

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed April 02, 2011, 12:00 a.m. through April 15, 2011, 11:59 p.m.

Number 2011-9  
May 01, 2011

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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 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

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

Division of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

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

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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## NOTICES OF PROPOSED RULES

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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 April 02, 2011, 12:00 a.m., and April 15, 2011, 11:59 p.m. are included in this, the May 01, 2011 issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least May 31, 2011. 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 August 29, 2011, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

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**The Proposed Rules Begin on the Following Page**

## Agriculture and Food, Animal Industry

### R58-11

#### Slaughter of Livestock

##### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34694

FILED: 04/14/2011

##### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to change definitions and to modify the rule in response to changes to Title 4, Chapter 32, that occurred in the 2011 legislative session under S.B. 32. (DAR NOTE: S.B. 32 (2011) is found at Chapter 383, Laws of Utah 2011, and will be effective 05/10/2011.)

**SUMMARY OF THE RULE OR CHANGE:** The changes include: changing or removing definitions; removing a reference to personal property; and clarifying the requirements for a slaughter area.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-32-8

##### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The changes to the rule will not affect the state budget. The program is currently being funded by general fund money. The Division does not anticipate that the changes to the rule will change the current funding level beyond inflationary costs associated with the general fund.

♦ **LOCAL GOVERNMENTS:** There are no costs to local government at this time under the current rule. With the changes in the rule, there may be an increased cost to local governments as they may be asked to monitor compliance of slaughter areas that are used heavily.

♦ **SMALL BUSINESSES:** There is no cost to small businesses and may reduce travel costs as animals can be slaughtered at a central location.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost to other persons and may reduce travel costs as animals can be slaughtered at a central location.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no change in cost to come under compliance.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes made in the rule are the result of recent changes in Title 4, Chapter 32, made by the legislature in the last session and the Division does see that the changes

made in the rule will increase the cost to the state to maintain this program. Businesses may actually have reduced costs now that animals can be slaughtered at a different location other than the animal owner's property.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Leonard Blackham, Commissioner

##### R58. Agriculture and Food, Animal Industry.

##### R58-11. Slaughter of Livestock.

##### R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

##### R58-11-2. Definitions.

A. "Adulterated" - As defined in Section 4-32-3(1) [~~"Department"~~ - Utah Department of Agriculture and Food].

B. "Bill of Sale for Hides" - A hide release or some other formal means of transferring the title of hides [~~"Commissioner"~~ - Commissioner of Agriculture and Food or his representative].

C. "Business" - An individual or organization receiving remuneration for services.

D. "Commissioner" - Commissioner of Agriculture and Food or his representative [~~"Food"~~ - Product intended for human consumption].

E. "Custom Slaughter-Release Permit" - A permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered [~~"Owner"~~ - A person holding legal title to the animal].

F. "Department" - Utah Department of Agriculture and Food [~~"Farm Custom Slaughtering"~~ - The slaughtering, skinning and preparing of livestock by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal. Unless express prior permission is given by a department representative the place of slaughter shall be on the animal's owner's property].

G. "Detain or Embargo" - Holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership [~~"Permit"~~ - Official written permission by the Utah

~~Department of Agriculture and Food to do farm custom slaughtering].~~

H. "Emergency Slaughter" - Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food["Permittee" - A person who possesses a valid farm custom slaughtering permit].

I. "Farm Custom Slaughtering" - The slaughtering, skinning and preparing of livestock by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.["Immediate Family" - Those living together in a single dwelling unit and/or their sons and daughters.]

J. "Food" - Product intended for human consumption["Property Owner" - A person having legal title to or who is a tenant operator, or lessee of such property].

K. "Immediate Family" - Those living together in a single dwelling unit and/or their sons and daughters["Adulterated" - As outlined in 9 C.F.R. 301.2, 1 Through 8; 381.1 (4), January 1, 2007 edition].

L. "License" - A license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

~~[ - L. "Misbranded" - as outlined in 9 C.F.R. 301.2 1 Through 12, Sections 316.6 and 317.16; 381.1(31), January 1, 2007 edition.~~

M. "Licensee" - A person who possesses a valid farm custom slaughtering license["Detain or Embargo" - Holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership].

