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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.

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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 EO/001/2010: Establishing A System For Allocating Volume Cap For Qualified Energy Conservation Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986

EXECUTIVE ORDER

Establishing A System For Allocating Volume Cap For Qualified Energy Conservation Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986

WHEREAS, Section 56D of the Internal Revenue Code of 1986, as amended (the "Code") provides that certain bonds can be issued for "qualified conservation purposes" subject to certain volume limitations (the "Volume Cap"); and

WHEREAS, the Code provides a formula for the allocation of such Volume Cap and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the State of Utah and its issuing authorities, it is prudent to issue this Executive Order;

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

Section 1: As used in this Executive Order:

(1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.

(2) "Board" means the Private Activity Bond Review Board of the State, created by Section 9-4-503, Utah Code Annotated 1953, as amended.

(3) "Bonds" means the Qualified Energy Conservation Bonds for which an allocation of the Volume Cap is required by the Code.

(4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.

(5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the United States Department of the Treasury under Section 149(e) of the Code.

(6) "Initial Required Allocations" means the Required Initial Allocations established by the Board under the Notice and referred to in Section 2 hereof.

(7) "Issuing Authority" shall have the meaning set forth in section 9-4-502(7) Utah Code Annotated 1953, as amended.

(8) "Notice" means IRS Notice 2009-29, as amended.

(9) "Qualified Energy Conservation Bonds" means bonds, notes or other obligations issued for "qualified conservation purposes" as provided in the Code and Notice.

(10) "Remaining Volume Cap" means the amount set forth as "Remaining Volume Cap" in Section 3 hereof.

(11) "State" means the State of Utah.

(12) "Subsequent Allocation" means an allocation of Volume Cap by the Board, acting on behalf of) the State, of Remaining Volume Cap or all or a portion of an Initial Required Allocation returned to the State by waiver under the Code and Notice.

(13) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.

(14) "Volume Cap" means the volume cap for Qualified Energy Conservation Bonds for the State as computed under Section 54D of the Code, the Notice and related regulations.

Section 2.

The Initial Required Allocations of Volume Cap for the State are hereby made by the State to State counties and municipalities qualifying as "large local governments" in the amounts set forth on Exhibit "A". Such amounts were determined by the Board under the Notice and are intended to be further allocated by said entities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

Section 3.

The Remaining Volume Cap shall equal the Qualified Energy Conservation Bond limitation allocated to the State under the Code and the Notice, less the sum of all Initial Required Allocations. Subsequent Allocations of Volume Cap shall be allocated by the Board in accordance with the procedures set forth in this Executive Order. The Board may seek waivers of Initial Required Allocations from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

Section 4.

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained is subject to the Government Records Access and Management Act (GRAMA) of the State and may be classified as protected records if the requirements relating hereto are determined to apply by the Chair of the Board.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, benefit to the citizens of the State and efficient distribution of resources in the State as determined by the Board. Subsequent Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

(4) Subsequent Allocations of Remaining Volume Cap and allocations by "large local governments" of Initial Required Allocations will be made such that not less than 70 percent of the allocation to the State or to each "large local government" will be used for Bonds which are not private activity bonds as provided in the Code and the Notice. Bonds issued to finance capital expenditures to implement "green community programs" shall not be treated as private activity bonds for this purpose.

Section 5.

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Volume Cap shall remain effective until, and including, the date determined by the Board but not to exceed 180 days after the date on which such allocation was made. Any allocation for which Bonds are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

Section 6.

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Required Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

Section 7.

In addition to the duties otherwise specifically set forth in this Executive Order, the Chair of the Board shall:

(1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;

(2) maintain a record of all Bonds issued by Issuing Authorities;

(3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;

(4) make available upon reasonable request a certified copy of all or any part portion of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order; and

(5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 8.

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

Section 9.

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

Section 10.

No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State, or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

Section 11.

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

Section 12.

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah at the Utah State Capitol in Salt Lake City on this, the 12th day of January, 2010.

(State Seal)

Gary R. Herbert
Governor

Attest:

Greg Bell
Lieutenant Governor

EO/001/2010

EXHIBIT A TO EXECUTIVE ORDER

State of Utah

Qualified Energy Conservation Bonds

Suballocation Amounts

2007 Total State Population for Utah	Name of City or County	2007 City/County Population	C/C Percentage of State Population	QECB State Volume Cap Amount	C/C Allocation Amount
2,668,925	Cache County	108,995	4.0839%	$28,389,000	$1,159,365
2,668,925	Davis County	287,751	10.7815%	$28,389,000	$3,060,769
2,668,925	Provo City	117,849	4.4156%	$28,389,000	$1,253,544
2,668,925	Salt Lake City	179,433	6.7230%	$28,389,000	$1,908,605
2,668,925	Salt Lake County	600,993	22.5182%	$28,389,000	$6,392,683
2,668,925	Utah County	395,414	14.8155%	$28,389,000	4,205,966
2,668,925	Washington County	133,447	5.0000%	$28,389,000	$1,419,458

2,668,925	Weber County	221,419	8.2962%	$28,389,000	$2,355,204
2,668,925	West Jordan City	102,445	3.8384%	$28,389,000	$1,089,694
2,668,925	West Valley City	122,374	4.5851%	$28,389,000	$1,301,676
2,668,925	Indian Tribal Gov	37,009	1.3867%	$28,389,000	$393,660
Total Percentage and Allocation Amounts			86.4441%		$24,540,624
		Total Amount Left for State Allocation			$3,848,376

Governor's Executive Order EO/002/2010: Establishing a System For Allocating Volume Cap For Recovery Zone Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986

EXECUTIVE ORDER

Establishing a System For Allocating Volume Cap For Recovery Zone Bonds in the State Consistent With the Provisions of the United State Internal Revenue Code of 1986

WHEREAS, Sections 1400U-1 through U-3 of the Internal Revenue Code of 1986, as amended (the "Code") provide that until December 31, 2010 certain bonds can be issued to finance projects in "recovery zones" and subjects such bonds to volume limitations (the "Volume Cap"); and

WHEREAS, the Code provides a formula for the allocation of such Volume Cap and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the State of Utah and its issuing authorities, it is prudent to issue this Executive Order;

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

Section 1: As used in this Executive Order:

(1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.

(2) "Board" means the Private Activity Bond Review Board of the State, created by Section 9-4-503, Utah Code Annotated 1953, as amended.

(3) "Bonds" means the Recovery Zone Bonds for which an allocation of the Volume Cap is required by the Code.

(4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.

(5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.

(6) "Initial Allocations" means the sum of the Initial Allocations established under the Notice and referred to in Section 2 hereof.

(7) "Issuing Authority" shall have the meaning set forth in section 9-4-502(7) Utah Code Annotated 1953, as amended.

(8) "Notice" means IRS Notice 2009-50, as amended.

(9) "Recovery Zone" means an area so designated as provided in the Code and Notice.

(10) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(11) "Recovery Zone Economic Development Bonds" means bonds, notes or other obligations issued for one or more "qualified economic development purposes" as provided in the Code and the Notice.

(12) "Recovery Zone Facility Bonds" means bonds, notes or other obligations issued to finance "recovery zone property" as provided in the Code and Notice.

(13) "State" means the state of Utah.

(14) "Subsequent Allocation" means an allocation of Volume Cap by the Board acting for the State of all or a portion of Initial Allocations returned to the State by waiver under the Code and Notice.

(15) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.

(16) "Volume Cap" means the volume cap for Recovery Zone Bonds for the State as computed under Sections 1400U-1 through U-3 of the Code, the Notice and related regulations.

Section 2.

The Initial Allocations of Volume Cap for Recovery Zone Bonds for the State have been made to State counties and municipalities in the amounts set forth on Exhibit "A". Such amounts were determined by the Internal Revenue Service under the Notice and are intended to be further allocated by said entities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

Section 3.

If, and to the extent all, or a portion of, the Initial Allocations is returned to the State by waiver or deemed waiver as provided in the Code and Notice, Subsequent Allocations of Recovery Zone Volume Cap shall be allocated in accordance with the procedures set forth in this Executive Order. The Board shall seek waivers of Initial Allocations prior to December 31, 2009, and again, prior to April 1, 2010, from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

Section 4.

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of such Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained is subject to the Government Records Access and Management Act (GRAMA) of the State and may be classified as protected records if the requirements relating hereto are determined to apply by the Chair of the Board.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, economic impact and efficient distribution of resources in the State as determined by the Board. Subsequent Allocations for Recovery Zone Economic Development Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Economic Development Bonds returned to the State by waiver or deemed waiver and Subsequent Allocations for Recovery Zone Facility Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Facility Bonds returned to the State by waiver or deemed waiver. Subsequent State Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

Section 5.

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Recovery Zone Volume Cap shall remain effective until, and including, the earlier of: (a) the date determined by the Board but not to exceed 180 days after the date on which such allocation was made, or (b) 12:00 o'clock midnight on December 31, 2010. Any allocation for which Bonds are issued on, or prior to, the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

Section 6.

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

Section 7.

In addition to the duties otherwise specifically set forth in this Executive Order, the Chair of the Board shall:

(1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;

(2) maintain a record of all Bonds issued by Issuing Authorities;

(3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;

(4) make available, upon reasonable request, a certified copy of all or any part of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order; and

(5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 8.

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

Section 9.

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

Section 10.

No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

Section 11.

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

Section 12.

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah at the Utah State Capitol in Salt Lake City on this 12th day of January, 2010.

(State Seal)

Gary R. Herbert
Governor

Attest:

Greg Bell
Lieutenant Governor

EO/002/2010

EXHIBIT A TO EXECUTIVE ORDER

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Utah		90,000,000	135,000,000
Provo city, UT		8,675,000	13,013,000
Salt Lake City city, UT		0	0
West Jordan city, UT		0	0
West Valley City city, UT		0	0
Beaver County, UT		0	0
Box Elder County, UT		0	0
Cash County, UT		0	0
Carbon County, UT		0	0
Daggett County, UT		0	0
Davis County, UT		8,266,000	12,398,000
Duchesne County, UT		0	0

Emery County, UT		0	0
Garfield County, UT		0	0
Grand County, UT		0	0
Iron County, UT		0	0
Juab County, UT		512,000	768,000
Kane County, UT		0	0
Millard County, UT		0	0
Morgan County, UT		228,000	342,000
Piute County, UT		0	0
Rich County, UT		0	0
Salt Lake County, UT	Residual	0	0
San Juan County, UT		0	0
Sanpete County, UT		0	0
Sevier County, UT		0	0
Summit County, UT		0	0
Tooele County, UT		0	0
Uintah County, UT		0	0
Utah County, UT	Residual	19,560,000	29,340,000
Wasatch County, UT		4,531,000	6,797,000
Washington County, UT		41,818,000	62,727,000
Wayne County, UT		0	0
Weber County, UT		6,410,000	9,615,000

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Department of the Treasury
Internal Revenue Service

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 January 01, 2010, 12:00 a.m., and January 15, 2010, 11:59 p.m. are included in this, the February 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 March 3, 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 June 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

Administrative Services, Archives
R17-7-3
Archives/ Research Room/Access to Records

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33320
FILED: 01/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Limit use of computers and equipment in the Research Center to research associated with the Utah State Archives or Utah State History.

SUMMARY OF THE RULE OR CHANGE: Patrons may use the equipment and resources of the Research Center for research associated with the Utah State Archives or Utah State History and not for personal or business use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-301 and Section 63G-3-402 and Subsection 63G-3-601(3) Article IV

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No impact to the state budget.
♦ LOCAL GOVERNMENTS: No impact to local government.
♦ SMALL BUSINESSES: No impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact on persons other than those wanting to use resources of the Research Center for other than Archives or State History research.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Patrons may not use Research Center resources for personal or business purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on businesses other than they may not use Research Center resources for business purposes except as permitted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
ARCHIVES
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2010

AUTHORIZED BY: Patricia Smith-Mansfield, Director

R17. Administrative Services, Archives and Records Service.
R17-7. Archival Records Care and Access at the State Archives.
R17-7-3. Access to Records.

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records.

(7) Patrons may not remove government records from the Research Center.

(8) Patrons may only use equipment and resources in the Research Center for the purposes of research associated with the Utah State Archives or Utah State History.

KEY: records retention, public information, access to information
Date of Enactment or Last Substantive Amendment: [~~August 20, 2008~~]2010
Authorizing, and Implemented or Interpreted Law: 63A-12-104

Administrative Services, Finance
R25-7-10
Reimbursement for Transportation

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33302
FILED: 01/04/2010

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 cent 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. (DAR NOTE: A corresponding 120-day (emergency) rule was published in the January 1, 2010, Bulletin under DAR No. 33275 and was effective 01/01/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

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 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

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: [~~June 23, 2009~~]2010
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Commerce, Securities
R164-4-9
Exemptions from Licensing Requirements for Certain Investment Advisers

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33316
FILED: 01/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to comments received, several clarifications were made to the cited statutory authority through which the director may designate institutional investors by rule.

SUMMARY OF THE RULE OR CHANGE: In three subsections, prefatory language was changed to a more specific statutory reference, from "Notwithstanding the provisions of Subsection 61-1-3(3)" to "For purposes of Subsection 61-1-3(3)(b)(ii)". The catchline was also changed to more precisely describe the purpose of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 61-1-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No additional costs because the amendments merely change statutory references in the rule.
♦ LOCAL GOVERNMENTS: No additional costs because the amendments merely change statutory references in the rule.
♦ SMALL BUSINESSES: No additional costs because the amendments merely change statutory references in the rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs because the amendments merely change statutory references in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs because the amendments merely change statutory references in the rule.

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 makes technical and clarifying amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
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:
♦ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
♦ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.
R164-4. Licensing Requirements.
R164-4-9. Exemptions From Licensing Requirements for [~~Certain~~]Investment Advisers Providing Advice to Certain Institutional Investors.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than $10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain Institutional Investors

(1) For purposes[~~Notwithstanding the provisions~~] of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than $10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) For purposes[~~Notwithstanding the provisions~~] of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) For purposes[~~Notwithstanding the provisions~~] of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent

accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements
Date of Enactment or Last Substantive Amendment: March 10, 2010[~~January 6, 2010~~]
Notice of Continuation: July 30, 2007
Authorizing, and Implemented or Interpreted Law: 61-1-3; 61-1-4; 61-1-5; 61-1-6; 61-1-13; 61-1-14; 61-1-24

Environmental Quality, Air Quality
R307-840
Lead-Based Paint Accreditation, Certification and Work Practice Standards

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 33308
FILED: 01/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On April 22, 2008, Environmental Protection Agency (EPA) published changes to 40 CFR 745 titled, "Lead; Renovation, Repair, and Painting (RRP) Program" (Federal Register (FR) Vol. 73, No. 78, Tuesday, April 22, 2008, Pages 21691-21769). In 2009, EPA published three additional revisions to the RRP program. The Utah Administrative Code must be amended to include the EPA RRP program regulatory language before EPA can delegate program authority for Utah to the Division of Air Quality (DAQ). To implement the RRP Program in Utah, DAQ is using a full text copy of the federal regulation and modifying it to facilitate program administration in and by the State. The intent is to adopt the federal regulatory language as promulgated, making minor changes to help facilitate program administration in Utah. This presents the Utah rule in a more transparent, easily understandable format. In addition, this amendment also includes minor program administrative clarifications. This repeal and reenact is part of three rule changes that incorporate the above changes.

SUMMARY OF THE RULE OR CHANGE: This rule change repeals the current version of Rule R307-840 that incorporates by reference several sections of 40 CFR 745, replacing it with an updated purpose, in addition to the applicability and definitions originally incorporated by reference including changes made by the EPA from July 1, 2007, to July 15, 2009. The proposed version of Rule R307-840 contains the purpose, applicability, and the definitions used by Rules R307-841 and R307-842. Regulatory requirements for the Lead-Based Paint (LBP) Pre-Renovation Education Rule currently located in Rule R307-840 have been removed from Rule R307-840 and placed in the proposed new Rule R307-841. The LBP Abatement Program regulatory requirements currently located in Rule R307-840 have been removed from Rule R307-840 and placed in the proposed new Rule R307-841. By incorporating this set of three rule changes, the DAQ will have the ability to apply to the EPA for lead-based paint program regulatory oversight in Utah for renovation projects conducted in target housing and child-occupied facilities. (DAR NOTE: The proposed new Rule R307-841 is under DAR No. 33309; and the proposed new Rule R307-842 is under DAR No. 33310 in this issue, February 1, 2010, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745

Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for the state budget.
♦ LOCAL GOVERNMENTS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for local government.
♦ SMALL BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for businesses.

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 03/03/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 02/25/2010 01:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.
[~~R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.~~
~~R307-840-1. Purpose and Applicability.~~
~~(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.~~
~~(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.~~
~~(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.~~
~~(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.~~

~~R307-840-2. Definitions.~~
~~(1) Definitions found in 40 CFR 745.63, 40 CFR 745.83, and 40 CFR 745.223, effective as of July 1, 2007, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below.~~
~~(2) Substitutions.~~
~~(a) Substitute "the Executive Secretary" for all references to "EPA" except in the definition of "Pamphlet" found in 40 CFR 745.83 and in the definition of "Recognized laboratory" found in 40 CFR 745.223.~~
~~(b) Substitute "the Executive Secretary" for all references to "Administrator".~~
~~(3) Modifications.~~
~~(a) Delete the definition of "Administrator" found in 40 CFR 745.83.~~
~~(b) Modify the definition of "Pamphlet" found in Sec. 745.83 by deleting ", or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose".~~
~~(c) Delete the definition of "Lead-based paint hazard" found in 40 CFR 745.223.~~

~~(d) Modify the definition of "Business day" found in Sec. 745.223 by including "and State of Utah" before "holidays".~~

~~R307-840-3. Accreditation, Certification and Work Standards: Target Housing and Child-Occupied Facilities.~~

~~(1) The following requirements, effective as of July 1, 2007, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below:~~

~~(a) 40 CFR 745.61, 745.65, 745.80, 745.81, 745.82, 745.85, 745.86, 745.88, 745.225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233.~~

~~(2) Substitutions.~~

~~(a) Substitute "the Executive Secretary" for all references to "EPA" with the following exceptions:~~

~~(i) Sec. 745.65(d).~~

~~(ii) Sec. 745.86(b)(1).~~

~~(iii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv), Sec. 745.225(e)(2)(ii), Sec. 745.225(e)(10), Sec. 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).~~

~~(iv) The last reference to EPA in Sec. 745.226(a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).~~

~~(v) The first three references to EPA in Sec. 745.227(a)(3), and the reference to EPA in Sec. 745.227(a)(4), Sec. 745.227(e)(4)(vi)(D), Sec. 745.227(e)(4)(vi)(I), and Sec. 745.227(f)(2).~~

~~(b) Substitute "the Executive Secretary or the Executive Secretary's authorized representative" for references to "EPA" in Sec. 745.225(e)(12), Sec. 745.225(f)(4), and Sec. 745.225(i)(1).~~

~~(c) Substitute "the Executive Secretary" for all references to "Administrator".~~

~~(d) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or a State or Tribal certification program authorized pursuant to Sec. 745.324" in Sec. 745.82(b)(3).~~

~~(e) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or an EPA-authorized State or Tribal certification program" in Sec. 745.86(b)(1).~~

~~(f) Substitute "Sec. 745.82(b)(3)" for "Sec. 745.82(b)(iv)" in 40 CFR 745.86(b)(1).~~

~~(g) Substitute sample certification language found in Sec. 745.88(b)(2)(ii) with that found in Sec. 745.88(b)(2)(i).~~

~~(h) Substitute sample certification language found in Sec. 745.88(b)(2)(i) with that found in Sec. 745.88(b)(2)(ii).~~

