2009

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: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 35A-4-305 establishes how contributions will be collected including interest, how and when reports must be filed, the establishment of a penalty and how to collect contributions, interest and penalties. This rule provides guidance to employers on how to comply with the statute and is necessary to implement the statute. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 12/03/2009

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. 33030 (AMD): R156-3a. Architect Licensing Act Rule
Published: 11/01/2009
Effective: 12/08/2009

No. 33029 (AMD): R156-55c. Construction Trades Licensing Act Plumber Licensing Rule
Published: 11/01/2009
Effective: 12/08/2009

No. 33065 (AMD): R156-79. Hunting Guides and Outfitters Licensing Act Rule
Published: 11/01/2009
Effective: 12/08/2009

Real Estate
No. 33057 (AMD): R162-3-6. Renewal and Reinstatement
Published: 11/01/2009
Effective: 12/08/2009

Education
Administration
No. 33052 (AMD): R277-516. Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees
Published: 11/01/2009
Effective: 12/08/2009

No. 33053 (NEW): R277-613. School District and Charter School Bullying and Hazing Policies and Training
Published: 11/01/2009
Effective: 12/08/2009

No. 33054 (AMD): R277-750. Education Programs for Students with Disabilities
Published: 11/01/2009
Effective: 12/08/2009

No. 33055 (R&R): R277-800. Administration of the Utah School for the Deaf and the Utah School for the Blind
Published: 11/01/2009
Effective: 12/08/2009

Environmental Quality
Air Quality
No. 32958 (AMD): R307-101-2. Definitions
Published: 10/01/2009
Effective: 12/02/2009

Health
Health Systems Improvement, Emergency Medical Services
No. 33025 (AMD): R426-13. Emergency Medical Services Provider Designations
Published: 11/01/2009
Effective: 12/15/2009

Human Services
Child and Family Services
No. 32942 (AMD): R512-302. Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver
Published: 10/01/2009
Effective: 12/02/2009

Judicial Performance Evaluation Commission
Administration
No. 33062 (AMD): R597-3. Judicial Performance Evaluations
Published: 11/01/2009
Effective: 12/16/2009

Labor Commission
Industrial Accidents
No. 33064 (AMD): R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund
Published: 11/01/2009
Effective: 01/01/2010

No. 33063 (R&R): R612-8. Procedural Guidelines for the Reemployment Act
Published: 11/01/2009
Effective: 12/09/2009

Occupational Safety and Health
No. 33061 (AMD): R614-2-11. Drilling Industry - Walking, Working Surfaces
Published: 11/01/2009
Effective: 12/09/2009

Natural Resources
Wildlife Resources
No. 33042 (AMD): R657-13. Taking Fish and Crayfish
Published: 11/01/2009
Effective: 12/10/2009

No. 33041 (AMD): R657-58. Fishing Contests and Clinics
Published: 11/01/2009
Effective: 12/10/2009

Tax Commission
Administration
No. 33047 (AMD): R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, 59-13-107
Published: 11/01/2009
Effective: 12/08/2009

Auditing
No. 33048 (AMD): R865-12L-14. Quarterly List of Local Sales and Use Tax Distributions Pursuant to Utah Code Ann. Section 59-12-109
Published: 11/01/2009
Effective: 12/08/2009

No. 33044 (AMD): R865-20T-14. Directory of Cigarettes Approved for Stamping Pursuant to Utah Code Ann. Sections 59-14-603 and 59-14-607
Published: 11/01/2009
Effective: 12/08/2009

Motor Vehicle
No. 33050 (AMD): R873-22M-41. Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005
Published: 11/01/2009
Effective: 12/08/2009

Motor Vehicle Enforcement
No. 33046 (AMD): R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305
Published: 11/01/2009
Effective: 12/08/2009

Property Tax
No. 33043 (AMD): R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5
Published: 11/01/2009
Effective: 12/08/2009

End of the Notices of Rule Effective Dates Section

2009 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 December 15, 2009, the effective dates of which are no later than January 1, 2010. 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/).