N. "Misbranded" - As defined in Section 4-32-3(20) ["Bill of Sale for Hides" - A hide release or some other formal means of transferring the title of hides].

O. "Owner" - A person holding legal title to the animal["Emergency Slaughter" - Emergency Slaughter is no longer allowed even for ambulatory injured cattle, 9 Code of Federal Regulations 311.27 amended. 9 CFR January 1, 2007 edition 309.2(a)(b) Non-ambulatory disabled cattle are not allowed to enter any Federal, State, or Custom Exempt Facility. Cattle Prohibited From Slaughter: Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions. They are not allowed to enter any plant].

~~[ - P. "Custom Slaughter Release Permit" - A permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered. The brand inspection certificate will include the age of each beef slaughtered that is recorded on the brand certificate. The original copy will be retained by the brand inspector. Copies will accompany the farm custom slaughter tag. A copy will be sent to the Department by the permittee with the Farm Custom Slaughter Tags and a copy will serve as the bona fide bill of sale for the hide.~~

### **R58-11-3. Registration and License[Permit] Issuance.**

A. Farm Custom Slaughtering License[Permit].

1. Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a license[permit] will be made on a department form for a Farm Custom Slaughter License[Permit]. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Licenses[Permits] will be valid for the calendar year (January 1 to December 31). Each licensee[permittee] will be required to re-apply for a license[permit] every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

2. Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has completed and signed the registration form.

3. A fee of \$75 must be paid prior to license[permit] issuance.

### **R58-11-4. Equipment and Sanitation Requirements.**

A. Unit of vehicle and equipment used for farm custom slaughtering:

1. The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

2. A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

3. Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

a. A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

4. A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

5. A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

6. Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

7. Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

8. All inedible products and offal will be denatured with either an a[A]pproved denaturing agent or by use of pounce material as a natural denaturing agent[shall be available for use during all processing times. Denaturing shall be accomplished as outlined in 9 C.F.R. 325.13, January 1, 2007 edition].

9. When a ~~licensee~~[~~permittee~~] transports uninspected meat to an establishment for processing, he shall:

- a. do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and
- b. transport the meat in such a way that it is properly protected; and
- c. deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

10. Sanitation.

1. Unit or Vehicle.

a. The unit or vehicle must be thoroughly cleaned after each ~~daily use~~[~~slaughter~~].

b. All food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.

c. Carcasses must be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.

2. Equipment.

a. All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

b. Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

3. Inedibles.

a. Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must be clearly marked (Inedible Not For Human Consumption in letters not less than 4 inches in height).

b. Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

4. Personal Cleanliness.

a. Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

b. Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

c. No ~~licensee~~[~~permittee~~] with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

d. Hand wash facilities shall be used as needed to maintain good personal hygiene.

**R58-11-5. Slaughtering Procedures.**

A. Slaughter Area[~~---~~]

1. Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

2. If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating water sources.

3. Hides, viscera, blood, pounce material, and all tissues must be removed and disposed at a rendering facility, landfill, composting or by burial as allowed by law.

B. Humane Slaughter - [~~Slaughtered~~] ~~Δ~~[~~a~~]nimals shall be rendered insensible to pain by a single blow, or gun shot or

electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

C. Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

D. Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

E. Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

F. Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

**R58-11-6. Identification and Records.**

A. Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any ~~licensee~~[~~holder~~]~~slaughter (including permittees)]~~ to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at time of slaughter.

1. Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

2. Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of \$1 each. These tags will be required on beef, pork, and sheep.

B. Records.

1. The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag will record the following information:

a. An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement must be signed by the owner or ~~designee~~[~~Signature~~].

b. In addition to this affidavit, the following information will be recorded:

- (1) date;
- (2) owner's name, address and telephone number;
- (3) animal description including brands and marks;
- (4) Farm Custom Slaughter tag number.