~~(i) Substitute "the current Department of Environmental Quality Fee Schedule" for references to "Sec. 745.238" in Sec. 745.225(b)(4), Sec. 745.225(f)(3)(v), Sec. 745.226(a)(6), Sec. 745.226(e)(3), Sec. 745.226(f)(6), and Sec. 745.226(f)(7).~~

~~(j) Substitute "Utah Division of Air Quality electronic notification system" for "Agency's central data exchange (CDX)" in Sec. 745.225(e)(13)(vi), Sec. 745.225(e)(14)(iii), and Sec. 745.227(e)(4)(vii).~~

~~(k) Substitute "Notification Form" for "Schedule" in Sec. 745.225(e)(13)(vi).~~

~~(l) Substitute "Utah Division of Air Quality Lead-Based Paint Program web site" for "NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead" in Sec. 745.225(e)(13)(vi), Sec. 745.225(e)(14)(iii), and Sec. 745.227(e)(4)(vii).~~

~~(m) Substitute "Verification Form" for "Course Follow-up" in Sec. 745.225(e)(14)(iii).~~

~~(n) Substitute "Utah lead-based paint firm" for "EPA" in Sec. 745.227(e)(4)(vi)(D).~~

~~(o) Substitute "Utah lead-based paint individual" for "EPA" in Sec. 745.227(e)(4)(vi)(I).~~

~~(p) Substitute "Lead-Based Paint Abatement Project Notification" for "Notification of Lead-Based Paint Abatement Activities" in Sec. 745.227(e)(4)(vii).~~

~~(q) Substitute "Sec 745.65(b)" for "Sec 745.227(b)" in 40 CFR 745.227(h)(2)(i).~~

~~(3) Modifications.~~

~~(a) Change the date in Sec. 745.81 to October 1, 2005.~~

~~(b) Change the date in Sec. 745.226(a)(5), Sec. 745.226(d)(2), Sec. 745.226(f)(1), and Sec. 745.227(a)(1) to August 30, 1999.~~

~~(c) Modify Sec. 745.225(b)(1)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part,".~~

~~(d) Modify Sec. 745.225(b)(1)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".~~

~~(e) Modify Sec. 745.225(e)(2)(ii) by including "Executive Secretary-accredited," before "EPA-accredited".~~

~~(f) Modify Sec. 745.225(e)(13)(v)(B) and Sec. 745.225(e)(14)(ii)(A) by deleting "EPA accreditation number,".~~

~~(g) Modify Sec. 745.225(e)(14)(ii)(F) to include "Utah Division of Air Quality Lead-Based Paint Program training verification statement".~~

~~(h) Modify Sec. 745.225(e)(5)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under Sec. 745.324 to develop its refresher training course materials,".~~

~~(i) Modify Sec. 745.225 (e)(5)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".~~

~~(j) Modify Sec. 745.226 (a)(1)(ii) by including "EPA or" after the word "from".~~

~~(k) Modify Sec. 745.226(f)(7) by deleting "every 3 years".~~

~~(l) Modify Sec. 745.227 (a)(3) by deleting "Regulations, guidance, methods, or protocols issued by States and Indian Tribes that have been authorized by EPA;".~~]

R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions.

R307-840-1. Purpose and Applicability.

(1) Rule R307-840, R307-841, and R307-842 establish procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and renovations, and work practice standards for performing such activities. These rules also require that, except as outlined in R307-840-1(2), all lead-based paint activities and renovations, as defined in these rules, must be performed by certified individuals and firms.

(2) R307-840, R307-841, and R307-842 apply to all individuals, agencies, and firms who are engaged in lead-based paint activities and renovations as defined in R307-840-2, except for persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a

child residing in the building has been identified as having an elevated blood lead level.

(3) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(4) R307-840, R307-841, and R307-842 do not require the owner of the property or properties subject to these rules to evaluate the property or properties for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

(5) While R307-840, R307-841, and R307-842 establish specific requirements for performing lead-based paint activities and renovations should they be undertaken, these rules do not require that the owner or occupant undertake any particular lead-based paint activity or renovation.

The following definitions apply to R307-840, R307-841, and R307-842 in addition to the definitions found in R307-101-2.

R307-840-2. Definitions.

"Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(i) Shall result in the permanent elimination of lead-based paint hazards, or

(ii) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition;

(b) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals certified in accordance with R307-842-2, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited Training Program" means a training program that has been accredited by the Executive Secretary pursuant to R307-842-1 to provide training for individuals engaged in lead-based paint activities.

"Adequate Quality Control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic Mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business Day" means Monday through Friday with the exception of Federal and State of Utah holidays.

"Certificate of Mailing" means Certificate of Mailing as defined by the United States Postal Service.

"Certified Abatement Worker" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-842-2 to perform abatements.

"Certified Dust Sampling Technician" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-841-8(1) and R307-842-2 to collect dust samples.

"Certified Inspector" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-842-1 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Project Designer" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-842-2 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified Renovator" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-841-8(1) and R307-842-2 to conduct renovations.

"Certified Risk Assessor" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-842-2 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Supervisor" means an individual who has been trained by an accredited training program and certified by the Executive Secretary pursuant to R307-842-2 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

"Chewable Surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that can not be dented by the bite of a young child are not considered chewable.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child under 6 years of age on at least two different days within any week (Sunday through Saturday period), provided that each day's

visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Clearance Levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

"Common Area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Common Area Group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairways, and laundry rooms.

"Component or Building Component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners, and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course Test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course Test Blue Print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Deteriorated Paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking, or cracking, or any other paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this rule for which individuals may receive training from accredited programs and become certified by the Executive Secretary. Disciplines include Abatement Worker, Dust Sampling Technician, Inspector, Project Designer, Renovator, Risk Assessor, and Supervisor.

"Distinct Painting History" means the application history, as indicated by its visual appearance or a record of application over time of paint or other surface coatings to a component or room.

"Documented Methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within 3 feet surrounding the perimeter of the building.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 ug/ft2 on floors or 250 ug/ft2 on interior window sills based on wipe samples.

"Elevated Blood Lead Level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 micrograms of lead per deciliter of whole blood (ug/dl) for a single venous test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart.

"Emergency Renovation Operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Encapsulant" means a substance that forms a barrier between lead based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"Executive Secretary" means the Executive Secretary of the Utah Air Quality Board.

"Friction Surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization that performs lead-based paint activities or renovations.

"Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-On Skills Assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in R307-842-1(4), as well as any other skill taught in a training course.

"Hazardous Waste" means any waste as defined in 40 CFR 261.3.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

"Housing for the Elderly" means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

"HUD" means the United States Department of Housing and Urban Development.

"Impact Surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim Certification" means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the Executive Secretary pursuant to R307-842-2. Interim certification expires 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior Window Sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-Based Paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

"Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

"Lead-Based Paint Activities Courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-Based Paint Hazard" means hazardous lead-based paint, dust-lead hazard, or soil-lead hazard as identified in R307-840-2.

"Lead-Hazard Screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in R307-842-3(3).

"Living Area" means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Local Government" means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

"Mid-Yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Minor Repair and Maintenance Activities" are activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by R307-841-5(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Multi-Family Dwelling" means a structure that contains more than one separate residential dwelling unit which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multi-Family Housing" means a housing property consisting of more than four dwelling units.

"Nonprofit" means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

"Paint In Poor Condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors), or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in the definition of "Dust-lead hazard".

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

"Permanently Covered Soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Person" means any natural or judicial person including any individual, corporation, partnership, or association, any indian tribe, State, or political subdivision thereof, any interstate body, and any government department, agency, or instrumentality.

"Play Area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

"Principal Instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized Laboratory" means an environmental laboratory recognized by EPA pursuant to TSCA Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Renovation" means the modification of an existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this rule. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)), the removal of building components (e.g., walls, ceilings, plumbing, windows), weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planning thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this rule. The term renovation does not include minor repair and maintenance activities.

"Residential Building" means a building containing one or more residential dwellings.

"Residential Dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk Assessment" means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and (2) the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

"Soil Sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ug/g) in a play area or average 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

"Start Date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start Date Provided to the Executive Secretary" means the start date included in the original notification or the most recent start date provided to the Executive Secretary in an updated notification.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601.

"Training Manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training Provider" means any organization or entity accredited under R307-842-1 to offer lead-based paint activities courses.

"Visual Inspection for Clearance Testing" means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

"Visual Inspection for Risk Assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"Weighted Arithmetic Mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 ug/ft2, a composite sample (3 subsamples) containing 100 ug/ft2, and a composite sample (4 subsamples) containing 110 ug/ft2 is 100 ug/ft2. This result is based on the equation (60+(3*100)+(4*110))/(1+3+4).

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Window Trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window well.

"Wipe Sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques", or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Work Area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

"0-Bedroom Dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

KEY: [~~air pollution~~]definitions, paint, lead-based paint
Date of Enactment or Last Substantive Amendment: [~~May 7, 2009~~]2010
Notice of Continuation: May 7, 2009
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)

Environmental Quality, Air Quality
R307-841
Residential Property and Child-Occupied Facility Renovation

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33309
FILED: 01/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On April 22, 2008, Environmental Protection Agency (EPA) published changes to 40 CFR 745 titled, "Lead; Renovation, Repair, and Painting (RRP) Program" (Federal Register (FR) Vol. 73, No. 78, Tuesday, April 22, 2008, Pages 21691-21769). In 2009, EPA published three additional revisions to the RRP program. The Utah Administrative Code must be amended to include the EPA RRP program regulatory language before EPA can delegate program authority for Utah to the Division of Air Quality (DAQ). To implement the RRP Program in Utah, DAQ is

using a full text copy of the federal regulation and modifying it to facilitate program administration in and by the State. The intent is to adopt the federal regulatory language as promulgated, making minor changes to help facilitate program administration in Utah. This presents the Utah rule in a more transparent, easily understandable format. In addition, this amendment also includes minor program administrative clarifications. This new rule is part of three rule changes that incorporate the above changes. The proposed version of Rule R307-841 contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following: 1) owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and 2) individuals performing renovations regulated in accordance with Section R307-841-3 are properly trained, renovators, and firms performing these renovations are certified, and the work practices in Section R307-841-5 are followed during these renovations. By incorporating this set of three rule changes, the DAQ will have the ability to apply to the EPA for lead-based paint program regulatory oversight in Utah for renovation projects conducted in target housing and child-occupied facilities. (DAR NOTE: The proposed repeal and reenactment of Rule R307-840 is under DAR No. 33308; and the proposed new Rule R307-842 is under DAR No. 33310 in this issue, February 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The proposed new Rule R308-841 contains: effective dates; applicability; information distribution requirements; work practice standards; recordkeeping, and reporting requirements; firm certification; renovator certification and dust sampling technician certification; and suspending, revoking, or modifying an individual's or firm's certification originally incorporated by reference in Rule R307-840 including changes made by the EPA from July 1, 2007, to July 15, 2009.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for the state budget.
♦ LOCAL GOVERNMENTS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for local government.
♦ SMALL BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for businesses.

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 03/03/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 02/25/2010 01:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-841. Residential Property and Child-Occupied Facility Renovation.
R307-841-1. Purpose.
This rule contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for

compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained, renovators, and firms performing these renovations are certified, and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements, and work practice standards in this rule will become effective as follows:

(a) Training programs. No training program may provide, offer, or claim to provide training or refresher training for Executive Secretary certification as a renovator or a dust sampling technician without accreditation from the Executive Secretary under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7.

(ii) No firm may perform, offer, or claim to perform renovations without certification from the Executive Secretary under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1) or (3).

(c) Individuals. All renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1) or (3).

(d) Work practices. All renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(f) and (2)(g) in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1) or (3).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2) which must be performed by certified renovators, or the recordkeeping requirements of R307-841-6(2)(f) and (g).

(3) The training requirements in R307-841-8 and the work practice standards for renovation activities in R307-841-5 apply to all renovations covered by this rule, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in the Executive Secretary's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, or foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgement that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain from the adult occupant a written acknowledgement that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling

and that the renovator has been unsuccessful in obtaining a written acknowledgement from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgement (e.g., occupant refuses to sign, no adult occupant available), the signature of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgement that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet at no charge from the firm performing the renovation; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a) Provide the owner of the building with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(c) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians; and

(d) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgement. The written acknowledgements required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i), and (3)(b)(i) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, remain in place, and be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering; and

(D) The renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(c) Prohibited and restricted practices. The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control; and

(iii) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust,

debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer. After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth.

(I) If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(III) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer. After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h).

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the Executive Secretary all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1), of this section, shall include (where applicable):

(a) Reports certifying that a determination had been made by an inspector (certified pursuant to R307-842) that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1)(a).

(b) Signed and dated acknowledgements of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i), and (3)(b)(i).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(b)(i).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(ii), and (3)(b)(ii).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(c).

(f) Any signed and dated statements received from owner-occupants documenting that the requirements of R307-841-5 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in the Executive Secretary's renovation, repair, and painting rule, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.

(g) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of their current Utah Lead-Based Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling report to the person who contracted for the renovation.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the Executive Secretary for certification to perform renovations or dust sampling. To apply, a firm must submit to the Executive Secretary a completed "Lead-Based Paint Certification Application for Firms" signed by an authorized agent of the firm and pay the correct amount of fees.

(b) After the Executive Secretary receives a firm's application, the Executive Secretary will take one of the following actions within 90 days of the date the application is received:

(i) The Executive Secretary will approve a firm's application if the Executive Secretary determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the Executive Secretary approves a firm's application, the Executive Secretary will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The Executive Secretary will request a firm to supplement its application if the Executive Secretary determines that the application is incomplete. If the Executive Secretary requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The Executive Secretary will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the Executive Secretary determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The Executive Secretary will send the firm a letter giving the reason for not approving the application. The Executive Secretary will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the Executive Secretary.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is

submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the Executive Secretary has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the Executive Secretary does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the Executive Secretary approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Executive Secretary action on an application. After the Executive Secretary receives a firm's application for re-certification, the Executive Secretary will review the application and take one of the following actions within 90 days of receipt:

(i) The Executive Secretary will approve a firm's application if the Executive Secretary determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the Executive Secretary approves a firm's application for re-certification, the Executive Secretary will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The Executive Secretary will request a firm to supplement its application if the Executive Secretary determines that the application is incomplete.

(iii) The Executive Secretary will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the Executive Secretary determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The Executive Secretary will send the firm a letter giving the reason for not approving the application. The Executive Secretary will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the Executive Secretary will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by the Executive Secretary under R307-842-1.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an Executive Secretary, EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the Executive Secretary under R307-842-1 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and

while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(g).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h)(i) through (v), must send the collected samples to a laboratory recognized by EPA under Section 405(b) of TSCA, and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The Executive Secretary may suspend, revoke, or modify an individual's certification if the individual fails to comply with State lead-based paint administrative rules. The Executive Secretary may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The Executive Secretary may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the Executive Secretary in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with State lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

KEY: paint, lead-based paint, lead-based paint renovation
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)

Environmental Quality, Air Quality
R307-842
Lead-Based Paint Activities

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33310
FILED: 01/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On April 22, 2008, Environmental Protection Agency (EPA) published changes to 40 CFR 745 titled, "Lead; Renovation, Repair, and Painting (RRP) Program" (Federal Register (FR) Vol. 73, No. 78, Tuesday, April 22, 2008, Pages 21691-21769). In 2009, EPA published three additional revisions to the RRP program. The Utah Administrative Code must be amended to include the EPA RRP program regulatory language before EPA can delegate program authority for Utah to the DAQ. To implement the RRP Program in Utah, DAQ is using a full text copy of the federal regulation and modifying it to facilitate program administration in and by the State. The intent is to adopt the federal regulatory language as promulgated, making minor changes to help facilitate program administration in Utah. This presents the Utah rule in a more transparent, easily understandable format. In addition, this amendment also includes minor program administrative clarifications. This new rule is part of three rule changes that incorporate the above changes. The proposed version of Rule R307-842 contains: 1) accreditation of training programs: target housing and child-occupied facilities; 2) certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities; 3) work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities; 4) lead-based paint activities requirements; and 5) work practice requirements. By incorporating this set of three rule changes, the DAQ will have the ability to apply to the EPA for lead-based paint program regulatory oversight in Utah for renovation projects conducted in target housing and child-occupied facilities. (DAR NOTE: The proposed repeal and reenactment of Rule R307-840 is under DAR No. 33308; and the proposed new Rule R307-841 is under DAR No. 33309 in this issue, February 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The proposed new Rule R308-842 contains: accreditation of training programs: target housing and child-occupied facilities; certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities; work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities; lead-based paint activities requirements; and work practice requirements originally incorporated by reference in Rule R307-840 including changes made by the EPA from July 1, 2007, to July 15, 2009.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for the state budget.
♦ LOCAL GOVERNMENTS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for local government.
♦ SMALL BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because no new requirements are created that are not already required by the federal government under 40 CFR 745 Subpart D, 40 CFR 745 Subpart E, and 40 CFR 745 Subpart F, no cost or savings is anticipated for businesses.

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 03/03/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 02/25/2010 01:00 PM, DEQ Building, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-842. Lead-Based Paint Activities.
R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(b) Training programs may apply to the Executive Secretary for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the Executive Secretary for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide Executive Secretary-accredited lead-based paint activities courses without applying for and receiving accreditation from the Executive Secretary as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide Executive Secretary-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the Executive Secretary as required under paragraph (2) of this section.

(2) Accreditation process. The following are procedures a training program must follow to receive Executive Secretary accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the Executive Secretary containing the following information:

(i) The training program's name, address, and telephone number;

(ii) The appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule;

(iii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements;

(iv) A description of the facilities and equipment to be used for lecture and hands-on training;

(v) A copy of the course test blueprint for each course;

(vi) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(vii) A copy of the quality control plan as described in paragraph (3)(j) of this section; and

(viii) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(ix) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(b) If a training program meets the requirements in paragraph (3) of this section, then the Executive Secretary shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Executive Secretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Executive Secretary may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time; and

(c) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section;

(3) Requirements for the accreditation of training programs. For a training program to obtain accreditation from the Executive Secretary to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(a) The training program shall employ a training manager who has demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene in addition to one of the following:

(i) At least 2 years of experience, education, or training in teaching workers or adults;

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards;

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults;

(ii) Successfully completed at least 16 hours of any Executive Secretary-accredited, EPA-accredited, or EPA-authorized State or Tribal-accredited lead-specific training; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene;

(c) The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course;

(d) The following documents shall be recognized by the Executive Secretary as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements;

(e) The documentation in (d) need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section.