2. The Farm Custom Slaughter tag must record the following information:

- a. date;
- b. owner's name, address and telephone number;
- c. location of slaughter;
- d. name of licensee[permittee];
- e. licensee[permittee] permit number; and
- f. carcass destination.

3. Prior to slaughter the licensee[permittee] shall:

a. Prepare the Farm Custom Slaughter tag with complete and accurate information;

(1) One tag shall stay in the licensee [permit] holder's file for at least one year.

(2) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the licensee[permittee].

(3) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(4) Hide Purchase - Licensee[Permittees] receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

**R58-11-7. Enforcement Procedures.**

A. Livestock Slaughtering Permit:

1. It shall be unlawful for any person to slaughter or assist in slaughtering livestock as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering License[Permit] issued to him by the Department.

2. Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a license[permit].

3. License[Permit] may be renewed annually and shall expire on the 31st of December of each year.

B. Suspension of license[permit] - license[permit] may be suspended whenever:

1. The Department has reason to believe that an eminent public health hazard exists;

2. Insanitary conditions are such that carcasses would be rendered adulterated and or contaminated.

3. The license[permit] holder has interfered with the Department in the performance of its duties;

4[3]. The licensee[permittee] violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.

C. Warning letter - In instances where a violation may have occurred a warning letter may be sent to the licensee[permittee] which specifies the violations and affords the holder a reasonable opportunity to correct them.

D. Hearings - Whenever a licensee[permittee] has been given notice by the Department that suspected violations may have occurred or when a license[permit] is suspended he may have an opportunity for a hearing to state his views before the Department.

E. Reinstatement of Suspended Permit - Any person whose license[permit] has been suspended may make application for the purpose of reinstatement of the license[permit]. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the license[permit] may be reinstated.

F. Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a licensee[permittee] which does not meet the requirements of these rules may be detained or embargoed.

G. Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

**KEY: food inspections, slaughter, livestock**

**Date of Enactment or Last Substantive Amendment: [November 8, 2007]2011**

**Notice of Continuation: August 25, 2010**

**Authorizing, and Implemented or Interpreted Law: 4-32-8**

Commerce, Real Estate  
**R162-2e**  
 Appraisal Management Company  
 Administrative Rules

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 34704  
 FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is: 1) to require an appraisal management company to register with the Utah Division of Corporations prior to registering with the Division of Real Estate; and 2) to require disclosure of, and to impose certain restrictions regarding, fees and costs that will be charged by an appraisal management company to an appraiser.

**SUMMARY OF THE RULE OR CHANGE:** In order to obtain an appraisal management company registration from the Division, an entity must provide a certificate of existence from the Utah Division of Corporations. If an appraisal management company charges a cost or fee to an appraiser in conjunction with an appraisal assignment, the cost or fee must be disclosed at the time the assignment is offered, or it may not be charged. An appraisal management company may not charge to an appraiser a cost or fee that is inflated above the actual cost of a service provided by a third party or that is charged for a service not actually performed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2e-103 and Section 61-2e-304

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule amendments do not create a new program for the Division to implement or administer. Any budget needed for enforcing the specific requirements proposed in these amendments is minimal and is already in place. Therefore, no impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local governments are required neither to comply with nor to enforce these rule amendments. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** A small appraisal management business will be required to register with the Utah Division of Corporations and pay the associated registration fees. The Division considers that this registration is already mandated by statute (see Section 16-10a-1501); this amendment is proposed simply to state that the Division will not issue a registration absent compliance with that statute. In addition, under the fee restrictions proposed, a small appraisal management business that realizes revenue by charging appraisers inflated or unearned fees will lose that revenue. The Division considers this regulation to be reasonable, as it parallels federal restrictions applicable to the mortgage industry.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply specifically to appraisal management businesses. It is anticipated that no other persons will be affected or will experience a fiscal impact.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Affected persons will pay the costs of registration with the Utah Division of Corporations and will lose any revenues associated with the charging of unearned or inflated fees to appraisers.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated from this rule filing, which clarifies for licensees that a business registration is required to conduct business as an appraiser management business, and that charging for services not rendered or inflating charges is not permitted.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: Deanna Sabey, Director

**R162. Commerce, Real Estate.**

**R162-2e. Appraisal Management Company Administrative Rules.**

**R162-2e-201. Registration Required - Qualification for Registration.**

(1) The division may not register or renew the registration of an AMC that fails to:

(a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";~~[-or]~~

(b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence; or

~~\_\_\_\_\_ [(b)](c)~~ comply with any provision of these rules.

(2) The division shall schedule a hearing before the board for an AMC that:

(a)(i) applies for registration or renewal of registration;  
(ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and

(iii) the division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the AMC's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

(3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.

(b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:

(i) at the time of registration; or

(ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.

(c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:

(i) in writing; and

(ii) within ten business days of making the change.

**R162-2e-304. Required Disclosure.**

In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(1) at the time an assignment is offered, disclose to the appraiser:

(a) the total amount that the appraiser may expect to earn from the assignment[~~;~~];

~~(i) disclosed as a dollar amount; and  
(ii) delineating any fees or costs that will be charged by the AMC to the appraiser;~~

~~(b)(i) the property address;  
(ii) the legal description; or  
(iii) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;~~

(c) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(d) any known deadlines within which the assignment must be completed;

(2) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(3) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(a) the total fee that will be collected by the AMC for the assignment; and

(b) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(4) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

**R162-2e-401. Unprofessional Conduct.**

(1) An AMC commits unprofessional conduct if the AMC:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;  
(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or  
(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report;~~[or]~~

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or  
(ii) any other real property price or value estimation that does not qualify as an appraisal[~~;~~]; or

~~(f) charges an appraiser:  
(i) for a service not actually performed; or  
(ii) for a fee or cost that:~~

~~(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or~~

~~(B) exceeds the actual cost of a service provided by a third party.~~

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-107.1.6 if the AMC requires the appraiser to:

(a) accept full payment; and  
(b) remit a portion of the full payment back to the AMC.

**KEY: appraisal management company, conduct, registration  
Date of Enactment or Last Substantive Amendment:  
[November 10, 2010]2011  
Authorizing, and Implemented or Interpreted Law: 61-2e-102;  
61-2e-103; 61-2e-304; 61-2e-305**

**Commerce, Real Estate  
R162-104-14  
Special Circumstances**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 34703  
FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to require re-evaluation and approval of the experience required for licensure or certification under a segmented application in specific circumstances.

**SUMMARY OF THE RULE OR CHANGE:** If an applicant's experience was approved under a segmented application, but the applicant did not pass the applicable licensing or certification examination by 12/31/2010, the applicant has until 12/31/2011 to complete any additional education that is required under new standards promulgated by the Appraiser Qualifications Board, pass the examination, and submit a completed application for licensure or certification. An applicant who is not able to meet this deadline must submit

new appraisals for review by the experience review committee in addition to completing required education, passing the associated examination, and submitting a complete application.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This rule amendment does not create a new program or regulation for the division to administer or enforce. It simply establishes a deadline after which previously-approved experience will be considered too stale to qualify an individual for licensure or certification. As such, no impact to the state budget is anticipated.

♦ LOCAL GOVERNMENTS: Local governments are required neither to comply with nor to enforce this rule amendment. Therefore, no fiscal impact to local government is anticipated.

♦ SMALL BUSINESSES: This rule amendment applies to an individual seeking licensure or certification as an appraiser. Small businesses are not affected, and no fiscal impact to small businesses is anticipated.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are 19 individuals who failed to pass their licensing or certification examinations after having their experience approved under a segmented application. These individuals will have to submit new appraisals for review if, by 12/31/2011, they are not able to meet the licensing or certification requirements that went into effect on 01/01/2011. This requirement will mean some additional effort from individuals who must submit new appraisals; however, no financial burden is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must submit new appraisals for review prior to sitting for a licensing or certification examination. Compliance will not pose any financial burden.