(f) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed;

(g) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training hour requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (4)(a) of this section;

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on

activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (4)(c) of this section;

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (4)(d) of this section;

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (4)(f) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification; and

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (4)(g) of this section. Hands-on training activities must cover dust sampling methodologies;

(h) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each individual must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application;

(i) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, abatement worker, renovator, or dust sampling technician course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught; and

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual;

(j) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency;

(k) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they are responsible for conducting;

(l) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section;

(m) The training manager shall allow the Executive Secretary or the Executive Secretary's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section;

(n) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the Executive Secretary with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the Executive Secretary at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the Executive Secretary updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the Executive Secretary, an updated notification must be received by the Executive Secretary at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the Executive Secretary, an updated notification must be received by the Executive Secretary at least 2 business days before the start date provided to the Executive Secretary;

(iii) The training manager must update the Executive Secretary of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the Executive Secretary;

(iv) The training manager must update the Executive Secretary regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the Executive Secretary at least 2 business days prior to the start date provided to the Executive Secretary;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);
(B) Training program name, address, and telephone number;
(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;
(D) Date(s) and time(s) of training;
(E) Training location(s) telephone number, and address;
(F) Principal instructor's name; and
(G) Training manager's name and signature;
(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(v) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;
(vii) Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and
(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the Executive Secretary of such activities in accordance with the requirements of this paragraph.
(o) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.
(i) The training manager must provide the Executive Secretary notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by the Executive Secretary no later than 10 business days following the course completion;
(ii) The notification must include the following:
(A) Training program name, address, and telephone number;
(B) Course discipline and type (initial/refresher);
(C) Date(s) of training;
(D) The following information for each student who took the course:
(I) Name,
(II) Address,
(III) Date of birth,
(IV) Course completion certificate number,
(V) Course test score, and
(VI) For renovator or dust sampling technician courses only, a digital photograph of the student;
(E) Training manager's name and signature; and
(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement; and
(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(o)(ii) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.
(4) Minimum training curriculum requirements. To become accredited to offer lead-based paint course instruction in the specific disciplines listed below, training programs must ensure that their courses of study include, at a minimum, the following course topics.
(a) Inspector.
(i) Role and responsibilities of an inspector;
(ii) Background information on lead and its adverse health effects.
(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.
(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.
(v) Paint, dust, and soil sampling methodologies.
(vi) Clearance standards and testing, including random sampling.
(vii) Preparation of the final inspection report.
(viii) Recordkeeping.
(ix) Items (iv) through (viii) require hands-on activities as an integral component of the course.
(b) Risk assessor.
(i) Role and responsibilities of a risk assessor.
(ii) Collection of background information to perform a risk assessment.
(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.
(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.
(v) Lead hazard screen protocol.
(vi) Sampling for other sources of lead exposure.
(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable State or Federal guidance or regulations pertaining to lead-based paint hazards.
(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.
(ix) Preparation of a final risk assessment report.
(x) Items (iv), (vi), and (vii) require hands-on activities as an integral component of the course.
(c) Supervisor.
(i) Role and responsibilities of a supervisor.
(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(xiv) Items (v), and (vii) through (x) require hands-on activities as an integral component of the course.

(d) Project designer.

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(viii) Items (iv) through (vii) require hands-on activities as an integral component of the course.

(f) Renovator.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(viii) Waste handling and disposal.

(ix) Providing on-the-job training to other workers.

(x) Record preparation.

(g) Dust sampling technician.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain Executive Secretary accreditation to offer refresher training, a training program must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours;

(c) For each course offered, the training program shall conduct a hands-on assessment (if applicable), and at the completion of the course, a course test;

(d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (2) of this section. If so, the Executive Secretary shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3) (except for the requirements in paragraph (3)(g)), and (5)(a), (5)(b), and (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the Executive Secretary containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(g) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(iv) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(v) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(j) of this section;

(vi) The requirements in paragraphs (3)(a) through (3)(f), and (3)(h) through (3)(o) of this section apply to refresher training providers; and

(vii) If a refresher training program meets the requirements listed in this paragraph, then the Executive Secretary shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the Executive Secretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The Executive Secretary may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation (including refresher training accreditation) shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the Executive Secretary no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the Executive Secretary cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students ability to learn;

(iv) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(v) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the Executive Secretary or the Executive Secretary's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The Executive Secretary may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation (including refresher training accreditation) if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the Executive Secretary and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the Executive Secretary in its application for accreditation or re-accreditation which the Executive Secretary relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the Executive Secretary or the Executive Secretary's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(j) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate; and

(vii) Any other material not listed above in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the Executive Secretary as part of the program's application for accreditation.

(b) The training program shall retain these records at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section for a minimum of 3 years and 6 months.

(c) The training program shall notify the Executive Secretary in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the Executive Secretary to engage in lead-based paint activities must either:

(i) Submit to the Executive Secretary an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the Executive Secretary an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a State or Tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the Executive Secretary shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving Executive Secretary certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-2.

(d) It shall be a violation of State Administrative Rules for an individual to conduct any of the lead-based paint activities described in R307-842-2 if that individual has not been certified by the Executive Secretary pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. The individual certification fee for a Lead-Based Paint Renovator shall be $150.00 per year. The individual certification fee for a Lead-Based Paint Dust Sampling Technician shall be $100.00 per year.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the Executive Secretary as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the Executive Secretary; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors. Risk assessors must have successful completion of an accredited training course for inspectors in addition to one of the following:

(I) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction);

(II) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(III) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction); and

(C) Supervisor:

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the Executive Secretary as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the Executive Secretary. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the Executive Secretary.

(3) Abatement worker and project designer.

(a) To become certified by the Executive Secretary as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the Executive Secretary as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The course completion certificate shall serve as an interim certification until certification from the Executive Secretary is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the Executive Secretary. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the Executive Secretary in that discipline by the Executive Secretary either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate.

(c) Individuals applying for recertification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. The individual re-certification fee for a Lead-Based Paint Renovator shall be $150.00 per year. The individual re-certification fee for a Lead-Based Paint Dust Sampling Technician shall be $100.00 per year.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the Executive Secretary.

(b) A firm seeking certification shall submit to the Executive Secretary a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the Executive Secretary shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the Executive Secretary shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the Executive Secretary for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. The firm certification fee for a Lead-Based Paint Renovator Firm and/or Dust Sampling Technician Firm shall be $200.00 per year.

(g) To maintain certification a firm shall submit appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. The firm re-certification fee for a Lead-Based Paint Renovator Firm and/or Dust Sampling Technician Firm shall be $200.00 per year.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The Executive Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent

agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The Executive Secretary may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the Executive Secretary;

(iv) Failed to maintain required records; or

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the Executive Secretary as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the Executive Secretary as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or

more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the risk assessment report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the Executive Secretary as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the Executive Secretary, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State, and local requirements.

(d) A certified firm must notify the Executive Secretary of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the Executive Secretary must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the Executive Secretary at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by the Executive Secretary as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the Executive Secretary change, an updated notification must be received by the Executive Secretary on or before the start date provided to the Executive Secretary. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the Executive Secretary for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the Executive Secretary an updated notification must be received by the Executive Secretary at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the Executive Secretary an updated notification must be received by the Executive Secretary on or before the start date provided to the Executive Secretary;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the Executive Secretary for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the Executive Secretary;

(v) Updated notification must be provided to the Executive Secretary when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Executive Secretary on or before the start date provided to the Executive Secretary, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the Executive Secretary of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed

prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft2 for floors, 250 ug/ft2 for interior window sills, and 400 ug/ft2 for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(i) Start and completion dates of abatement;
(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;
(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;
(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;
(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and
(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.
(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:
(a) Collected by persons certified by the Executive Secretary as an inspector or risk assessor; and
(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.
(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:
(a) Composite dust samples shall consist of at least two subsamples;
(b) Every component that is being tested shall be included in the sampling; and
(c) Composite dust samples shall not consist of subsamples from more than one type of component.
(8) Determinations.
(a) Lead-based paint is present:
(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and
(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.
(b) A paint-lead hazard is present:
(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;
(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;
(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and
(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.
(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:
(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft2 for floors and 250 ug/ft2 for interior window sills, respectively;
(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and
(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.
(d) A soil-lead hazard is present:
(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or
(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.
(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:
(a) Two square feet of deteriorated lead-based paint per room or equivalent,
(b) Twenty square feet of deteriorated paint on the exterior building, or
(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)

Insurance, Administration
R590-160
Administrative Proceedings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33317
FILED: 01/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes are being made to update code references resulting from the recodification of Utah Administrative Proceedings Act, 63G-4-101 et seq.

SUMMARY OF THE RULE OR CHANGE: Changes are being made to update code references resulting from the recodification of Utah Administrative Proceedings Act, 63G-4-101 et seq. Subsection R590-160-2(2) added a scope section; Definitions section was put in alphabetical order; Subsection R590-160-5(3) modified to account for the 4/10 work week; Subsection R590-160-5(5)(b) allows a member manager to represent a limited liability company; Subsection R590-160-5(5)(i) correction to show that a administrative proceeding may be initiated by a motion for an Order to Show Cause; Subsection R590-160-6(5)(b) clarifies when a transcript of a hearing must be provided to the department; Subsection R590-160-6(7) clarifies which rules of civil procedure apply to discovery; and made language gender neutral.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 63G-4-102 and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will not increase labor, revenues, or expenditures to the department. Changes are mainly for clarification purposes.
♦ LOCAL GOVERNMENTS: This rule will not affect local governments since it deals solely with the relationship between the department and those they regulate.
♦ SMALL BUSINESSES: The changes to this rule are mainly for clarification purposes and will not have a fiscal impact on small or large businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule are mainly for clarification purposes and will not have a fiscal impact on small or large businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule are mainly for clarification purposes and will have no fiscal impact on anyone involved in an administrative action by the department.

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

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 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the Insurance Commissioner under the general authority granted under Subsection 31A-2-201(3)(a), and, Subsection [~~63-46b-1(6)~~]63G-4-102(6), Subsection [~~63-46b-5(1)~~]63G-4-203(1) and other applicable sections of Chapter 4[~~6b~~] of Title 63G providing for rules governing adjudicative proceedings.

R590-160-2. Purpose and Scope.

1(a) Purpose: This rule establishes [~~rules~~]procedures governing the designation and conduct of adjudicative proceedings before the insurance commissioner or [~~his~~]the commissioner's designee.

(b) Public hearings under Section [~~63-46a-5~~]63G-3-302 are not covered by this rule.

(2) Scope: This rule applies to all licensees and non-licensees involved in the business of insurance in Utah.

R590-160-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions as set forth in Section 63G-4-103 and the following:

(1) "Complainant" is the Utah Insurance Department in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

(2) "Department Representative" means the person who will represent the interests of the Utah Insurance Department, including its attorney, in any administrative action before the commissioner.

(3) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

(4) "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

[~~(3)~~](5) "Petitioner" is a person seeking agency action.[

~~(4) "Person" is defined in Subsection 31A-1-301.~~

~~(5) "Respondent" means a person against whom an order or a proceeding is directed.~~]

(6) "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.[

~~(7) "Presiding Officer" means the person designated by the commissioner to decide adjudicative proceedings before the commissioner, either generally or for a specific adjudicative proceeding.~~

~~(8) "Department Representative" means the person who will represent the interests of the Utah Insurance Department in any administrative action before the commissioner.~~

~~(9) "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.~~]

R590-160-4. Designations of Proceedings.

(1) All actions pursuant to initial determinations upon applications for a license or a certificate of authority, or any petition to remove an existing disability, or an order disapproving a rate or prohibiting the use of a form, are designated as informal adjudicative proceedings.

(2) A proceeding may be commenced as an informal proceeding by the department when it appears to the department that no disputed issues may exist or in matters of technical or minor violation of the code or rules.

(3) Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection [~~63-46b-4(3)~~]63G-4-202(3).

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as [~~he may find~~]compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a Friday, Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Friday, Saturday, Sunday, or a legal holiday.[~~When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.~~]

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when [~~he has~~]it is established to the satisfaction of the commissioner or presiding officer that [~~he~~]the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer[~~to enter an appearance~~].

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters [~~his~~]an appearance by filing an initial [~~request for agency action~~]pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving [~~his~~]the party's name, address, telephone number, and stating [~~his~~]the party's position or interest in the proceeding.

(b) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership[-], and a member or manager may represent a limited liability company.

(c) An attorney or other authorized representative authorized in Subsection R590-160-[~~6~~]5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which [~~he~~]the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) [~~Proceeding~~]Docket Number. Upon the [~~filing of a pleading initiating a~~]commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left [~~margin~~]side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right [~~margin~~]side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right [~~margin~~]side, [~~proceeding~~]docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and [~~proceeding~~]docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, [~~and~~]telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene [~~and requests for rehearing~~]shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion[~~, directed toward a hearing~~] shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the [~~business~~]mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or [~~these~~]this rule[~~s~~].

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section [~~63-46b-8~~]63G-4-202.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at [~~his~~]the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a

transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is [~~given~~]simultaneously provided at no cost to the commissioner[~~ within ten days of transcription~~]. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. [~~The~~]On the motion of the commissioner or the presiding officer, [~~may issue subpoenas on his own motion~~] or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery[~~ and Depositions~~]. Discovery and motions thereupon [~~shall be~~]may be had in accordance with the Utah Rules of Civil Procedure, Rules 27 through 37.

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

R590-160-8. Agency Review.

(1) Agency review of an administrative proceeding, except an informal proceeding that becomes final without a request for a hearing pursuant to subsection 7(2), shall be available to any party to such administrative proceeding by filing a petition for review with the commissioner within 30 days of the date the order is issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Petitions for Review shall be filed in accordance with Section [~~63-46b-12~~]63G-4-301.

(3) Review shall be conducted by the commissioner or a person or persons [~~he may~~]designated by the commissioner, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) The content of a request for agency review shall be in accordance with Subsection [~~63-46b-12(1)(b)~~]63G-4-301(1)(b). The request for agency review shall include a copy of the order, which is the subject of the request.

(b)(i) A party requesting agency review shall set forth any factual or legal basis in support of that request; and

(ii) may include supporting arguments and citation to appropriate legal authority; and[~~:~~]

(A) to the relevant portions of the record developed during the adjudicative proceeding if the administrative proceeding being reviewed is a formal proceeding; or

(B) to the relevant portions of the department's files if the administrative proceeding being reviewed is an informal proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate:

(i) based on the entire record, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is a formal proceeding; or

(ii) based on the department's files, that the finding is not supported by substantial evidence if the administrative proceeding being reviewed is an informal proceeding.

(d) A party challenging a legal conclusion must support its argument with citation to any relevant authority and also:

(i) cite to those portions of the record which are relevant to that issue if the administrative proceeding being reviewed is a formal proceeding; or

(ii) cite to those parts of the department's files which are relevant to that issue if the administrative proceeding being reviewed is an informal proceeding.

(e)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the record relevant to such finding or conclusion to be prepared if the administrative proceeding being reviewed is a formal proceeding. R590-160-6.(5)(b) shall govern as to acquisition of hearing tapes for preparation of such transcript; or

(B) reference in its request for agency review that no transcript or hearing tapes are available if the administrative proceeding being reviewed is an informal proceeding.

(ii) When a request for agency review is filed under the circumstances set forth under R590-160-8(4)(e)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the commissioner when the transcript will be available for filing with the department.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The commissioner may waive the requirement of preparation of a written transcript and permit citation to the electronic tape recording of such administrative proceeding upon appropriate motion and a showing of reasonableness where such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

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

(5) Request of Stay.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) The department may oppose the request for a stay in writing within 10 days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the commissioner shall review the request and any opposing memorandum, and the findings of fact, conclusions of law and order and determine whether a stay is in the best interest of the public. If the commissioner determines it is in the best interest of the public to issue a stay, the commissioner may:

(i) issue a stay, staying all or any part of the order pending agency review, or

(ii) issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(d) The commissioner may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The commissioner may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the commissioner or [~~his~~]the commissioner's designee.

(b)(i) When no transcript is available or if available has been deemed unnecessary and waived by the commissioner in accordance with R590-160-8(4)(e)(iv) to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request.

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

(c) Any response in opposition to a request for agency review and any memoranda supporting that response:

(i) shall be filed no later than 15 days from the filing of the request for agency review when no transcript is available or necessary to conduct agency review; or

(ii) shall be filed no later than 15 days from the filing of any subsequent memoranda supporting the request for agency review if a transcript is necessary to conduct agency review.

(d) Any final reply memoranda in support of the request for agency review shall be filed no later than 5 days after the filing of a response to the request for agency review and any memoranda supporting that response.

(7) Oral Argument.

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

(8) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection [~~63-46b-16(4)~~]63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection [~~63-46b-12(6)~~]63G-4-301(6).

(b) An Order on Review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with this rule or any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with this rule or lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with this rule, rulings, or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule [~~from~~]on the effective date of the rule

R590-160-11. Severability.

If any provision of this rule or [~~the~~]its application [~~thereof~~]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 severable[~~the remainder of the rule and the application of each provision to other persons or circumstances may not be affected thereby~~].

KEY: insurance
Date of Enactment or Last Substantive Amendment: [~~January 9, 2003~~]2010
Notice of Continuation: October 30, 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-201; [~~63-46b-1; 63-46b-5~~]63G-4-102; 63G-4-203

Insurance, Administration
R590-253
Utah Mini-COBRA Notification Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33328
FILED: 01/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are being made to comply with the Department of Defense Appropriation Act, 2010, extending the American Recovery and Reinvestment Act (ARRA) Subsidies from 9 months to 15 months. The change extends the COBRA premium reduction benefit for persons involuntarily terminated through February 28, 2010.

SUMMARY OF THE RULE OR CHANGE: In Section R590-253-2, the Department of Defense Appropriations Act of 2010 has been added; and in Section R590-253-3, the date for the eligibility of Utah mini-COBRA was changed to February 28, 2010.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes to this rule will not impact department revenues, expenses, or workload. Insurers will not be required to file forms with the department nor will additional duties be required of department staff. As a result of the change in the federal law, the department has received an increased number of calls from consumers wanting to know how this will affect them.
♦ LOCAL GOVERNMENTS: Local governments will not be affected by the changes in this rule since the rule affects the relationship between the department and their health insurance licensees and their consumers only.
♦ SMALL BUSINESSES: The change in the federal law and our regulation only affect individuals who have been impacted by a reduction-in-force on the part of small employer groups. These small employer groups consist of 2 - 19 people. The employee has lost their health insurance coverage as a result of the reduction-in-force and as a result has turned to Utah mini-COBRA for coverage. The federal government has allowed premiums for the mini-COBRA coverage to be reduced by 35% for the individual with the insurer covering 65% of the premium, which is then subsidized by the federal government.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only applies to individuals who were on small employer group health insurance plans.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in the federal law and our regulation only affect individuals who have been impacted by a reduction-in-force on the part of small employer groups. These small employer groups consist of 2 - 19 people. The employee has lost their health insurance coverage as a result of the reduction-in-force and as a result has turned to Utah mini-COBRA for coverage. The federal government has allowed premiums for the mini-COBRA coverage to be reduced to 35% for the individual with the insurer covering 65% of the premium, which is then subsidized by the federal government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have a positive fiscal impact on employees of small businesses who have been affected by a reduction-in-force and as a result lost their health insurance coverage. If they qualify, the cost of their mini-COBRA coverage will be reduced to 35% of the total premium. Insurers will then be required to cover the rest of the premium. That amount will then be subsidized by the federal government. The individual purchasing the mini-COBRA will have reduced premium costs and the insurer will be reimbursed by the federal government.

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 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-253. Utah Mini-COBRA Notification Rule.
R590-253-2. Purpose and Scope.

(1) The purpose of this rule is to ensure that all persons who are eligible for health insurance continuation coverage under the American Recovery and Reinvestment Act of 2009, ARRA, Section 3001(a)(7), and the Department of Defense Appropriations Act of 2010, receive the necessary information and forms that will assist them in making a decision to elect continuation coverage of their health insurance coverage under Utah's mini-COBRA law.

(2) This rule applies to all accident and health insurers doing business in Utah that are required to provide continuation coverage pursuant to Sections 31A-22-722 and 722.5.

R590-253-3. General Instructions.

(1) An accident and health insurer shall provide the Utah mini-COBRA Continuation Coverage Election Notice for individuals eligible for Utah mini-COBRA. The notice can be downloaded from the Department's website at www.insurance.utah.gov.