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 addresses the procedure for license applications in a transitional phase after changes in licensing requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: Deanna Sabey, Director

**R162. Commerce, Real Estate.**

**R162-104. Experience Requirement.**

**R162-104-14. Special Circumstances.**

104.14 Applicants having experience in categories other than those shown on the Appraisal Experience Hours Schedules and applicants who believe the Experience Hours Schedules do not adequately reflect their experience or the complexity or time spent on an appraisal may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of hours for the alternate experience.

104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the scope of authority limitations in Subsection R162-105.3.

104.14.2(a) If an applicant's education was approved prior to January 1, 2008, and his or her experience was approved prior to January 1, 2011 (under a system referred to by the division and industry as a segmented application), but the applicant did not pass the applicable examination required for licensure or certification by December 31, 2010, the applicant shall, by December 31, 2011:

(i) complete all additional education as required under the AQB standards;

(ii) pass the required examination applicable to the license or certification sought by the individual; and

(iii) submit a complete application to the division.

(b) An applicant who fails to comply with the December 31, 2011 deadline established in Subsection (a) shall:

(i) complete all additional education as required under the AQB standards;

(ii) pass the required examination applicable to the license or certification sought by the individual;

(iii) submit recent appraisals that meet the requirements of all applicable statutes and rules for review by the experience review committee; and

(iv) submit a complete application to the division according to deadlines established in Subsection R162-102.1.3.1.

**KEY: real estate appraisals, experience requirement**

**Date of Enactment or Last Substantive Amendment: [January 27, 2010]2011**

**Notice of Continuation: February 15, 2007**

**Authorizing, and Implemented or Interpreted Law: 61-2b-1 through 61-2b-40**

**Environmental Quality, Air Quality  
R307-103  
Administrative Procedures**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 34682  
FILED: 04/13/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act. The current Rule R307-103 is in need of updating to accommodate the statutory change requiring appointment of an administrative law judge for many proceedings and to address matters that have come up in the course of past administrative proceedings. The Attorney General's Office decided that rather than each division in the Department of Environmental Quality having its own administrative procedures rule, the department would enact a rule that would apply department-wide. In DAR No. 34472, the Department Executive Director Amanda Smith, the Air Quality Board, the Water Quality Board, the Radiation Control Board, the Drinking Water Board, and Solid and Hazardous Waste Control Board proposed the creation of the department Rule R305-6. To incorporate Rule R305-6 into the Division of Air Quality's rules, Rule R307-103 needs to be amended to reference Rule R305-6 for all administrative procedures. (DAR NOTE: The proposed new Rule R305-6 was published under DAR No. 34472 in the March 15, 2011, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R307-103 is amended to reference Rule R306-5 for all administrative procedures. All administrative procedures located in Rule R307-103 are located in the new Rule R305-6 with changes. R305-6 makes many changes to the current rule, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No cost or savings is anticipated for state budget as this amendment does not create any new requirements.
- ◆ LOCAL GOVERNMENTS: No cost or savings is anticipated for local government as this amendment does not create any new requirements.
- ◆ SMALL BUSINESSES: No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost or savings is anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or savings is anticipated for affected persons as this amendment does not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No cost or savings is anticipated for businesses as this amendment does not create any new requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 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](mailto:kkreykes@utah.gov)
- ◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at [llockhart@utah.gov](mailto:llockhart@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2011

AUTHORIZED BY: Bryce Bird, Acting Director

**R307. Environmental Quality, Air Quality.**

**[R307-103. Administrative Procedures.**

**R307-103-1. Scope of Rule.**

~~(1) This rule R307-103 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 2, Utah Air Conservation Act, and governed by Title 63G, Chapter 4, the Utah Administrative Procedures Act.~~

~~\_\_\_\_\_ (2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 2, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.~~

~~\_\_\_\_\_ (3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63G-4-102(2)(k) and are not governed by R307-103-3 through R307-103-14 of this Rule. Initial orders and notices of violation are further described in R307-103-2(1).~~

~~\_\_\_\_\_ (4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R307-103.~~

~~\_\_\_\_\_ (5) The Utah Administrative Procedures Act and this rule R307-103 also govern any other formal adjudicative proceeding before the Air Quality Board.~~

### **R307-103-2. Initial Proceedings.**

~~\_\_\_\_\_ (1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:~~

~~\_\_\_\_\_ (a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;~~

~~\_\_\_\_\_ (b) notices of violation and orders associated with notices of violation;~~

~~\_\_\_\_\_ (c) orders to comply and orders to cease and desist;~~

~~\_\_\_\_\_ (d) certification for tank vapor tightness testing under R307-342;~~

~~\_\_\_\_\_ (e) certification of asbestos contractors under R307-801;~~

~~\_\_\_\_\_ (f) fees imposed for major source reviews under R307-414;~~

~~\_\_\_\_\_ (g) assessment of other fees except as provided in R307-103-14(7);~~

~~\_\_\_\_\_ (h) eligibility of pollution control equipment for tax exemptions under R307-120 and R307-121;~~

~~\_\_\_\_\_ (i) requests for variances, exemptions, and other approvals;~~

~~\_\_\_\_\_ (j) requests or approvals for experiments, testing or control plans; and~~

~~\_\_\_\_\_ (k) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840.~~

~~\_\_\_\_\_ (2) Effect of Initial Orders and Notices of Violation.~~

~~\_\_\_\_\_ (a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.~~

~~\_\_\_\_\_ (b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.~~

~~\_\_\_\_\_ (c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.~~

### **R307-103-3. Contesting an Initial Order or Notice of Violation.**

~~\_\_\_\_\_ (1) Procedure. Initial orders and notices of violation, as described in R307-103-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Air Quality~~

~~Board, Division of Air Quality, PO Box 144820, Salt Lake City, Utah 84114-4820.~~

~~\_\_\_\_\_ (2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of 63G-4-201(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R307-103-6(3) to bring the requested action.~~

~~\_\_\_\_\_ (3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.~~

~~\_\_\_\_\_ (4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.~~

### **R307-103-4. Designation of Proceedings as Formal or Informal.**

~~\_\_\_\_\_ (1) Contest of an initial order or notice of violation resulting from proceedings described in R307-103-2(1) shall be conducted as a formal proceeding.~~

~~\_\_\_\_\_ (2) The board in accordance with 63G-4-202(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.~~

### **R307-103-5. Notice of and Response to Request for Agency Action.**

~~\_\_\_\_\_ (1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with 63G-4-201(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.~~

~~\_\_\_\_\_ (2) The Notice shall include a designation of parties under R307-103-6(4), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63G-4-204.~~

### **R307-103-6. Parties and Intervention.**

~~\_\_\_\_\_ (1) Determination of a Party. The following persons are parties to an adjudicative proceeding:~~

~~\_\_\_\_\_ (a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by initial order of the executive secretary;~~

~~\_\_\_\_\_ (b) The executive secretary of the board;~~

~~\_\_\_\_\_ (c) All persons to whom the board has granted intervention under R307-103-6(2); and~~

~~\_\_\_\_\_ (d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.~~

~~\_\_\_\_\_ (2) Intervention.~~

~~\_\_\_\_\_ (a) A Petition to Intervene shall meet the requirements of 63G-4-207. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.~~

~~(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R307-103-6(2)(c).~~

~~(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63G-4-201 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.~~

~~(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.~~

~~(e) A Petition to Intervene shall be granted if the requirements of 63G-4-207(2) are met.~~

~~(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.~~

~~(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.~~

~~(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.~~

### **R307-103-7. Conduct of Proceedings.**

~~(1) Role of Board.~~

~~(a) The board is the "agency head" as that term is used in Title 63G, Chapter 4. The board is also the "presiding officer," as that term is used in Title 63G, Chapter 4, except:~~

~~(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and~~

~~(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.~~

~~(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.~~

~~(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.~~

~~(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.~~

~~(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.~~

~~(5) Pre-hearing Documents.~~

~~(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.~~

~~(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.~~

~~(6) Briefs.~~

~~(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63G-4-208, at least seven business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.~~

~~(b) Post hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.~~

~~(7) Schedules.~~

~~(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.~~

~~(b) The presiding officer shall establish a schedule for the matters described in (a) above.~~