(2) For individuals eligible for Utah mini-COBRA from February 17, 2009, through February 28, 2010,[~~December 31, 2009,~~] an accident and health insurer shall:

(a) mail the notices required by R590-253-3(1) to an individual:

(i) within seven days after being contacted by an individual or the individual's employer on or after April 6, 2009; or

(ii) no later than April 10, 2009 for an insured whose employer or the individual contacted the insurer prior to April 1, 2009; or

(b) mail the notices required by R590-253-3(1) to all employers whose coverage is subject to 31A-22-722:

(i) no later than April 10, 2009;

(ii) on the plan's anniversary renewal; and

(iii) shall include a statement of the employer's obligation on the monthly notice of premium payments.

(c) An accident and health insurer who elects to provide notification under R590-253-3(2)(b) is responsible to assure the employer has provided notification to its employees who are eligible as provided by Section 31A-22-722 and the American Recovery and Reinvestment Act of 2009, Pub. S. 111-5.

(3)(a) For individuals eligible for Utah mini-COBRA from September 1, 2008 through February 16, 2009, the notices in R590-253-3(1) shall be mailed after being contacted by an individual or the individual's employer that the individual wants to take advantage of the second election period to extend the health insurance coverage provided by the employer Section 31A-22-722.5.

(b) The notice shall be mailed:

(i) within one business day after being contacted by an individual or the individual's employer on or after April 6, 2009; or

(ii) no later than April 9, 2009 for an insured whose employer or the individual contacted the insurer prior to April 6, 2009.

KEY: mini-COBRA insurance
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 31A-2-201

Insurance, Administration
R590-256
Health Benefit Plan Internet Portal Solvency Rating

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33321
FILED: 01/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the methodology for determining the solvency rating for each insurer who posts a health benefit plan on the Internet portal.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the methodology for determining the solvency rating for each insurer who posts a health benefit plan on the Internet portal.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-1-2506 and Title 63G, Chapter 3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Some additional analysis work may be required of department staff but it would be so insignificant that it would create no fiscal impact.
♦ LOCAL GOVERNMENTS: This rule will have no affect on local governments since it deals with the relationship between the department and their life licensees.
♦ SMALL BUSINESSES: All work required by this rule will be provided by department staff in the way of financial analysis. The rule will have no fiscal impact on groups of individuals outside of department personnel.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: All work required by this rule will be provided by department staff in the way of financial analysis. The rule will have no fiscal impact on groups of individuals outside of department personnel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All work required by this rule will be provided by department staff in the way of financial analysis. The rule will have no fiscal impact on groups of individuals outside of department personnel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses of any size.

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 03/03/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 02/23/2010 03:00 PM, State Office Building, 450 N State St, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-256. Health Benefit Plan Internet Portal Solvency Rating.
R590-256-1. Authority.

This rule is promulgated by the Insurance Department pursuant to Utah Code Sections:

(1) 63G, Chapter 3, Utah Administrative Rule Making Act; and

(2) 63M-1-2506(5) which requires the Insurance Department to establish a methodology establishing a calendar year solvency rating to be posted on the internet portal.

R590-256-2. Purpose and Scope.

(1) The purpose of this rule is to establish the methodology for determining the solvency rating for each insurer who posts a health benefit plan on the Internet portal.

(2) The scope of this rule applies only to insurers who post a health benefit plan on the internet portal.

R590-256-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-17-601, the following definitions shall apply for the purpose of this rule:

(1) "Insurer" means an insurer who posts a health benefit plan on the Internet portal under 63M-1-2504(2)(a).

R590-256-4. Solvency Rating Methodology.

(1) An insurer's solvency rating shall fall within one of three tiers:

(a) Solvent;

(b) Hazardous; or

(c) Insolvent.

(2) An insurer shall have a solvency rating of solvent if the insurer's annual risk based capital report demonstrates that the insurer is not in an action level event defined under Sections 31A-17-603 to 606.

(3) An insurer shall have a solvency rating of hazardous if the insurer's annual risk based capital report demonstrates the insurer is in an action level event defined under Sections 31A-17-603 or 604.

(4) An insurer shall have a solvency rating of insolvent if the insurer's annual risk based capital report demonstrates that the insurer is in an action level event defined under Sections 31A-17-605 or 606.

R590-245-5. Enforcement Date.

The Commissioner will begin enforcing this rule on the effective date of this rule.

R590-256-6. 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 internet portal
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 63G-3; 63M-1-2506

Labor Commission, Antidiscrimination and Labor, Labor
R610-3-22
Payment of Wages Via Pay Cards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33299
FILED: 01/04/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to permit employers to use pay cards to pay employee wages, and to establish requirements for use of such pay cards.

SUMMARY OF THE RULE OR CHANGE: The proposed rule authorizes employers to use pay cards to pay wages provided that the pay cards allow withdrawal of the full amount of wages once without cost to the employee.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-23-101 et seq. and Section 34-28-1 et seq. and Section 34-40-101 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This proposed amendment will not impose any additional implementation or regulatory costs on the Labor Commission, which is the state agency charged with enforcing Utah's wage payment laws. Regarding costs to the state in its capacity as an employer, the proposed rule permits, but does not require, use of pay cards. Consequently, the rule does not impose any cost to the state. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to the state.
♦ LOCAL GOVERNMENTS: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on local government. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings to local governments.
♦ SMALL BUSINESSES: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on small businesses. However, it is possible that use of pay cards could reduce costs associated

with already-existing payroll methods, thereby resulting in some degree of savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule permits, but does not require, use of pay cards. Consequently, the rule will not impose any costs on persons other than small businesses, businesses, or local government entities. However, it is possible that use of pay cards could reduce costs associated with already-existing payroll methods, thereby resulting in some degree of savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule does not require any employer to use pay cards, but merely permits pay cards as an alternative to existing methods of paying wages, such as payroll checks and electronic transfers. Consequently, an employer will only incur compliance costs as a result of this rule if the employer voluntarily chooses to pay wages with pay cards. Also, because the proposed rule does not permit any costs associated with use of a pay card system to be assessed to employees, there will no compliance costs for employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission is promulgating this rule amendment at the request of employers who desire to use pay cards to pay wages. The proposal has been discussed and endorsed by the Antidiscrimination Advisory Council. Because the rule establishes an alternative method of paying wages but does not mandate use of that method, each business can evaluate its particular circumstances and determine whether use of a pay card system is advantageous, financially or otherwise, for that business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR, LABOR
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:
♦ Brent Asay by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-3. Filing, Investigation, and Resolution of Wage Claims.
R610-3-22. Payment of Wages Via Pay Cards.
A. An employer may pay wages by providing the employee a pay card subject to the following conditions:
1. The employee must be able to use the pay card for full payment of wages on the designated pay day.
2. The employee must be able to use the pay card twice in a pay period to withdraw funds without incurring a fee or charge.

KEY: wages, minors, labor, time
Date of Enactment or Last Substantive Amendment: [~~June 13, 2008~~|2010
Notice of Continuation: November 30, 2006
Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.

Labor Commission, Boiler and Elevator Safety
R616-4
Coal Mine Safety

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33300
FILED: 01/04/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed rule is to: 1) define terms; 2) establish procedures under which the Utah Office of Coal Mine Safety will examine provisions made for health and safety in coal mines and respond to any unsafe conditions; 3) establish standards for reporting coal mine accidents to the Office of Coal Mine Safety; and 4) establish requirements for coal mine operators to conduct annual reviews of coal mine emergency response plans.

SUMMARY OF THE RULE OR CHANGE: Section R616-4-1 of the proposed rule states the purpose of the proposed rule and identifies the Labor Commission's statutory authority to promulgate the rule. Section R616-4-2 defines terms used in the rule or in the Coal Mine Safety Act. Section R616-4-3 describes the Office of Coal Mine Safety's authority to enter coal mines to examine conditions related to employee safety and health. This provision also explains the actions that will be taken if unsafe conditions are observed. Section R616-4-4 clarifies the timing of a coal mine operator's

obligation to notice the Office of Coal Mine Safety of any serious coal mine accident. Section R616-4-5 establishes a requirement that coal mine operators conduct annual reviews of emergency response plans with relevant law enforcement staff, medical personnel and, as practicable, the Office of Coal Mine Safety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-2-104 and Subsection 40-20-301(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The activities required by the proposed rule are already generally required by the Utah Coal Mine Safety Act and are already being performed by the Office of Coal Mine Safety. While the proposed rule provides some additional detail and explanation of such activities, the rule does not require any substantial additional action from the Office and will not result in any cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Although proposed Section R616-4-5 requires coal mine operators to meet annually with local law enforcement and health care providers, such meetings are within the scope of existing law enforcement and health care provider responsibilities. It is not anticipated that such meetings will impose any appreciable burden or expense on local law enforcement and health care providers. More importantly, the meetings are expected to result in increased coordination and readiness that could reduce local government costs in the event of a coal mine accident. On balance, the Commission anticipates no cost or savings to local governments.
♦ SMALL BUSINESSES: The coal mines subject to the proposed rule are large employers. The Commission does not expect the proposed rule to have any financial impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Commission is not aware of any other entities that will experience any financial impact from the proposed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The requirements of the proposed rule dovetail with, and augment, existing safety efforts by coal mine operators and the federal Mine Safety and Health Administration (MSHA). Because the proposed rule does not impose any unique additional requirements, it will impose no compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Coal mine operators are already subject to MSHA inspection, accident reporting, and emergency planning requirements. The proposed rule allows the Utah Office of Coal Mine Safety to participate and monitor such matters but does not require any significant additional expenditure by the coal mine operators. Based on the information presented by the coal mine operators and other interested parties as this rule was discussed and developed, the Labor Commission believes the proposed rule will have no fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.
R616-4. Coal Mine Safety.
R616-4-1. Authority and Purpose.
This rule is established pursuant to authority granted the Commission by 40-2-104 and 40-2-301(2) for the purpose of improving coal mine safety, preventing coal mine accidents, and improving coal mine accident response consistent with the Coal Mine Safety Act.

R616-4-2. Definitions.
As used in this rule, the terms listed below shall have the same definition as set forth in the Coal Mine Safety Act, as follows.
(1) "Adverse action" means to take any of the following actions against a person in a manner that affects the person's employment or contractual relationships:
(a) discharge the person;
(b) threaten the person;
(c) coerce the person;
(d) intimidate the person; or
(e) discriminate against the person, including to discriminate in:
(i) compensation;
(ii) terms;
(iii) conditions;
(iv) location;
(v) rights;
(vi) immunities;
(vii) promotions; or
(viii) privileges.
(2) "Coal mine" means:
(a) the following used in extracting coal from its natural deposits in the earth by any means or method:
(i) the land;
(ii) a structure;
(iii) a facility;
(iv) machinery;
(v) a tool;

(vi) equipment;
(vii) a shaft;
(viii) a slope;
(ix) a tunnel;
(x) an excavation; and
(xi) other property; and
(b) the work of preparing extracted coal, including a coal preparation facility.
(3) "Commission" means the Labor Commission created in 34A-1-103.
(4) "Commissioner" means the commissioner appointed under 34A-1-201.
(5) "Council" means the Mine Safety Technical Advisory Council created in 40-2-203.
(6) "Director" means the Director of the Utah Office of Coal Mine Safety appointed under 40-2-202.
(7) "Major coal mine accident" means any of the following (but not limited too) at a coal mine located in Utah:
(a) a mine explosion;
(b) a mine fire;
(c) the flooding of a mine;
(d) a mine collapse; or
(e) the accidental death of an individual at a mine.
(8) "Mine Safety and Health Administration" and "MSHA" means the federal Mine Safety and Health Administration within the United States Department of Labor.
(9) "Office" means the Utah Office of Coal Mine Safety created in 40-2-201.
(10) "Unsafe condition" means a danger that reasonably could be expected to cause serious harm to a person or property.

R616-4-3. Examining Coal Mines.
(1) Pursuant to 34A-1-406 and other provisions of Utah Law, representatives of the Utah Labor Commission are authorized to enter places of employment, including coal mines, for purposes of "examining the provisions made for the health and safety of the employees in the place of employment."
(2) If the Director of the Office of Coal Mine Safety determines that the safety of an employee is or will be endangered by activities or conditions in a coal mine, the Director shall may:
(a) notify the employee and mine management of the danger and specify actions necessary to remedy the danger;
(b) notify the Mine Safety and Health Administration of the danger;
(c) notify other appropriate federal, state, and local government agencies; and
(d) take such other action as authorized by law to eliminate or mitigate the danger.

R616-4-4. Accident Notification Requirements.
(1) After the occurrence of any coal mine accident that is required by MSHA or regulations 30 CFR Part 50 to be immediately reported to MSHA, a coal mine operator shall first notify MSHA of the accident. Immediately after completing its report to MSHA, the coal mine operator shall then report the accident to the Office of Coal Mine Safety at telephone number 1-888-988-6463.

R616-4-5. Emergency Response Training.
(1) Beginning with the 2010 calendar year, each coal mine operator shall annually hold an in-person meeting with law enforcement, public safety and health care providers for the purpose of reviewing and refining coal mine emergency response plans. The Office of Coal Mine Safety shall be notified of and arrange to participate in each such meeting, but the inability of the Office or any local, state, and federal emergency response personnel to attend such a meeting shall not prevent the operator from proceeding with the meeting as scheduled.

KEY: coal mines, safety
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 40-2-104; 40-2-301(2)

Transportation, Preconstruction, Right-of-Way Acquisition
R933-4
Bus Shelters and Bus Benches

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 33311
FILED: 01/11/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department seeks to repeal the rule because it conflicts with Subsection 72-3-109(1)(c)(i) which assigns responsibility for items located in road right-of-ways outside the back of the curb to municipalities.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-3-109(1)(c)(i)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The repeal has no direct cost or savings to the state because it is not currently being enforced.
♦ LOCAL GOVERNMENTS: The repeal has no cost or savings to local government because it does not change their statutory authorty to regulate bus shelters and bus benches.
♦ SMALL BUSINESSES: The repeal has no cost or savings to small businesses because it is not currently being enforced.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repeal has no cost or savings to persons other than small businesses, businesses, or local government entities because it is not currently being enforced and does not change the current statutory authority of municipalities to regulate bus shelters and bus benches.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repeal of the rule has no cost to affected persons because it is not currently being enforced and does not change the current statutory authority of municipalities to regulate bus shelters and bus benches.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Repeal of the rule will have no fiscal impact on businesses because it is not currently being enforced and does not change the current statutory authority of municipalities to regulate bus shelters and bus benches.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION
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 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: John Njord, Executive Director

R933. Transportation, Preconstruction, Right-of-Way Acquisition.
[~~R933-4. Bus Shelters and Bus Benches.~~
~~R933-4-1. Authority.~~

~~The provisions of this rule are authorized under Sections 72-7-102 through 72-7-104.~~

~~R933-4-2. Definitions.~~

~~(1) "ADA" means the Americans with Disabilities Act.~~

~~(2) "Advertisement or advertising" means a printed or painted sign encouraging or promoting the purchase or use of goods or services, but does not include campaign posters or signs or other signs or advertisements prohibited by law, including these rules.~~

~~(3) "Bus Benches" means any type of bench that is located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.~~

~~(4) "Bus shelter" means a shelter located at a designated bus stop accepted as such by the Utah Department of Transportation, used to aid in the loading and unloading of passengers for the convenience of passengers of public transportation systems.~~

~~(5) "Clear Zone" as defined under "AASHTO Roadside Design Guide".~~

~~(6) "UDOT" means Utah Department of Transportation.~~

~~R933-4-3. Purpose.~~

~~The purpose of this rule is to authorize bus shelters and bus benches at officially recognized bus stops accepted as such by UDOT and within the limits of these rules, on UDOT rights-of-way and for the benefit of the public, also allowing certain specified incidental advertising benefits to the provider of the bus shelter or bench.~~

~~R933-4-4. Permitting and Conditions for Valid Permits.~~

~~Bus shelters or benches, including those on which commercial advertisements are placed, may be erected and maintained on the state rights-of-way of public roads subject to the following conditions and requirements:~~

~~(1) Any person wishing to erect and maintain a bus shelter or bench on the state right-of-way of a public road shall apply to UDOT for a license. As a condition of the issuance of the license, UDOT must approve the bus shelter building or bench plans and the location of the bus shelter or bench on the right-of-way, provided, however, that such approval is subject to any and all restrictions imposed by Title 23 United States Code and 23 CFR relating to the federal-aid system and the Utah Outdoor Advertising Act and Rules, except as specifically otherwise provided herein. The initial license fee is $200 for a five-year period. Licenses are renewable thereafter, at a cost of $25 per year for a five-year period.~~

~~(2) If the bus shelter or bench is to be located on a street, road, or right-of-way of a county or municipality, the respective county or municipality also must approve the erection and maintenance of the bus shelter or bench, and for that purpose, a copy of the application to the respective county or municipality and permit shall be provided to UDOT as part of the application for a license.~~

~~(3) An applicant to UDOT for a license hereunder shall include as part of the application a written statement signed by each owner of property abutting the proposed bus shelter or bench site who is required to be notified under subsection (11) of this section, acknowledging receipt of the notice and opportunity to comment provided for under that subsection, or copy of the notice together with a receipt evidencing the notice was sent to such owner by certified mail together with a declaration under oath affirming that a bone fide attempt to obtain the signed written statement was made.~~

~~(4) A copy of the application for a bus shelter or bench license shall be provided also to any public transit agency or authority providing the public transportation of persons to be served by the bus shelter or bench, for all bus shelters or benches on routes~~

of that agency or authority for its approval or rejection of proposed locations. The sequence of applications shall be first, the transit agency or authority; second, the municipality; and third, the state.

(5) As a condition of issuing a license for the erection of a bus shelter or bench on the state right-of-way of a public road, UDOT shall require that the bus shelter or bench will be properly maintained and that its location will meet minimum setback requirements as follows:

(a) Where a curb and gutter are present, there shall be a minimum of four feet clearance from the face of the curb to any portion of the bus shelter or bench;

(b) Where no curb or gutter is present, the front of the bus shelter or bench shall be at least ten feet from the edge of the main traveled roadway located outside of the clear zone;

(c) UDOT may provide a schedule of other safety requirements consistent with law.

(6) A map of the municipality or county, or both, showing the proposed bus shelter or bench locations shall accompany the application.

(7) A plan shall be prepared for each bus shelter or bench location. The plan should be drawn to an approximate scale and the scale indicated on the sketch plan. The plan, as a minimum, shall include a written description of the location and the assigned shelter or bench number. The shelter or bench position shall be shown on the plan with dimensions shown from the closest edge of the shelter or bench to roadway or curb, plus dimensions to the nearest intersecting street. The road characteristics shall be shown on the plan. Other pertinent existing features such as sidewalks, utility poles, large trees, and signs shall be shown as necessary. The existing right-of-way line shall be shown when available and if required.

(8) Each applicant must provide a performance bond, letter of escrow, or other satisfactory security to assure that the authorized work is accomplished in accordance with the approved permit. Any letter of escrow or other satisfactory security must be from a bank which is located in Utah. A bond may be underwritten by a surety company located outside Utah if it is countersigned by a Utah resident agent of that surety company. This security must be described on the appropriate UDOT form and the amount will be based on the number of shelters or benches being licensed, the amount per shelter or bench to be $500.

The bond will be released only after all work has been satisfactorily completed for all bus shelter or bench locations covered under the license. The applicant shall notify the appropriate UDOT Region Permit Office when all work is completed for the shelter or bench installations covered by the license. If all work on the right-of-way has been completed as per license requirements, the UDOT permit officer will perform a final inspection. The bond shall be held during the life of the shelter or bench to secure compliance with this rule.

(9) Notwithstanding any other provision of law that may be less restrictive, no bus shelter or bench may be erected and maintained less than 150 feet from another bus shelter or off-premise outdoor advertising sign.

(10) A bus shelter less than 20 feet long may have advertising only on one end of the shelter, on which end an advertising face may be placed on both sides. If a bus shelter of 20 feet or longer is approved by the department, which in the interest of the traveling public it may choose to approve, the shelter may have advertising on both ends, on each of which an advertising face may be placed on both sides. Each advertising face, regardless of the length of the shelter, is limited to no more than 72 inches by 60 inches, with no more than one advertisement per face. No bus shelter may exceed a height of ten feet.

(11) A bus bench may advertise on both sides of the back rest, but may not exceed 2 feet high by 8 feet long.

(12) The license applicant shall notify the abutting property owner by certified mail of the proposed shelter or bench location and any proposed advertising, and provide an opportunity to comment.

(13) A transit bus shelter or bench shall not infringe upon or obstruct any sidewalk, bike path, pedestrian path, driveway, drainage structure or ditch, etc. without adding or allowing adequate passage, which meet ADA requirements.

(14) Prior to permitting the installation of the shelter or bench, any impacted utility companies and municipalities must be notified by the license applicant to determine location of utilities and prevent conflicts. A license to erect and maintain a bus shelter is subject to any pre-existing utility license or right.

(15) All shelter utility connections must be approved by the appropriate city or county agency.

(16) Flashing lights on a transit bus shelter are prohibited. All lights shall be placed or shielded so they do not interfere with motorists on the roadway.

(17) Sides and internal dividers in transit bus shelters shall be constructed of structurally sound materials and provide visibility of waiting passengers to passing traffic and pedestrians. All transparent materials shall be shatter proof. No shelter may be located in such a manner, or be constructed of such materials, as to adversely affect sight distance at any intersection or obstruct the view of traffic signs or other traffic control devices.

(18) Transit bus shelters must be securely attached to their foundations and must provide for a clear opening between the structure and foundation to facilitate cleaning and preclude the accumulation of debris.

(19) Transit bus shelters or benches may not be located within five feet of any fire hydrant or handicapped parking space.

(20) Each bus shelter or bench shall have placed on it a number unique to that location at least two inches by two inches in size, placed at a location on the shelter that renders the sign number visible from the street. The telephone number of the applicant or person to contact regarding the shelter or bench and the area immediately around the shelter, or both, shall be appropriately displayed on the shelter.

(21) Licenses are valid for a five-year, all permits to be renewed before July 1.

(22) A license lapses unless construction is completed within 90 days of the date of the license.

(23) Any bus shelter or bench erected and maintained on the right-of-way of a public road in violation of this rule or in violation of the conditions of the license issued by UDOT may be ordered removed by UDOT.

(24) If such a bus shelter or bench is not removed by its owner within 30 days after its owner has been issued a written order of removal by UDOT, the department may cause the bus shelter or bench to be removed and submit a statement of expenses incurred in the removal to the owner of the bus shelter or bench. If payment or arrangement to make payment is not made within 60 days after the

~~receipt of such statement, UDOT may institute legal proceedings for collection. When a bus shelter or bench is located on a county or municipal street, road, or right-of-way, UDOT may delegate its powers under this rule to the respective county or municipality, and the respective county or municipality shall cooperate with and assist UDOT in enforcing the conditions of licenses issued by UDOT pursuant to the provisions of this section.~~

~~(25) The person to whom a license has been issued for the erection and maintenance of a bus shelter or bench on the right-of-way of a public road shall at all times assume all risks for the bus shelter or bench and shall indemnify and hold harmless the State of Utah, the Utah Department of Transportation, and any county or municipality against all losses or damages resulting solely from the existence of the bus shelter or bench.~~

~~(26) All future bus shelter or bench additions must be licensed separately and a bond obtained for the number of bus shelters or benches to be included in the succeeding license. The same data and information will be required for each separate bus shelter or bench license application.~~

~~(27) Any existing bus shelter or bench located on UDOT rights-of-way in violation of law is declared to be a public nuisance, and its removal may be ordered by the department.~~

~~(28) All construction, maintenance and operational activities shall be the sole responsibility of the licensee.~~

~~R933-4-5. Alteration or Termination in Public Interest.~~

~~If UDOT determines that the bus shelters or benches do not serve the public interest, the department may terminate the privilege of maintaining bus shelters or benches, and the prior erection or maintenance of shelters or benches pursuant to rule shall not require continued allowance of shelters or benches or compensation to the provider of the shelters or benches.~~

~~R933-4-6. Relocation of Bus Shelters or Benches.~~

~~If road construction, maintenance or repair requires displacement of a bus shelter or bench and relocation is allowed, such shall be accomplished at the expense of the owner of the bus shelter or bench. Prior to any relocation of any bus shelter or bench, Licensee shall submit an application for review to UDOT for approval.~~

~~KEY: buses, bus benches, bus shelters*, right-of-way~~
~~Date of Enactment or Last Substantive Amendment: April 18, 2001~~
Notice of Continuation: November 29, 2006
~~Authorizing, and Implemented or Interpreted Law: 72-7-102 through 72-7-104~~]

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 March 3, 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 June 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

Environmental Quality, Drinking Water
R309-511
Hydraulic Modeling Requirements

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 32978
FILED: 01/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been modified in response to comments from public hearing comments and written comments received.

SUMMARY OF THE RULE OR CHANGE: Minor changes have been made to the rule in response to comments. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the October 1, 2009, issue of the Utah State Bulletin, on page 88. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no change from the original rule filing. ($20,000 cost based on state engineer's additional review time.)
♦ LOCAL GOVERNMENTS: There is no change from the original rule filing.
♦ SMALL BUSINESSES: There is no change from the original rule filing.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no change from the original rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change from the original rule filing. (Estimated cost from Very Small System (fewer than 500 people) $16,060 to Very Large System (greater than 100,000 people) $225,000.)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In the original filing of this proposed rule, the Department acknowledged the cost impact on water systems with this new rule. There is no change in the cost impact with this change in proposed rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
♦ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/03/2010

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2010

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.
R309-511. Hydraulic Modeling Requirements.

. . . . . .

R309-511-4. General.

(1) Rule Applicability.

(a) This rule applies to public drinking water systems categorized as community water systems as defined by rule R309-100-4(2) and to non-transient non-community water systems that have system demands higher than required by R309-510 or with demands for fire suppression. All public drinking water systems are still required to comply with R309-550-5 with respect to water main design which may require a hydraulic analysis. Further, Certifications as defined by this rule, shall be part of the submission of plans for any public drinking water project as defined in rule R309-500-5(1), except projects that meet one of the following criteria:

(i) [~~p~~]Public drinking water projects that will not result in negative hydraulic impact, such as, but not limited to,

(A) addition of new sources in accordance with R309-515.

(B) adding disinfection, fluoridation, or other treatment facilities that do not adversely impact flow, pressure or water quality.

(C) storage tank repair or recoating.

(D) water main additions with no expansion of service (i.e. looping lines).

(E) adding transmission lines to storage or sources without adding service connections.

(F) adding pump station(s) from source or storage upstream of distribution service connections.

(G) public drinking water projects that have negligible hydraulic impact as determined by the Executive Secretary.

(ii) [~~p~~]Public drinking water projects that are a part of a planned phase of a master plan previously approved by the Executive Secretary per R309-500-6(3)a).

(iii) The water system maintains and updates a hydraulic model of the system, and has designated a professional engineer responsible for overseeing the hydraulic analysis in meeting the requirements of R309-511 in writing to the Executive Secretary.

(iv) The water system has a means that is deemed acceptable by the Executive Secretary to gather real time data indicative of hydraulic conditions in [~~simulating~~]model scenarios of R309-511-5(9), and the real time data shows the system is capable of meeting the flow and pressure requirements for the additional demands placed on the existing system.

(b) A public water system must clearly identify the reason in the plan submittal if it wishes to demonstrate that R309-511 does not apply to a new construction project. In some cases, supporting documentation may be needed.

(c) If there are existing deficiencies in the water system, the Executive Secretary may allow a new construction project to proceed in accordance with the plan review requirements in R309-500 through 550 as long as the public water system demonstrates that the new construction project is located in a hydraulically separated area and does not adversely impact the existing deficiencies, or does not create new deficiencies within the water system.

[~~(d) This rule does not waive the requirement of R309-550-5(3) if a proposed project does not qualify under R309-500-6(3) for plan waivers.~~

~~————~~](2) Rule Elements.

The public water system or its agent, in connection with the submission of plans and specifications to the Executive Secretary, shall perform the following:

(a) Conduct a hydraulic modeling evaluation consistent with the requirements as set forth in this rule and R309-510. This model shall include either the entire public drinking water system or the specific areas affected by the new construction if hydraulically separated areas exist within the water system.

(b) Calibrate the model using field measurements and observations.

(c) Certify in writing to the Executive Secretary that the design complies with the sizing requirements of R309-510 and the minimum water pressures of R309-105-9.

(d) Prepare and submit a Hydraulic Model Design Elements Report (see R309-511-7).

(f) Prepare a System Capacity and Expansion Report if required (see R309-511-8).

R309-511-5. Requirements for the Hydraulic Model.

The following minimum requirements must be incorporated into hydraulic models constructed to meet these requirements:

(1) Include at least 80 percent of the total pipe lengths in the distribution system affected by the proposed project.

(2) Account for 100 percent of the flow in the distribution system affected by the proposed project. Water demand allocation must account for at least 80 percent of the flow delivered by the distribution system affected by the proposed project if customer usage in the system is metered.

(3) Include all 8-inch diameter and larger pipes. Pipes smaller than 8-inch diameter should also be included if they connect pressure zones, storage facilities, major demand areas, pumps, and control valves, or if they are known or expected to be significant conveyers of water such as fire suppression demand. Model piping does not need to include service lateral piping.

(4) Include all pipes serving areas at higher elevations, dead ends, remote areas of a distribution system, and areas with known under-sized pipelines.

(5) Include all storage facilities and accompanying controls or settings applied to govern the open/closed status of the facility that reflect standard operations.

(6) If applicable, [~~I~~]include all pump stations, drivers (constant or variable speed), and accompanying controls or settings applied to govern their on/off/speed status that reflect various operating conditions and drivers.

(7) Include all control valves or other system features that could significantly affect the flow of water through the distribution system (i.e. interconnections with other systems, pressure reducing valves between pressure zones) reflecting various operating conditions.

(8) Impose peak day and peak instantaneous demands to the water system's facilities. These demands may be peak day and peak instantaneous demands per R309-510, the reduced demand approved by the Executive Secretary per R309-510-5, or the demands experienced by the water system which are higher than the values listed in R309-510. This may require multiple model simulations to account for the varying water demand conditions. In some cases, extended period simulations are needed to evaluate changes in operating conditions over time. This will depend on the complexity of the water system, extent of anticipated fire event and nature of the new expansion.

(9) Calibrate the model to adequately represent the actual field conditions using field measurements and observations.

(10) If fire hydrants are connected to the distribution system, account for fire suppression requirements specified by local fire authority or use the default values stated in R309-510-9(4). For significant fire suppression demand, extended simulations must contain the run time for the period of anticipated fire event. In some cases, a steady state model may be sufficient for residential fire suppression demand.

(11) Account for outdoor use, such as irrigation[~~-demand~~], if the drinking water system supplies [~~irrigation~~]water for outdoor use.

R309-511-6. Elements of the Public Water System or Its Agent's Certification.

(1) The public water system or its agent's certification.

The Division relies upon the professional judgment of the registered professional engineer who certifies that the hydraulic analysis and evaluation have been done properly and that the flow and pressure requirements have been met. The public water system or its agent shall, after a thorough review, submit a document to the Executive Secretary certifying that the following requirements have been met:

(a) The hydraulic model requirements as set forth in rule R309-511-5.

(b) The appropriate demand requirements as specified in this rule and rule R309-510 have been used to evaluate various operating conditions of the public drinking water system.

(c) The hydraulic model predicts that new construction will not result in any service connection within the new expansion area not meeting the minimum distribution system pressures as specified in R309-105-9.

(d) The hydraulic model predicts that new construction will not decrease the pressures within the existing water system to such that the minimum distribution system pressures as specified in R309-105-9 are not met.

(e) The calibration methodology is described and the model is sufficiently accurate to represent conditions likely to be experienced in the water delivery system.

(f) Identify the hydraulic modeling method, and if computer software was used, the software name and version used.

(2) The format of the public water system or its agent's submission.

The public water system or its agent shall submit to the Executive Secretary the following documentation:

(a) The certification as required in R309-511-6(1). The certification shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(b) A Hydraulic Model Design Elements Report (see R309-511-7). The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

(c) For community public water systems, the water system management shall certify that they have received a copy of input and output data for the hydraulic model with the simulation showing the worst case results in terms of water system pressure and flow.

(3) The submission of supporting documentation.

The public water system or its agent shall submit a System Capacity and Expansion Report (see R309-511-8) if requested by the Executive Secretary. The document shall be signed, dated, and stamped by a registered professional engineer, licensed to practice in the State of Utah.

R309-511-7. Hydraulic Model Design Elements Report.

The public water system or its agent shall prepare a Hydraulic Model Design Elements Report along with and in support of the certification stated in R309-511-6(1). The Hydraulic Model Design Elements Report shall contain, and is not limited to, the following elements:

(1) If the public drinking water system provides water for [~~irrigation~~]outdoor use, the report must describe the criteria used to estimate this demand. If the irrigation demand map in R309-510-7(3) is not used, the report shall provide justification for the alternative demands used in the model. If the irrigation demands are based on the map in R309-510-7(3) the report must identify the irrigation zone number, a statement and/or map of how the irrigated acreage is spatially distributed, and the total estimated irrigated acreage. The indicated irrigation demands must be used in the model simulations.

(2) The total number of connections served by the water system including existing connections and anticipated new connections served by the water system after completion of the construction of the project.

(3) The total number of equivalent residential connections (ERC) including both existing connections as well as anticipated new connections associated with the project. The number of ERC's must include high as well as low volume water users. The determination of the equivalent residential connections shall be based on flow requirements using the anticipated demand as outlined in R309-510, or based on alternative sources of information that are deemed acceptable by the Executive Secretary.

(4) Provide methodology used for calculating demand and allocating it to the model; a summary of pipe length by diameter; a hydraulic schematic of the distribution piping showing pressure zones, general pipe connectivity between facilities and pressure zones, storage, elevation and sources; and a list or ranges of values of friction coefficient used in the hydraulic model according to pipe material and condition in the system. All coefficients of friction used in the hydraulic analysis shall be consistent with standard practices.

(5) A statement stating either "yes fire hydrants exist or will exist within the system" or "there are no fire hydrants connected to the system and there is no plan to add fire hydrants with this project." Either statement will require the identification of the local fire authority's name, address, and contact information, as well as the fire flow quantity and duration if required.

(6) The locations of the lowest pressures within the distribution system, and areas identified by the hydraulic model as not meeting each scenario of the minimum pressure requirements in R309-105-9.

(7) Calibration method and quantitative summary of the calibration results (i.e., comparison tables, graphs).

. . . . . .

KEY: drinking water, hydraulic modeling
Date of Enactment or Last Substantive Amendment: [~~2009~~]2010
Authorizing, and Implemented or Interpreted Law: 19-4-104

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.

Natural Resources, Wildlife Resources
R657-20
Falconry

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 33314
FILED: 01/12/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes are to regulate the sport of falconry in conjunction with federal regulations.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule make it consistent with new guidelines issued by the Federal Fish and Wildlife Service. (DAR NOTE: A corresponding proposed amendment is under DAR No. 33287 and was published in the January 15, 2010, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-17-7

REGULAR RULEMAKING WOULD place the agency in violation of federal or state law.
The sport of falconry is regulated by both the federal government and the state. However, the federal government possess primary regulatory authority by virtue of the Migratory Bird Treaty Act and the Supremacy Clause of the United States Constitution. Historically, a person engaging in falconry had to obtain a federal and state permit authorizing the activity. On 01/01/2010, the United States Fish and Wildlife Service amended 50 CFR 21.29 authorizing Utah to administer falconry within its borders pursuant to federal regulations and eliminating the requirement of a federal permit. The current falconry rule (Rule R657-20) requires participants to obtain a federal permit and is not otherwise entirely consistent with the 01/01/2010 amendments to 50 CFR 21.29. Inasmuch as Rule R657-20 requires falconry participants to obtain a federal permit and 50 CFR 21.29 has eliminated that requirement, the current version of Rule R657-20 violates federal law. The changes amend Rule R657-20 to remove the requirement of a federal falconry permit and to otherwise bring it into compliance with the requirements of 50 CFR 21.29. Emergency rulemaking is necessary under Subsection 63G-3-304(1)(c) to harmonize Rule R657-20 with preemptive federal law.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes clarify the rules that regulate the possession and use of raptors for falconry. Therefore, the Division of Wildlife Resources (DWR) determines that these changes will not create any 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 the changes clarify the rules that regulate the possession and use of raptors for falconry, 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: These changes clarify the rules that regulate the possession and use of raptors for falconry. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes clarify the rules that regulate the possession and use of raptors for falconry. Therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes are for clarification, thus DWR has determined that there were no additional compliance costs associated with this filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule do not 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

EFFECTIVE: 01/12/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR [~~21, 2000 ed.,~~]21 and 22, which is incorporated by reference, [~~this rule provides the requirements and procedures for possessing and using raptors for falconry.~~]the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

[
~~**R657-20-2. Possession of Raptors.**~~**]**

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Falconiformes (i.e., vultures, kites, eagles, hawks, caracaras, and falcons) and all avian species in the Order Strigiformes such as owls and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov.

([~~1~~]7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a [~~federal falconry permit and a valid Falconry Certificate of Registration, license or Form 3-186A~~]valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

[~~(2) The only species of raptor that may be possessed, transported, or used for falconry are:~~

~~(a) raptors of the subfamily Accipitrinae, other than the Bald Eagle (Haliaeetus leucocephalus);~~

~~(b) raptors of the subfamily Falconinae; and~~

~~(c) Great Horned Owl (Bubo virginianus) and captive-bred Eurasian Eagle-owl (Bubo bubo) of the family Strigidae.~~

~~]~~(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

[~~R657-20-3.~~ |R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and [~~Rule~~]R657-[~~6.~~]6-2.

(2) In addition:

[~~(a) "Bird Banding Laboratory band" means a permanent, numbered, silver, aluminum band.~~](a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

([~~b~~]h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

[~~(c) "Falconry" means the sport of taking quarry by means of a trained raptor.~~](i) "Division" means the Utah Division of Wildlife Resources.

(j) "falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

([~~d~~]l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in Section 10.13 of Subchapter B of 50 CFR 21.

([~~e~~]q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

([~~f~~]u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor.

([~~g~~]v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

([~~h) "Passage bird~~]w) "Mews" refers to indoor facilities where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of sustained flight[~~.~~] that is no longer dependent upon parental care and/or feeding.

([~~i) "Quarry" means any live animal.~~]aa) "Raptor" means any bird of the Order Falconiformes or the Order Strigiformes and hybrids thereof unless defined otherwise in this rule.

[~~(j) "Raptor" means a bird of the families Accipitridae, Falconidae, Tytonidae, or Strigidae.~~

]bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

([~~k~~]cc) "Service" means the U.S. Fish and Wildlife Service.

([~~l) "State Forms" means annual reports and completed Raptor Capture permits.~~][~~(m)~~]dd) "Take" means to: [~~(i)~~]hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or [~~(ii)~~]attempt any such action[~~ referred to in Subsection (i)~~].

([~~n)~~]ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where[~~ only coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon,~~] European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), [~~or~~]Rock [~~Pigeon~~]Dove/feral pigeon (Columba livia), pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least 14 years of age.