~~(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.~~

~~(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.~~

### **R307-103-8. Hearings.**

~~The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.~~

### **R307-103-9. Orders.**

~~(1) Recommended Orders of Appointed Presiding Officers.~~

~~\_\_\_\_\_ (a) Unless an appointed presiding officer is required by the terms of his appointment to issue a final order, he shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.~~

~~\_\_\_\_\_ (b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.~~

~~\_\_\_\_\_ (c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.~~

~~\_\_\_\_\_ (d) The board may modify this procedure with notice to all parties.~~

~~\_\_\_\_\_ (2) Final Orders. The board shall issue a final order which shall include the information required by 63G-4-208 or 63G-4-203(1)(i).~~

#### **R307-103-10. Stays of Orders.**

~~\_\_\_\_\_ (1) Stay of Orders Pending Administrative Adjudication.~~

~~\_\_\_\_\_ (a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.~~

~~\_\_\_\_\_ (b) The board may order a stay of the order if the party seeking the stay demonstrates the following:~~

~~\_\_\_\_\_ (i) The party seeking the stay will suffer irreparable harm unless the stay is issued;~~

~~\_\_\_\_\_ (ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;~~

~~\_\_\_\_\_ (iii) The stay, if issued, would not be adverse to the public interest; and~~

~~\_\_\_\_\_ (iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.~~

~~\_\_\_\_\_ (2) Stay of the Order Pending Judicial Review.~~

~~\_\_\_\_\_ (a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.~~

~~\_\_\_\_\_ (b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R307-103-10(1)(b) are met.~~

#### **R307-103-11. Reconsideration.**

~~\_\_\_\_\_ No agency review under 63G-4-301 is available. A party may request reconsideration of an order of the presiding officer as provided in 63G-4-302.~~

#### **R307-103-12. Disqualification of Board Members or Other Presiding Officers.**

~~\_\_\_\_\_ (1) Disqualification of Board Members or Other Presiding Officers.~~

~~\_\_\_\_\_ (a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding~~

~~officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:~~

~~\_\_\_\_\_ (i) Is a party to the proceeding, or an officer, director, or trustee of a party;~~

~~\_\_\_\_\_ (ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;~~

~~\_\_\_\_\_ (iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;~~

~~\_\_\_\_\_ (iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or~~

~~\_\_\_\_\_ (v) Is likely to be a material witness in the proceeding.~~

~~\_\_\_\_\_ (b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.~~

~~\_\_\_\_\_ (c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.~~

~~\_\_\_\_\_ (2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.~~

#### **R307-103-13. Declaratory Orders.**

~~\_\_\_\_\_ (1) A request for a declaratory order may be filed in accordance with the provisions of 63G-4-503. The request shall be titled a petition for declaratory order and shall meet the requirements of 63G-4-201(3). The request shall also set out a proposed order.~~

~~\_\_\_\_\_ (2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R307-103-4(2) above.~~

~~\_\_\_\_\_ (3) The provisions of 63G-4-202 through 63G-4-302 apply to declaratory proceedings, as do the provisions of this Rule R307-103.~~

#### **R307-103-14. Miscellaneous.**

~~\_\_\_\_\_ (1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.~~

~~\_\_\_\_\_ (2) Extensions of Time. Except as otherwise provided by statute, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R307-103-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.~~

~~\_\_\_\_\_ (3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.~~

~~\_\_\_\_\_ (4) Appearances and Representation.~~

~~\_\_\_\_\_ (a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.~~

~~\_\_\_\_\_ (b) Any participant may be represented by legal counsel.~~



~~(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R307-103-3.~~

~~(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.~~

~~(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63G, Chapter 2, Utah Government Record Access and Management Act, and Title 63A, Chapter 12, Archives and Records Service, are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, or by this rule.]~~

**R307-103. Administrative Procedures.**

**R307-103-1. Administrative Procedures.**

Administrative proceedings under Utah Air Quality Act are governed by Rule R305-6.