R657-20-4. [~~Federal Requirements~~]Falconry COR, Permits, and Licenses.

(1) [~~A federal falconry permit is required before any person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter raptors for falconry purposes.~~]The division may deny issuing a COR or permit to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

[~~(2) Applications for a federal falconry permit may be obtained from, and submitted to the U.S. Fish and Wildlife Service, Migratory Bird Permit Office, P.O. Box 25486, Denver Federal Center (60154), Denver, CO. 80225-0486.~~

~~(3)(a) A federal falconry permit issued or renewed under 50 CFR 21.28 expires on the date designated on the face of the permit unless amended or revoked, but the term of permit shall not exceed three years from the date of issuance or renewal.~~

~~(b) Applicants for renewal of a federal falconry permit must submit a written application at least 30 days prior to the expiration date of the permit.~~](a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah. A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

R657-20-5. [~~Resident Certificate of Registration~~]Application for a Resident or Nonresident Falconry COR.

(1) Resident Applications

(a) A resident applying for or renewing a [~~F~~]falconry [~~Certificate of Registration~~]COR shall:

([~~a~~]i) [~~s~~]Submit a completed falconry application to the [~~d~~]Division; and

([~~b~~]ii) [~~i~~]Include the [~~certificate of registration fee.~~]appropriate COR fee.

([~~2~~]b) At the time of renewal, the current [~~F~~]falconry [~~Certificate of Registration and a federal falconry permit~~]COR number must be [~~submitted~~]included on the falconry COR renewal application.

[

~~R657-20-6. Apprentice Class Falconer.~~

~~(1) An apprentice class falconer shall be:~~

~~(a) 14 years of age or older; and~~

~~(b) sponsored by a general or master class falconer for the first two years of apprenticeship.~~

~~(2) An apprentice obtaining their first Falconry Certificate of Registration must answer correctly at least 80 percent of the questions on a supervised examination provided and administered by the division, relating to basic biology, care and handling of raptors, literature, laws, rules, regulations, and other appropriate subject matter.~~

~~(3) If necessary, the examination may be taken again after a 14 calendar-day waiting period.~~

~~(4) A person may not take the falconry exam earlier than two months before that person's 14th birthday.~~

~~(5) The sponsor shall provide advice for facilities and equipment construction, trapping the first season, training the raptor, and all other activities that will promote adequate care and good health for the raptor and safety for the apprentice. A sponsor may not have more than three apprentices at one time.~~

(6) In the event sponsorship is terminated, the holder of an apprentice Falconry Certificate of Registration must obtain a new sponsor within 30 calendar days of termination.

(7) The division must be notified in writing concerning the change in sponsor. The sponsor's name, state, Falconry Certificate of Registration and federal falconry permit number must be included in the notification.

(8) An apprentice may not:

(a) possess more than one raptor for falconry; and

(b) obtain more than one raptor for replacement during any 12-month period from the date of the first capture.

(9) An apprentice may possess only an American Kestrel (Falco sparverius) or a Red-tailed Hawk (Buteo jamaicensis), which must be taken from the wild as a passage bird by the apprentice during the passage season.

(10) Re-examination and facilities inspection will be required of any applicant who has not held a Falconry Certificate of Registration or license for two consecutive years.

(11)(a) Requests for class upgrades must be submitted to the division in writing.

(b) Failure to comply with the rules and regulations of the Wildlife Board may result in the denial of an upgrade.

R657-20-7. General Class Falconer.

(1) A general class falconer shall:

(a) be 18 years of age or older;

(b) show proof of having a valid Falconry Certificate of Registration for at least 24 months; and

(c) have at least two years of sponsor-verified experience caring for, training, or hunting with raptors at the apprentice level or its equivalent;

(i) For purposes of this section, "two years of experience" means at least four months caring for, training, or hunting with raptors in each of two different 12-month periods.

(2) Evidence that the applicant has had a valid raptor license or permit in another state for at least 24 consecutive months may be substituted for the apprentice Falconry Certificate of Registration requirement.

(3)(a) Verification of the two-year experience requires a letter from the sponsor that details the applicant's progress in falconry and qualifications for upgrade; and

(b) the appropriate federal Form 3-186A and state forms indicating experience caring for raptors.

(4) A general class falconer may not:

(a) possess more than two raptors for falconry; and

(b) obtain more than two raptors taken from the wild for replacement birds during any 12-month period from the date of first capture; or

(c) take, transport, or possess a Golden Eagle (Aquila chrysaetos) or any species listed as threatened or endangered in 50 CFR 17.

(5)(a) Facilities inspection will be required of any applicant who has not held a Falconry Certificate of Registration or license for two consecutive years.

(b) Re-examination will be required of any applicant who has not held a Falconry Certificate of Registration or license for five consecutive years.

(6)(a) Requests for class upgrades must be submitted to the division in writing.

(b) Failure to comply with the rules and regulations of the Wildlife Board may result in the denial of an upgrade.

R657-20-8. Master Class Falconer.

(1) A master class falconer shall:

(a) show proof of having a valid general class Falconry Certificate of Registration for at least 60 months; and

(b) have at least five years experience caring for, training, or hunting with raptors at the general class level or its equivalent.

(i) For purposes of this section, "five years of experience" means at least four months caring for, training, or hunting with raptors in each of five different 12-month periods.

(2) Verification of the five-year experience requires the appropriate federal Form 3-186A and state forms indicating experience caring for raptors.

(3) A master class falconer may not:

(a) possess more than three raptors for falconry;

(b) obtain more than two raptors taken from the wild for replacement birds during any 12-month period from the date of first capture; or

(c) take from the wild:

(i) more than one raptor listed as threatened in 50 CFR 17, in any 12-month period, as part of the three bird limitation, and then only in accordance with 50 CFR 17; or

(ii) any species listed as endangered in 50 CFR 17, but may transport or possess such species in accordance with 50 CFR 17.

(4) A master class falconer may not take from the wild, transport, or possess a Golden Eagle for falconry purposes unless authorized in writing under 50 CFR 22.24.

(5) A master class falconer may possess one Golden Eagle for falconry purposes pursuant to 50 CFR 22.24, Eagle Permits, and as provided in Subsections (i) through (ii).

(i) The registrant may not obtain or possess more than one Golden Eagle during a 12-month period; and

(ii) the Golden Eagle held by the registrant shall be included in the three-bird limitation of the master class falconer in accordance with 50 CFR 17.

R657-20-9. Facilities and Equipment.

(1) Before a person may obtain a Falconry Certificate of Registration, the raptor housing facilities and equipment shall be inspected by a division representative and must be certified as meeting the requirements of this section.

(2)(a) The primary consideration for raptor housing facilities whether indoor mews or outdoor weathering area is protection from the environment, predators, and undue disturbance.

(b) A person may not possess a raptor without either an indoor facility or an outdoor facility as provided in Section R657-20-10 and R657-20-11.

R657-20-10. Indoor Facilities.

(1) An indoor facility or mews must be large enough to allow easy access for caring for the raptor housed in the facility.

(2) If more than one raptor is to be kept in the mews, the raptors must be tethered or separated by partitions and the area for each raptor must be large enough to allow the raptor to fully extend its wings.

~~(3) There must be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the raptor's body, and a secure door that can be easily closed.~~

~~(4) The floor of the mews must allow for easy cleaning and be well drained.~~

~~(5) Adequate perches must be provided to ensure the health, safety and protection of the raptor.~~

~~R657-20-11. Outdoor Facilities.~~

~~(1) Outdoor facilities or weathering areas must be fenced and covered with netting or wire, or roofed to protect the raptor from disturbance and attack by predators.~~

~~(2) The enclosed area must be large enough to ensure the raptor cannot strike the fence when flying from the perch.~~

~~(3) Protection from excessive sun, wind, and inclement weather must be provided for each raptor.~~

~~(4) Adequate perches must be provided to ensure the health, safety and protection of the raptor.~~

~~R657-20-12. Equipment.~~

~~The following items shall be in the possession of the applicant before a federal falconry permit or Falconry Certificate of Registration may be obtained:~~

~~(1)(a) At least one pair of Aylmeri jesses or similar type constructed of pliable, high quality leather or suitable synthetic material to be used when any raptor is flown free.~~

~~(b) Traditional one-piece jesses may be used on raptors when not being flown.~~

~~(2) At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design.~~

~~(3) At least one suitable container, two to six inches deep and wider than the length of the raptor, for drinking and bathing for each raptor.~~

~~(4) At least one weathering area perch of an acceptable design for each raptor.~~

~~(5) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce.~~

~~R657-20-13. Federal Form 3-186A.~~

~~A falconer may not take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless the falconer completes a federal Form 3-186A. The blue (State) copy of each completed Form 3-186 should be sent to the division within five calendar days of the transaction; the white copies (USFWS-Original and USFWS Copy) should be sent to the Service within five calendar days of the transaction; the falconer should keep the pink (Permittee) copy.~~

~~R657-20-14. Temporary Possession For Care.~~

~~(1)(a) A raptor possessed under authority of a Falconry Certificate of Registration may be temporarily held by a person other than the possessor of record for maintenance and care for a period not to exceed 30 calendar days.~~

~~(b) The raptor must be accompanied at all times by a copy of the properly completed federal Form 3-186A or copy designating the falconer as the possessor of record and by a signed, dated statement from the falconer authorizing temporary possession.~~

~~(c) The temporary possessor must hold a valid Falconry Certificate of Registration in the appropriate class designation and have adequate facilities.~~

~~R657-20-15. Permanent Transfer.~~

~~A falconer may permanently transfer a raptor to:~~

~~(1) another falconer of appropriate class designation with a valid Falconry Certificate of Registration and adequate facilities; or~~

~~(2) a raptor propagator or special purpose possession permittee who has the appropriate certificates, licenses, permits and Form 3-186A.~~

~~R657-20-16. Purchase or Sale of Captive-Bred Raptors.~~

~~(1) Only general and master class falconers may purchase or sell captive-bred raptors.~~

~~(2) Before a captive-bred raptor is purchased or sold, bartered or gifted it shall be properly banded.~~

~~R657-20-17. Importation Requirements for Residents and Nonresidents.~~

~~(1)(a) A person is not required to obtain an importation certificate of registration to possess a raptor brought into Utah from another state when the raptor is to be used for falconry purposes.~~

~~(b) A raptor used for any purpose other than falconry is governed by Rule R657-3.~~

~~(2) If any raptor is brought into the state on a permanent basis, the band number must be presented to the division within five business days of the arrival of the raptor into the state.~~

~~(3) A raptor brought into the state for any purpose is governed by Rule R58-1-4.~~

~~R657-20-18. Nonresidents Establishing Residency.~~

] (c) A falconer claiming residency[~~(1) A falconer~~] in Utah may not claim residency in[~~ more than one state~~], or possess a resident falconry license or [~~F~~]falconry [~~Certificate of Registration from more than one~~]permit from, another state.

(2) [~~A n~~]Nonresident Applications

(a) A six-month domicile period is required for a nonresident falconer entering [~~the state~~]Utah to establish residency.

(b) A nonresident falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah during the six-month domicile period while establishing residency.

([~~3~~]i) If the raptors are to be flown or exercised during the six-month domicile period, the following permits must be in possession:

(A) a valid falconry license from the previous state; and

(B) a valid federal falconry permit when required under federal law.

(ii) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(c) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of [~~the~~]each raptor held in possession, and an import authorization number

obtained from the Utah Department of Agriculture must be presented to the [~~d~~]Division [~~upon~~]within 5 business days after entering [~~the state.~~]Utah.

([~~4~~]d) [~~The~~]A non-resident falconer establishing residency must [~~have the~~]maintain proper facilities and equipment.

(i) A facilities inspection is required and must be requested from the Division by the non-resident falconer no later than 120 days of establishing domicile in the state.

~~[(5) If the raptor is to be flown or exercised during the six-month domicile period, a valid falconry license from the previous state and a current federal falconry permit are required.~~

~~(6) If the raptor is to be used for falconry during the six-month domicile period, a valid falconry license from the previous state, a current federal falconry permit number and the appropriate nonresident game license are required.~~

~~]~~(A) Requests may be made in writing or via email at falconry@utah.gov.

(ii) A facilities inspection will be completed by the Division within 30 business days of the date the request for an inspection is received.

(iii) A non-resident falconer establishing residency may temporarily house raptors prior to their initial facilities inspection (see Section R657-20-20).

([~~7) Upon completion of the residency requirement~~]e) At the conclusion of the six-month domicile period, a new resident applying for a [~~f~~]falconry [~~Certificate of Registration~~]COR must submit the following to the [~~d~~]Division:

([~~a~~]i) [~~a~~]A completed falconry application indicating class designation;

([~~b) the certificate of registration fee;~~

~~(e~~]ii) [~~a~~]A copy of a valid falconry license from the former state of residency indicating class designation;[~~ and~~]

([~~d) their~~]iii) A valid federal falconry permit number[~~:~~], if applicable;

[

~~R657-20-19. Facilities for Raptors in Transit.~~

~~To ensure the health, safety and protection of any raptor being transported or held, temporary facilities must be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 calendar days.~~

~~R657-20-20. Change of Address.~~

~~Any falconer who possesses a raptor and moves or changes the address of where the raptor is being held must notify the division in writing of the change of address within five business days. An inspection of facilities may be required at the new location.~~

~~R657-20-21. Release to the Wild.~~

~~Prior to releasing any raptor to the wild:~~

~~(1) the falconry shall be removed by a division representative; and~~

~~(2) a numbered aluminum Bird Banding Laboratory band shall be attached to the raptor by a division representative. Banding is by appointment only.~~

~~R657-20-22. Escape or Death.~~

~~(1) The division must be notified upon escape or death of a raptor.~~

~~(2) Within five business days of the escape or death of any raptor, the appropriate copies of the federal Form 3-186A must be provided to the division and the Service.~~

~~(3) Within five business days, the band from a raptor that dies must be presented to a division representative with the corresponding federal Form 3-186A.~~

~~R657-20-23. Feathers.~~

~~Feathers that are molted or feathers from raptors held in captivity that die may be retained and exchanged for imping purposes by falconers with a valid Falconry Certificate of Registration.~~](iv) Proof that the applicant has passed the falconry test administered by the state, tribe, or territory where legal residence was maintained, or proof that the applicant previously held a falconry permit at the class level being requested; or:

(A) Correctly answer at least 80 percent of the questions on an examination administered by the Division.

(B) If the applicant passes the examination, the Division will decide which level of falconry permit to be issued, consistent with the class requirements outlined in Sections R657-20-16, R657-20-17, and R657-20-18 of this rule; and

(v) Submit the appropriate COR fee.

(f) A non-resident falconer entering Utah to establish residency that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

(g) At the conclusion of the six-month domicile period outlined in Section R657-20-5, a falconer may apply for a resident Utah falconry COR.

R657-20-[~~24. Certificate of Registration~~]6. COR Renewal and Annual Report Forms.

(1) Resident falconers wishing to renew a valid [~~f~~]falconry [~~Certificate of Registration~~]COR must submit a completed [~~f~~]falconry [~~Certificate of Registration~~]COR renewal form to the [~~d~~]Division upon or before the expiration date specified on the current [~~f~~]falconry [~~Certificate of Registration~~]COR.

(a) falconry COR Renewals require up to a 30-day processing time for completion.

(2) All Resident falconers holding a valid [~~f~~]falconry [~~Certificate of Registration~~]COR must submit a completed falconry [~~a~~]Annual [~~r~~]Report [~~form~~]to the [~~d~~]Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual summary report of their falconry activities that are on file.

(b) Each resident falconer must verify the annual summary report for accuracy and return the report to the Division by the following January 31.

(3) Residents who do not hold a valid [~~F~~]falconry [~~Certificate of Registration~~]COR or do not submit a [~~certificate of registration~~]COR renewal form by the date [~~specified on the certificate of registration and~~]their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under [~~Section~~]Sections 23-13-[~~4.~~]4 and 23-20-3.

[~~(4) Any raptor not listed on the falconry annual report or federal Form 3-186A may be seized.~~

]([~~5~~]4) Failure to submit [~~the appropriate~~]required records and timely, accurate, or valid reports may result in [~~revocation, suspension or denial of a Falconry Certificate of Registration or upgrade.~~]administrative action by the Division.

[~~R657-20-25. Inspection of Raptors, Facilities, Certificates of Registration, and Documents.~~

~~As a condition of obtaining a Falconry Certificate of Registration, the falconer agrees to reasonable administrative inspections of raptors, facilities equipment, appropriate permits, licenses, certificates of registration and forms.~~

~~R657-20-26. Taking Raptors from the Wild.~~

~~(1) A person may not take any raptor from the wild without first obtaining a Raptor Capture Permit from the division.~~

~~(2)(a) A raptor may be taken by traps or nets that are humane in their operation and use.~~

~~(b) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, and bow net traps.~~

~~(c) Trapping devices must be constantly attended while in use.~~

~~(d) Protected wildlife may not be used to capture raptors.~~

~~R657-20-27. Capture Permits.~~

~~(1) A person must possess a valid Falconry Certificate of Registration and federal falconry permit prior to obtaining a Raptor Capture Permit.~~

~~(2)(a) Prior to capturing or attempting to capture any raptor a falconer must obtain a Raptor Capture Permit from a division office.~~

~~(b) The Raptor Capture Permit, federal falconry permit and Falconry Certificate of Registration must be in possession while pursuing, capturing or attempting to capture a raptor.~~

~~(3) An apprentice class Raptor Capture Permit is valid for the passage season capture of~~

](a) Administrative action that may be taken by the Division include:

([~~a) one American Kestrel; or~~

~~(b) one passage Red-tailed Hawk.~~

~~(4) A general or master class Raptor Capture Permit is valid for one eyas or one passage raptor listed in Subsection (10) or (11), respectively in accordance with the restrictions and limitations of this rule.~~

~~(5) Raptor Capture permits are non-transferable and non-assignable and can only be used by the person specified on the permit. Raptor Capture permits are valid only for the season specified on the permit.~~

~~(6)(a) Nonresidents wishing to purchase a Raptor Capture Permit and not participating in the sport of falconry in the state are not required to purchase a Utah Falconry Certificate of Registration or license.~~

~~(b) However, nonresidents must show proof of a valid federal falconry permit and falconry license issued by their state of residency.~~

~~(7) Falconers shall not retain and transport more than one captured raptor per capture permit.~~

~~(8) Any person who captures a raptor must have it banded in accordance with Section R657-20-31.~~

~~(9) Capture of eyas raptors is allowed only for the following species:~~

~~(a) Northern Harrier (Circus cyaneus);~~

~~(b) Sharp-shinned Hawk (Accipiter striatus);~~

~~(c) Cooper's Hawk (Accipiter cooperii);~~

~~(d) Northern Goshawk (Accipiter gentilis);~~

~~(e) Swainson's Hawk (Buteo swainsoni);~~

~~(f) Red-tailed Hawk (Buteo jamaicensis);~~

~~(g) Ferruginous Hawk (Buteo regalis);~~

~~(h) Golden Eagle;~~

~~(i) American Kestrel;~~

~~(j) Peregrine Falcon (Falco peregrinus);~~

~~(k) Prairie Falcon (Falco mexicanus); and~~

~~(l) Great Horned Owl;~~

~~(10) Capture of passage raptors is allowed only for the following species:~~

~~(a) Northern Harrier;~~

~~(b) Sharp-shinned Hawk;~~

~~(c) Cooper's Hawk;~~

~~(d) Northern Goshawk;~~

~~(e) Harris's Hawk (Parabuteo unicinctus);~~

~~(f) Swainson's Hawk;~~

~~(g) Red-tailed Hawk;~~

~~(h) Ferruginous Hawk;~~

~~(i) Rough-legged Hawk;~~

~~(j) Golden Eagle;~~

~~(k) American Kestrel;~~

~~(l) Merlin (Falco columbarius);~~

~~(m) Gyrfalcon (Falco rusticolus);~~

~~(n) Prairie Falcon; and~~

~~(o) Great Horned Owl.~~

~~R657-20-28. Legal Birds.~~

~~(1)(a) Eyasses may be taken from the wild only by general and master class falconers as provided in Subsections (a) through (d).~~

~~(b) Eyasses, except Great Horned Owls and Peregrine Falcons, may be taken from May 13, unless May 13 is a Sunday, in which case the season shall begin the following day through July 15 and during the third weekend in July.~~

~~(c) Great Horned Owl eyasses may be taken from the wild during the first two Saturdays of April and from May 13, unless May 13 is a Sunday, in which case the season shall begin the following day through July 15 and during the third weekend in July.~~

~~(d) Peregrine Falcon eyasses may be taken in accordance with R657-20-29(4).~~

~~(e) No more than two eyasses may be taken by the same falconer.~~

~~(2) An eyas may not be taken from a nest containing only a single eyas.~~

(3) One or more eyasses must be left in a nest from which any eyas has been removed.

(4) Passage raptors may be taken from the wild only from:

(a) September 1 through October 31 on weekends and legal holidays, unless September 1 is a Sunday, in which case the season shall begin the following weekend or legal holiday; and

(b) November 1, unless November 1 is a Sunday, in which case the season shall begin the following day through January 31.

(5) Only American Kestrels and Great Horned Owls may be taken when over one year of age.

(6) The date of capture, sex of raptor, and the location of the capture must be recorded precisely, to within 100 meters, on the Raptor Capture Permit. Precise nest locations will be held for use by the division and not made available to the public.

(7)(a) The division falconry coordinator shall determine on an annual basis the number of capture permits issued for the taking of eyas raptors listed on Utah's current sensitive species list.

(b) Notice of any limitations on the number of eyas capture permits for sensitive raptors shall be made by February 7 of each year.

(c) Application procedures for taking sensitive raptor species limited by the falconry coordinator are provided in Section R657-20-41.

R657-20-29. Resident - Legal Birds by Class Designation.

(1)(a) An apprentice class falconer may possess only one American Kestrel or one Red-tailed Hawk in accordance with Section R657-20-6, Apprentice Class Falconer.

(b) Only first-year Red-tailed Hawks may be taken, while first-year or older American Kestrels may be taken.

(c) Eyasses may not be taken.

(2) A general class falconer may not possess more than two raptors and may not obtain more than two raptors taken from the wild for replacement birds during a 12-month period.

(3) A master class falconer may not possess more than three raptors and may not obtain more than two raptors taken from the wild for replacement birds during a 12-month period, except Golden Eagles.

(4) A resident general or master class falconer may apply each year to take one eyas Peregrine Falcon from the wild on the first two Saturdays of May and from May 13, unless May 13 is a Sunday, in which case the season will begin the following day through June 30.

(5)(a) Any resident general or master class falconer may apply each year to take one passage Peregrine Falcon from the wild from:

(i) September 1 through October 31 on weekends and legal holidays, unless September 1 is a Sunday, in which case the season shall begin the following weekend or legal holiday; and

(ii) November 1, unless November 1 is a Sunday, in which case the season will begin the following day through November 30.

(b) Any captured Peregrine Falcon banded with a numbered aluminum Bird Banding Laboratory band (numbered aluminum) must be released immediately.

(c) The band number, date of trapping, and precise location, within 100 meters, of the banded falcon must be reported to the falconry coordinator as soon as possible.

(d) Passage take of Peregrine Falcons will not be allowed unless approved by the Service.

(e) Application procedures for taking eyas or passage Peregrine Falcons are provided in Section R657-20-41.

(6)(a) The number of resident permits issued annually for the taking of eyas Peregrine Falcons may not exceed 10; and

(b) take is limited to Beaver, Iron, Washington, Piute, Wayne, Garfield, Kane, and San Juan counties and the area south of Interstate 70 in Grand, Emery and Sevier counties.

(c) In addition to following the requirements provided in Section R657-20-28(4) through R657-20-28(6), a falconer taking or attempting to take an eyas Peregrine Falcon must abide by the following:

(i) an eyas may not be removed from its nests prior to 10 days of age;

(ii) nests may not be entered when young are 28 days or more of age;

(iii) recently fledged young may be trapped within 100 meters of the nest;

(iv) three plucked breast feathers from any captured eyas must be presented to the division within five business days of capture.

(7) The number of resident and nonresident permits issued annually for the take of passage Peregrine Falcons may not exceed that number set by the Service.

R657-20-30. Nonresident- Legal Birds by Class Designation.

(1)(a) A nonresident general or master class falconer may apply each year to take one eyas from the wild pursuant to R657-20-28.

(b) Any nonresident general or master class falconer may apply each year to take one passage bird from the wild pursuant to R657-20-28.

(2) Application procedures for taking an eyas are provided in Section R657-20-41.

(4) The number of nonresident permits issued annually may not exceed the following:

(a) Sharp-shinned Hawk 10;

(b) Cooper's Hawk 20;

(c) Northern Goshawk 5;

(d) Red-tailed Hawk 20;

(e) American Kestrel 20;

(f) Merlin 10, passage take only;

(g) Gyrfalcon 5, passage take only;

(h) Prairie Falcon 20; and

(i) Great Horned Owl 20;

(j) Peregrine Falcon 1, eyas only, in accordance with restrictions set forth in R657-20-29(4), R657-20-29(8)(b) and R657-20-29(8)(c).

(5) Nonresidents may not take any other species.

R657-20-31. Banding Raptors.

(1)(a) A falconer who has captured a raptor from the wild must notify the division by telephone within two business days to receive a federal falconry band.

~~(b) Upon notification, the division shall issue a federal falconry band number to the falconer and mail the federal falconry band to the falconer.~~

~~(2) Upon receiving the federal falconry band, the falconer must attach the band to the raptor's leg.~~

~~(3) Within five business days of notifying the division of the capture, the falconer must submit:~~

~~(a) a completed Raptor Capture permit, with the precise location of capture within 100 meters; and~~

~~(b) the blue copy of the federal Form 3-186A.~~

~~(4) A falconer may remove the rear tab on a band and may smooth any imperfect surface, provided the integrity of the band and numbering are not affected.~~

~~(5)(a) A person may not remove, transfer, alter, counterfeit, or deface a falconry, except a band that is causing damage to a raptor may be removed only if the band is affecting the health or safety of the raptor.~~

~~(b) The raptor must be presented to a division representative and a replacement band placed on the raptor's other leg. Banding is by appointment only.~~

~~(c) The detached band must be surrendered to the division at the time of re-banding.~~

~~(6) The division must be notified of any raptor acquired or brought into the state on a permanent basis without a band. The raptor must be presented to a division representative for banding.~~

~~R657-20-32A. Recovery and Capture of Banded Raptors - Federal Falconry Band.~~

~~(1) An escaped raptor banded with a federal falconry band may be recovered at any time.~~

~~(2) Notification of recovery must be made to a division representative followed by a written notice within five business days.~~

~~R657-20-32B. Recovery and Capture of Banded Raptors - Bird Banding Laboratory Band.~~

~~The division requires notification of the capture date and precise location, within 100 meters, of any raptor marked with a numbered aluminum Bird Banding Laboratory band.~~]i) Issuance of a probationary COR with restrictions on activities allowed; or

(ii) Non-renewal of a COR until the required records and reports are completed.

(5) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(a) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(b) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(6) A falconer who has allowed their COR to lapse may apply for a new COR.

(a) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4(1).

(b) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-16(1)(b)(ii).

(i) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(ii) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-8, R657-20-9, and R657-20-10.

R657-20-[~~33.~~]7. Nonresident Participation in Meets or Trials.

(1) A nonresident entering Utah to participate in the sport of falconry at an organized meet must [~~first~~]be 14 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(2) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the [~~d~~]Division.

(3) [~~The~~]A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(4) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(5) A nonresident participating in an organized meet for more than five consecutive calendar days must obtain appropriate nonresident licenses, permits, tags, and stamps as provided in the proclamations of the Wildlife Board if protected wildlife is pursued.

(6) A nonresident participating in an organized meet for more than five consecutive calendar days must provide a health certificate and an import authorization number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

(7) A falconry meet license is not required for participation in a falconry trial.

([~~7~~)(~~a~~]8) An organizer of a falconry meet must obtain prior approval from the Wildlife Board [~~to conduct the falconry meet~~]for non-residents to purchase a 5-day non-resident meet license.

([~~b) An organizer of a falconry trial must obtain landowner permission and prior approval from the division to conduct the falconry trial.~~

~~(c~~]a) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the [~~d~~]Division.

R657-20-8. Care and Facilities Requirements.

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(4) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(5) The Division should complete an inspection of falconry facilities within 30 business days of receiving a request for inspection.

(a) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(b) Requests for inspections may be made verbally or in writing or via email.

(6) Facilities Requirements.

(a) Facilities must be adequate to house the number of raptors in possession.

(b) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(i) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-8(6)(d)(viii).

(ii) A new facilities inspection may be required when a permittee increases the number of raptors in their possession.

(c) The Utah falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(d) The Mews.

(i) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(ii) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(iii) Untethered raptors may be housed together in the mews if they are compatible with each other.

(iv) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(v) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(vi) If raptors housed in an indoor mews that is not a place of residence are untethered, the mews must be fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the mews.

(vii) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(viii) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(A) A raptor may be untethered inside a place of residence when being handled.

(B) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(C) A raptor may be housed untethered inside a flight chamber constructed within a place of residence, provided the chamber has a source of light and is fully enclosed with solid walls and ceiling or with bars or heavy duty netting or mesh spaced narrower than the width of the body of the smallest raptor housed in the chamber.

(e) Weathering Area

(i) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(ii) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(iii) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(iv) Raptors must be tethered while inside the weathering area.

(v) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(vi) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall to the perch will not cause injury to the raptor or feather damage.

(vii) Each raptor should have a pan of clean water available.

(A) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(viii) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(ix) falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(f) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(g) Any falconer who possesses a raptor and moves or changes the address of where the raptor is held must notify the Division in writing of the change of address within 5 business days.

(i) An inspection of facilities may be required at the new location.

(h) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

(i) A raptor may be housed in temporary facilities for no more than 120 consecutive calendar days, provided the temporary facilities has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

R657-20-9. Equipment.

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material, or the materials and equipment to make them, or the material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(b) At least one flexible, weather-resistant leash.

(c) At least one swivel of acceptable falconry design.

(d) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(e) At least one perch of an acceptable design will be provided for use for each raptor.

(f) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(g) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

R657-20-10. Inspection of Raptors, Facilities, CORs, and Documents.

(1) A facilities inspection is required prior to initial issuance of a falconry COR and may be requested by the falconer in writing or by email at falconry@utah.gov. Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(2) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(3) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

R657-20-11. Take of Wild Raptors.

(1) A licensed falconer may take from the wild any raptor species of the Order Falconiformes or Strigiformes only as provided in this rule

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptors taken from the wild for falconry is a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A raptor taken from the wild for falconry must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the date of capture.

(2) Resident Take of Wild Raptors

(a) A Utah Resident may not take any raptor from the wild without first obtaining a COR and a Raptor Capture Permit from the Division.

(b) A Raptor Capture Permit is valid for one raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(c) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-21(2) and (3) as long as the permit holder is present.

(d) Raptor Capture Permits are valid only for the season specified on the permit.

(e) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a raptor.

(f) Raptors may not be taken at any time or in any manner that violates any State, federal, tribal, or local law.

(g) While trapping, falconers shall not retain and transport more than one captured raptor per capture permit.

(3) Taking of wild raptors is prohibited within the boundaries of all National Parks in Utah and on all Utah State Parks

(4) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(5) No more than two 2 raptors may be taken from the wild each calendar year to use in falconry.

(6) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred raptor will not count as a capture by the recipient.

(c) The transferred raptor will always be considered a wild bird.

(7) A permittee may not intentionally capture raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a raptor he or she is not allowed to possess, it must be released immediately.

(8) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17, and if a federal endangered species permit is obtained before taking the bird.

(9) A General or Master Class falconers may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(10) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(11) Periods for Allowable Take Of Raptors From the Wild

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1 through December 31.

(i) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) A peregrine falcon banded with a Federal Bird Banding Laboratory aluminum band may not be taken from the wild and retained.

(iv) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(v) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(d) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(i). Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(e) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(i) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(ii) Recapture of falconry raptors must be reported to the Division no more than 5 business days from the date of recapture.

(iii) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(A) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(B) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

(13) Special provisions for take of peregrine falcons.

(a) Only General and Master Class falconers only may take eyas or passage age peregrine falcons in accordance with Sections R657-20-11 and R657-20-12 and as provided in this rule.

(i) Application procedures for taking eyas or passage Peregrine Falcons are provided in Section R657-20-12 and R657-20-13.

(ii) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(iii) The number of permits issued to take peregrine falcons will be set by the Division annually.

(A) One non-resident take permit will be issued annually. If that permit is not applied for, it will be made available to resident falconers.

(B) Any remaining permits that are not applied for will be made available to resident and nonresident falconers on a first-come first-served basis.

(iv) Issued permits will allow take of one eyas or passage age Peregrine Falcon.

(b) An eyas peregrine falcon may not be removed from its aerie prior to 10 days of age.

(c) Aeries of peregrine falcon may not be entered when young are 28 days or more of age.

(d) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(e) A peregrine falcon that is marked with a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(14) Special provisions for take of golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-18(2)(c)(i).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A.

Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands;

(15) Acquiring a bird for falconry from a permitted rehabilitator.

(a) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A raptor acquired for falconry from a rehabilitator must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the transaction.

(ii) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-12. Nonresident Take of Wild Raptors.

(1) A Nonresident may not take any raptor from the wild without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(c) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(d) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

R657-20-13. Application Procedures and Drawings for Capture of Peregrine Falcons, Sensitive Raptors, and Raptors Available to Nonresident Falconers.

(1) Applications for Raptor Capture Permits must be made for:

(a) Peregrine falcons;

(b) Sensitive raptor species for which take is limited by the falconry Program Coordinator pursuant to Section R657-20-11, and

(c) Raptors designated for non-resident take.

(2) If necessary, a drawing will be held for those species that have more applicants than available permits.

(3) An individual may only draw once every 2 years for a Raptor Capture Permit to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(a) In the event that unclaimed permits remain after a drawing, then the 2 year restriction is waived.

(4) If the number of applications received exceeds the number of available permits, then the Division will conduct a drawing to determine which applicants receive a permit.

(a) Any remaining permits that are not applied for will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis..

(5) Application forms for Raptor Capture Permits are provided by the Division.

(6) An applicant for a Raptor Capture Permit must submit a complete and accurate application to include the following:

(a) A copy of the applicant's valid Utah falconry COR, or valid license from their state of residency indicating the falconry class designation;

(b) A copy of the applicant's valid federal permit, when required by federal law; and

(c) A non-refundable application fee.

(7) Applications for taking raptors must be received by the Division through the mail, or by email, no later than close of business on the last business day of March each year.

R657-20-14. Importation Requirements for Residents and Nonresidents.

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) a certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) an import authorization number issued through the Utah Department of Agriculture, Animal Health Office.

(2) Any raptor brought into the state on a permanent basis must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of importation.

(3) A raptor imported into the state for falconry or any other purpose have an import permit and certificate of veterinary inspection issued by the Utah Department of Agriculture and Food pursuant to R58-1-4.

R657-20-15. Flying a Hybrid Raptor in Falconry.

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

R657-20-16. Apprentice Class Falconer and Sponsors.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 14 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 14th birthday.

(ii) The examination questions will cover bacare and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-8, R657-20-9, and R657-20-10 before a falconry COR can be issued.

(2)(a) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(i) Husbandry and training of raptors held for falconry;

(ii) Relevant wildlife laws and regulations, and

(iii) Determining what species of raptor is appropriate for the Apprentice to possess.

(b) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(c) A sponsor must be:

(i). a Master Class Falconer who holds a valid Utah falconry COR or tribal falconry permit;

(ii) a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR or tribal falconry permit

(d) Unless approved by the Division in writing, the sponsor cannot reside

(i) greater than a 100 mile distance from the Apprentice; or

(ii) outside of Utah.

(e) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

(i) Apprentice Class falconers that change sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements in R657-20-16(2)(a) through (d).

(3) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess any wild-caught passage age raptor or captive-bred raptor species of the Order Falconiformes or Strigiformes for falconry, with the following exceptions:

(i) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles, or federally listed threatened or endangered species, or Utah state Sensitive Species, or any species listed as a national Species of Conservation Concern in the most recent list of "Birds of Conservation Concern" from the federal Division of Migratory Bird Management to include wild, captive-bred, or hybrid individuals of any restricted species, with the following exceptions:

(1) Notwithstanding Subsection (3)(a)(i), an Apprentice Class falconer may take or possess raptors specified in the falconry guide book

(2) An Apprentice Class falconer may possess a hybrid raptor provided that the hybrid raptor is not the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act).

(b) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(c) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(d) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-11(6) and R657-20-21.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-17. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor, captive-bred, or hybrid raptor species of the Order Falconiformes or Strigiformes except eagles.

(b) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-18. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Falconiformes or Strigiformes except a bald eagle (Haliaeetus leucocephalus).

(i) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(c) below are met.

(b) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, but they must be trained in the pursuit of wild game and used for hunting.

(c) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

(ii) A Master Class falconer that satisfies the requirements of this rule may be authorized to take or possess no more than 3 eagles as part of the 5-wild bird maximum limitation for the Master Class level.

R657-20-19. Unintentional Kill of a Prey Item by a Falconry Raptor.

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 5 business days of the take event.

(3) Unintentional take of any state Sensitive Species must be reported to the Division within 5 business days of the take event.

R657-20-20. Temporary Care of Falconry Raptors.

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division indefinitely in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division indefinitely in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconers caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 90 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

R657-20-21. Reporting Requirements for Acquisition of Raptors.

(1) Take of any raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email to falconry@utah.gov, no later than 10 business days after capture of the raptor.

(2) A permittee may receive assistance from another individual in capturing a raptor, but the permittee must be present at the capture site

(a) Regardless of the assistance of another person in capturing a raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(3) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(a) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(b) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(c) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(d) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(4) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(a) Any transfer or exchange for a raptor must be reported to the Division within 10 business days either by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email to falconry@utah.gov.

(b) A permittee may not purchase, sell, trade, or barter a wild raptor.

(i) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(c) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(5) Anytime a permittee acquires, transfers, rebands, or microchips a raptor; or a raptor in their possession is stolen; or is lost to the wild and is not recovered within 30 days; or dies; the occurrence must be reported to the Division within 10 days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A to the Division or FWS pdf i-381A via email to falconry@utah.gov.

(6) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(7) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(8) On an annual basis, the falconry Program Coordinator shall determine the number of capture permits issued for the taking of eyas raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the number of eyas capture permits available for sensitive raptors shall be available by February 1 of each year.

(b) Application procedures for taking sensitive raptor species are provided in Section R657-20-11.

R657-20-22. Banding or Tagging Raptors Used in Falconry.

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (Parabuteo unicinctus), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, numbered U. S. Fish and Wildlife Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Take or acquisition of any wild raptor must be reported to the Division by either entering the required information including, when required, the band number or microchip information in the electronic database at http://permits.fws.gov/186A, or by submitting a paper form 3-186A or FWS pdf i-381A via email no later than 10 business days after capture or acquisition of the raptor.

(3) Raptors bred in captivity must be banded with a U. S. Fish and Wildlife Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered U. S. Fish and Wildlife Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division by either entering the required information including the band number and microchip information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after banding the raptor.

(4) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division within 5 business days and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division.

(5) A band may not be altered, defaced, or counterfeited.

(6) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i). Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

(7) A raptor removed from the wild may not be banded with a with a U. S. Fish and Wildlife Service seamless metal band or plastic, numbered U. S. Fish and Wildlife Service yellow band.

R657-20-23. Raptors Injured Due to Falconer Trapping Efforts.

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) Take of the injured raptor from the wild must be reported to the Division by either entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, no later than 10 business days after capture of the raptor.

(i). The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(ii) The injured raptor will count against the permittee's possession limit.

(b) An injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(i) the injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

R657-20-24. Releasing a Falconry Raptor to the Wild.

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A or FWS pdf i-381A via email.

R657-20-25. Hacking of Falconry Raptors and other Training Techniques.

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the U. S. Fish and Wildlife Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

[R657-20-34. Use of Pen-Reared Game Birds for Meets, Trials and Training.

A person may hold a meet or trial or may train a raptor using legally acquired**]R657-20-26. Use of [p]Pen-[r]Reared [g]Game [b]Birds [**under the following provisions:**]for Meets, Trials and Training.**

(1) Any [person]falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture [Certificate of Registration]COR as provided in Rule R657-4.

(3)[(a)] Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released[,] except as provided in Subsection ([d]c).

([b]a) Aluminum leg bands may be purchased at any [d]Division office.

([e]b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

([d]c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet [or trial]may be released only on the property specified and only during the dates approved for the falconry meet[or trial.

(5) After release at a meet or trial, pen-reared game birds may be taken:].

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) [b]By the [person]individual who released the pen-reared game birds, or by any [person]individual participating in the meet[or trial]; and

(b) [o]Only during the approved dates of the meet[or trial].

(6) [Pen-reared game birds used in a meet or trial become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board if:

(a) the birds]Once released, any pen-reared game birds that leave the property where the meet [or trial]is held[;or

(b) the birds have] or are not[been] retrieved [by the end of the meet or trial]at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the [s]State of Utah and may not be recaptured or taken, except [during legal hunting seasons as specified]as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

[R657-20-35. Certificates of Registration, Licenses, Permits, and Stamps.

(1) A person must possess a valid federal permit and a valid Falconry Certificate of Registration or license from that person's state of residency while engaging in falconry.

(2) The Falconry Certificate of Registration or license allows the person to use a raptor to take coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove/feral pigeon.

(3) A falconer releasing a raptor on protected wildlife, not held in private ownership, must obtain the appropriate licenses, permits, tags, certificates of registration and stamps as provided in the applicable rules and proclamations of the Wildlife Board.

(4) A federal waterfowl stamp is required of a person 16 years of age or older to hunt migratory waterfowl.

R657-20-36. Seasons and Bag and Possession Limits.

(1) The hunting of:

(a) upland game shall be done in accordance with the rule and proclamation of the Wildlife Board for taking upland game species.

(b) waterfowl, Wilson's snipe, and coot shall be done in accordance with the rule and proclamation of the Wildlife Board for taking those species.

(c) Mourning Dove and Band-tailed Pigeon shall be done in accordance with the rules and proclamations of the Wildlife Board for those species.

(2) Bag and possession limits do not apply to coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock pigeon/feral pigeon.

(3) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or proclamations.

]**R657-20-27. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.**

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife.

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the U. S. Fish and Wildlife Service or the Division.

[R657-20-37. Training.]R657-20-28. Permission to Conduct Falconry Activities on Public or Private Lands.

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization from the affected Indian tribe.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas [from April 1 through August 15, unless otherwise authorized]without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah.

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

R657-20-29. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary flight feathers or rectrices from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

R657-20-[~~38. Firearms~~]30. Other Uses of Raptors.

[~~A person may not possess a firearm while pursuing any quarry with a raptor, unless the person is licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code and is not utilizing the concealed weapon to hunt or take wildlife.~~](1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession .

(i). Transfer must be reported to the Division within 10 business days by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a standard paper form 3-186A, or FWS pdf i-381A via email.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i). The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) promoting or endorsing any business, company, corporation, or other organization; or

(iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-8, R657-20-9, and R657-20-10 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession of a Special Purpose Abatement permit issued by the U.S. Fish and Wildlife Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the U.S. Fish and Wildlife Service.

[R657-20-39. Other Uses of Raptors.

~~(1)(a) A general or master class falconer who possesses a raptor for falconry purposes is not required to obtain an education certificate of registration to use the raptor for educational purposes provided money or consideration is not involved.~~

~~(2)(a) An apprentice falconer who possesses a raptor for falconry purposes is required to obtain an education certificate of registration to use the raptor for educational purposes.~~

~~(b) The division will provide the education certificate of registration at no cost provided money or consideration is not involved.~~

~~(3) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the division as provided in Rule R657-3 and the appropriate authorization from the Service.~~

R657-20-40. Application Procedures and Drawings for Capture of Peregrine Falcons, Sensitive Raptors, and Nonresident Legal Birds.

~~(1) Applications for Raptor Capture Permits must be made for:~~

~~(a) Peregrine Falcons;~~

~~(b) sensitive raptor species limited by the falconry coordinator pursuant to Section R657-20-28(7), and;~~
~~(c) nonresident legal birds.~~
~~(2) Application forms are provided by the division.~~
~~(3) An applicant must submit a complete and accurate application with:~~
~~(a) a copy of their valid Falconry Certificate of Registration or valid license from their state of residency, indicating the falconry class designation;~~
~~(b) a copy of their valid federal permit, indicating the falconry class designation; and~~
~~(c) the application handling fee.~~
~~(4)(a) Applications for taking an eyas raptor must be received through the mail by 5 p.m. on the last Friday of February.~~
~~(b) Applications for taking a passage raptor must be received through the mail by 5 p.m. on the last Friday of June.~~
~~(5)(a) If necessary, a drawing will be held for those species that have more applicants than available permits.~~
~~(b) Remaining permits will be available to falconers of the appropriate class and residency on a first-come first-served basis after the drawing.~~]

KEY: wildlife, birds, falconry
Date of Enactment or Last Substantive Amendment: January 12, 2010
Notice of Continuation: January 10, 2007
Authorizing, and Implemented or Interpreted Law: 23-17-7; 50 CFR 21

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.

Agriculture and Food, Animal Industry
R58-7
Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33326
FILED: 01/14/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-30-3 and Section 4-2-2 authorize the Department to enact rules that will promote the selling of livestock and fair market practices.

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 not received any comments supporting or opposing 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: Livestock markets play a vital role in providing a means whereby producers can receive a fair price for the livestock commodity being sold. They help to maintain the viability of the largest sector of the agriculture economy and are essential to maintaining the economic viability of the industry. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/14/2010

Agriculture and Food, Animal Industry
R58-10
Meat and Poultry Inspection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33329
FILED: 01/14/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-32-7 authorizes the Department to enact meat and poultry inspection rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing 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 department operates an "equal to" status program with the federal government. These rules are needed to maintain the "equal to" status and receive 50% reimbursement for the costs of the program. The state meat inspection program enables small meat plants to be operated in rural parts of the state and provide a services to the citizens that wouldn't be available without the program. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/14/2010

Agriculture and Food, Animal Industry
R58-17
Aquaculture and Aquatic Animal Health

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33327
FILED: 01/14/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 4-37-101 et seq., Subsection 4-2-2(j), and Section 4-37-503 authorize the Department to enact a rule to regulate the aquaculture industry in Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing 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: This rule is essential to provide direction for regulating the industry to control the spread of disease in public and private fishing waters. It helps in maintaining the economic viability of these types of operations. Therefore, this rule should be continued.

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/14/2010

EFFECTIVE: 01/07/2010

Agriculture and Food, Conservation and Resource Management
R64-1
Agriculture Resource and Development Loans (ARDL)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33305
FILED: 01/07/2010

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: Program is authorized by Subsection 4-18-5(e) which authorizes the Conservation commission to approve and make loans for agricultural purposes, from the Agriculture Resource Development Fund for projects designed to enhance agricultural efficiency and conserve resources. This rule clarifies the program and explains the responsibilities of the parties involved.

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 specific written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The program is ongoing, growing, and successful. It provides a benefit to the agriculture community, the economy of the state and the environment. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
CONSERVATION AND RESOURCE MANAGEMENT
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Sandberg by phone at 801-538-7030, by FAX at 801-538-9436, or by Internet E-mail at rsandberg@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

Agriculture and Food, Plant Industry
R68-20
Utah Organic Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33315
FILED: 01/12/2010

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 following statutes direct the department to write rules implementing and governing an organic standards and certification program: Subsection 4-2-2(1)(j), Section 4-3-2, Section 4-4-2, Subsection 4-5-17(1), Section 4-9-2, Section 4-11-3, Section 4-12-3, Subsection 4-14-6(5), Section 4-16-3, Subsection 4-32-7(7)(a)(ii), and Subsection 4-37-109(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Organic community.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The organic program continues to experience increases on an annual basis. There was some consideration given to eliminate the program due to budget cuts during the 2009 Legislative session. The consideration to eliminate was withdrawn due to overwhelming support for its continuation. As a result, all fees supporting the program were doubled and this was supported by the affected industry. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/12/2010

Commerce, Occupational and Professional Licensing
R156-38a
Residence Lien Restriction and Lien Recovery Fund Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33307
FILED: 01/07/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 38, Chapter 11, provides for the Residence Lien Recovery Fund. Section 38-11-103 provides that this chapter is to be administered by the Division of Occupational and Professional Licensing. Section 38-11-105 and Subsection 38-11-108(2) provide that the Division shall establish procedures by rule with respect to the Fund. This rule was enacted to clarify the provisions of Title 38, Chapter 11, with respect to the Residence Lien Recovery Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2005, it has been amended two times, once in 2005 and once in 2007. The Division has received no written comments with respect to 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: This rule should be continued for several reasons. First, the rule sets forth the evidentiary requirements for Lien Recovery Fund applications. Second, the rule codifies years of decisions so the public has a single, convenient reference for guidance on taking advantage of the Residence Lien Restriction and Lien Recovery Fund Act. Finally, the rule is the repository of instructions for all Fund activities. Without that guidance, the Fund's workings would become mired in inefficiency and contradiction.

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:
♦ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/07/2010

Commerce, Occupational and Professional Licensing
R156-60c
Professional Counselor Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33306
FILED: 01/07/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 60, Part 4, provides for the licensure of professional counselors and certified professional counselor interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-60-403(3) provides that the Professional Counselor Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the

duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 60, Part 4, with respect to professional counselors and certified professional counselor interns.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2005, it has been amended two times, once in 2006 and once in 2009. The Division has received no written comments with respect to 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: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 60, Part 4, with respect to professional counselors and certified professional counselor interns. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/07/2010

Human Services, Recovery Services
R527-40
Retained Support

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33301
FILED: 01/04/2010

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-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Under Section 62A-11-307, an obligee whose rights have been assigned must immediately deliver payments received by the obligor directly to ORS. If an obligee fails to follow these procedures, ORS may recover the assigned support that has been inappropriately retained by the obligee. This rule was adopted to provide a clear definition of "retained support" and to explain when the $50 pass-through payment would be appropriate for credit on support payments that were retained by the obligee.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

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 should continue because the laws and policies dealing with retained support are still in effect and the rule gives essential clarification, procedures, and explanation relating to the laws and policies. Recovery of assigned support is essential and is used to reimburse the state for funds spent on the family.

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

AUTHORIZED BY: Mark Brasher , Director

EFFECTIVE: 01/04/2010

Insurance, Administration
R590-88
Prohibited Transactions Between Agents and Unauthorized Multiple Employer Trusts

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33318
FILED: 01/13/2010

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 31A-2-201 authorizes the commissioner to write rules to implement the code. Specific rulemaking authority comes from Section 31A-23a-402. It authorizes the commissioner to set guidelines for determining what is unfair discrimination and allows the commissioner to make rules defining unfair marketing acts or practices. The rule identifies prohibited transactions of unauthorized multiple employer trusts and sets sanctions to be applied against those participating in these prohibited transactions.

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 in 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 protects consumers from agents and organizations selling insurance for unauthorized multiple employer trust. This insurance is not backed by a licensed insurer. The rule also provides sanctions against producers transacting this type of business. 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: 01/13/2010

Insurance, Administration
R590-128
Unfair Discrimination Based on the Failure to Maintain Automobile Insurance (Revised)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33319
FILED: 01/13/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written pursuant to Subsection 31A-23-302(3), which provides guidelines for determining what is unfair discrimination, and Subsection 31A-23-302(8), which allows the commissioner to make rules defining unfair marketing acts or practices.

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 not received any written comments regarding this rule in 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 needs to continue in force to prevent auto insurers from discriminating against an applicant of automobile insurance based solely upon the fact that they failed to maintain auto insurance for a period of time. An insurer must demonstrate that there are other reasons for denying coverage or increasing their premium, such as, poor driving record, or loss history.

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: 01/13/2010

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at cwinchester@utah.gov

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/14/2010

Judicial Conduct Commission, Administration
R595-1
General Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33322
FILED: 01/14/2010

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 78A-11-103(11) requires the Judicial Conduct Commission to adopt rules establishing its procedures.

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 the rule is necessary to allow the Judicial Conduct Commission to fulfill its constitutional and statutory obligations to investigate and resolve allegations of judicial misconduct.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
ROOM 703
2540 WASHINGTON BLVD
OGDEN, UT 84401
or at the Division of Administrative Rules.

Judicial Conduct Commission, Administration
R595-2
Administration

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33323
FILED: 01/14/2010

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 78A-11-103(11) requires the Judicial Conduct Commission to adopt rules establishing its procedures.

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 the rule is necessary to allow the Judicial Conduct Commission to fulfill its constitutional and statutory obligations to investigate and resolve allegations of judicial misconduct.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
ROOM 703
2540 WASHINGTON BLVD
OGDEN, UT 84401
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at cwinchester@utah.gov

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/14/2010

Judicial Conduct Commission, Administration
R595-3
Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33324
FILED: 01/14/2010

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 78A-11-103(11) requires the Judicial Conduct Commission to adopt rules establishing its procedures.

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 the rule is necessary to allow the Judicial Conduct Commission to fulfill its constitutional and statutory obligations to investigate and resolve allegations of judicial misconduct.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
ROOM 703
2540 WASHINGTON BLVD
OGDEN, UT 84401
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at cwinchester@utah.gov

AUTHORIZED BY: Colin Winchester, Director

EFFECTIVE: 01/14/2010

Judicial Conduct Commission, Administration
R595-4
Sanctions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33325
FILED: 01/14/2010

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 78A-11-103(11) requires the Judicial Conduct Commission to adopt rules establishing its procedures.

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 the rule is necessary to allow the Judicial Conduct Commission to fulfill its constitutional and statutory obligations to investigate and resolve allegations of judicial misconduct.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
JUDICIAL CONDUCT COMMISSION
ADMINISTRATION
ROOM 703
2540 WASHINGTON BLVD
OGDEN, UT 84401
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Colin Winchester by phone at 801-626-3359, by FAX at 801-626-3390, or by Internet E-mail at cwinchester@utah.gov

EFFECTIVE: 01/14/2010

AUTHORIZED BY: Colin Winchester, Director

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

Agriculture and Food
Plant Industry
No. 33080 (AMD): R68-7. Utah Pesticide Control Act
Published: 11/15/2009
Effective: 01/04/2010

Regulatory Services
No. 33074 (AMD): R70-101. Bedding, Upholstered Furniture and Quilted Clothing
Published: 11/15/2009
Effective: 01/11/2010

Capitol Preservation Board (State)
Administration
No. 33151 (AMD): R131-2-11. Fees and Charges During Legislative Session
Published: 12/01/2009
Effective: 01/07/2010

Commerce
No. 33150 (AMD): R151-46b. Department of Commerce Administrative Procedures Act Rules
Published: 12/01/2009
Effective: 01/07/2010

No. 33149 (AMD): R151-46b-5. General Provisions
Published: 12/01/2009
Effective: 01/07/2010

Real Estate
No. 33148 (NEW): R162-110. Trainee Registration
Published: 12/01/2009
Effective: 01/07/2010

Securities
No. 33006 (AMD): R164-4-9. Exemptions From Licensing Requirements for Certain Investment Advisers
Published: 10/15/2009
Effective: 01/06/2010

Education
Administration
No. 33147 (NEW): R277-111. Sharing of Curriculum Materials by Public School Educators
Published: 12/01/2009
Effective: 01/08/2010

Environmental Quality
Solid and Hazardous Waste
No. 32966 (AMD): R315-1-1. Definitions
Published: 10/01/2009
Effective: 01/15/2010

No. 32967 (AMD): R315-2. General Requirements - Identification and Listing of Hazardous Waste
Published: 10/01/2009
Effective: 01/15/2010

No. 32967 (CPR): R315-2. General Requirements - Identification and Listing of Hazardous Waste
Published: 12/01/2009
Effective: 01/15/2010

No. 32968 (AMD): R315-5. Hazardous Waste Generator Requirements
Published: 10/01/2009
Effective: 01/15/2010

No. 33144 (AMD): R315-7-27. Air Emission Standards for Equipment Leaks
Published: 12/01/2009
Effective: 01/15/2010

No. 32969 (AMD): R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 10/01/2009
Effective: 01/15/2010

No. 32970 (AMD): R315-13-1. Land Disposal Restrictions
Published: 10/01/2009
Effective: 01/15/2010

No. 32971 (AMD): R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces
Published: 10/01/2009
Effective: 01/15/2010

No. 32972 (AMD): R315-50-1. Instructions for Completion of Uniform Hazardous Waste Manifest
Published: 10/01/2009
Effective: 01/15/2010

No. 33145 (AMD): R315-316. Infectious Waste Requirements
Published: 12/01/2009
Effective: 01/15/2010

Governor
Criminal and Juvenile Justice (State Commission on)
No. 33073 (NEW): R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates
Published: 11/15/2009
Effective: 01/04/2010

Health
Epidemiology and Laboratory Services, Laboratory Services
No. 33087 (AMD): R438-12-2. Authorized Individual - Qualifications
Published: 11/15/2009
Effective: 01/06/2010

Health Systems Improvement, Emergency Medical Services
No. 33125 (AMD): R426-14-301. Application, Department Review, and Issuance
Published: 11/15/2009
Effective: 01/11/2010

Health Systems Improvement, Licensing
No. 33137 (AMD): R432-3. General Health Care Facility Rules Inspection and Enforcement
Published: 11/15/2009
Effective: 01/05/2010

No. 33119 (AMD): R432-10-8. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33120 (AMD): R432-11-7. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33121 (AMD): R432-12-25. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33122 (AMD): R432-13-8. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33123 (AMD): R432-14-6. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33118 (AMD): R432-16-16. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33136 (AMD): R432-35-8. Penalties
Published: 11/15/2009
Effective: 01/05/2010

No. 33135 (AMD): R432-700-30. Home Health - Personal Care Service Agency
Published: 11/15/2009
Effective: 01/05/2010

Regents (Board Of)
University of Utah, Administration
No. 33146 (NEW): R805-4. Illegal, Harmful and Disruptive Behavior on University of Utah Property
Published: 12/01/2009
Effective: 01/07/2010

Workforce Services
Employment Development
No. 33017 (AMD): R986-700. Child Care Assistance
Published: 10/15/2009
Effective: 01/13/2010

Unemployment Insurance
No. 33114 (AMD): R994-106-104. Determining the Paying State
Published: 11/15/2009
Effective: 01/13/2010

End of the Notices of Rule Effective Dates Section

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

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2010, including notices of effective date received through January 15, 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/).