**KEY:** air pollution, administrative procedures, hearings, administrative proceedings

**Date of Enactment or Last Substantive Amendment:** ~~[April 12, 2001]~~2011

**Notice of Continuation:** March 4, 2010

**Authorizing, and Implemented or Interpreted Law:** 63G-4

Environmental Quality, Air Quality  
**R307-120-8**  
 Appeal and Revocation

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 34689  
 FILED: 04/14/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The administrative procedures for the Division of Air Quality located in Rule R307-103 is undergoing a revision. Section R307-120-8 currently references Section R307-103-3. When the revision of Rule R307-103 become effective the reference in Section R307-120-8 will no longer be valid. This proposed rule amendment removes the "-3" from the reference and leaves the reference to Rule R307-103 as a general location to find the necessary information required by Section R307-120-8.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the reference of "R307-103-3" to "R307-103" located in Subsection R307-120-8(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-123 and Section 19-2-124 and Section 19-2-125 and Section 19-2-126 and Section 19-2-127

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No cost or savings is anticipated for state budget as this amendment does not create any new requirements.

◆ LOCAL GOVERNMENTS: No cost or savings is anticipated for local government as this amendment does not create any new requirements.

◆ SMALL BUSINESSES: No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost or savings is anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or savings is anticipated for affected persons as this amendment does not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No cost or savings is anticipated for businesses as this amendment does not create any new requirements.

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

ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 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](mailto:kkreykes@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2011

AUTHORIZED BY: Bryce Bird, Acting Director

**R307. Environmental Quality, Air Quality.**  
**R307-120. General Requirements: Tax Exemption for Air Pollution Control Equipment.**  
**R307-120-8. Appeal and Revocation.**

(1) A decision of the executive secretary of the Board may be reviewed by filing a Request for Agency Action as provided in R307-103[-3].

(2) Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

**KEY:** air pollution, tax exemptions, equipment

**Date of Enactment or Last Substantive Amendment:** [~~March 9, 2007~~]2011

**Notice of Continuation:** March 15, 2007

**Authorizing, and Implemented or Interpreted Law:** 19-2-123; 19-2-124; 19-2-125; 19-2-126; 19-2-127

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

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34559

FILED: 04/07/2011

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule was adopted by the Air Quality Board (AQB) in November 2003 and submitted to EPA as part of the Regional Haze SIP in December 2003. Amendments to Rule R307-204 were adopted by the AQB in April 2006, and submitted to EPA in May 2006. As part of a consent decree, EPA is required to take final action on both submittals by 12/30/2011. As part of EPA's review to meet the consent decree date, they identified a typographical error in the rule. DAQ staff and the Utah Smoke Management Coordinator confirmed the error and further identified an additional error, as well as redundant language that could be eliminated/removed. The amendment corrects the errors, removes redundant language and provides additional clarifying language.

SUMMARY OF THE RULE OR CHANGE: The changes correct typographical errors, remove redundant language, and provide additional clarifying language.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The rule is designed for federal agency fire experts who have detailed knowledge of the rule and have implemented the rule correctly even with the presence of these errors. There will be no change to implementation.

♦ LOCAL GOVERNMENTS: This rule is designed for federal fire management personnel.

♦ SMALL BUSINESSES: This rule is designed for federal fire management personnel.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is designed for federal fire management personnel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional cost, changes are corrections and clarifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No additional cost, changes are corrections and clarifications.

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

ENVIRONMENTAL QUALITY

AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at [jkarmazyn@utah.gov](mailto:jkarmazyn@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/06/2011

AUTHORIZED BY: Bryce Bird, Acting Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-204. Emission Standards: Smoke Management.**

##### **R307-204-3. Definitions.**

The following additional definitions apply only to R307-204.

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

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

"Burn Plan" means the plan ~~[required for each fire ignited by managers or allowed to burn]~~required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

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

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

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include ~~but are not limited to~~ safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

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

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

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

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn[ing]" means burning of individual piles.

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

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

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

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

"Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific pre-stated resource management objectives in predefined geographic areas.

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

"W[ildland]F[ire]I[mplementation]P[lan] Stage I" means the initial wildland fire strategy planning document. It is developed for fires less than 20 acres, with a low potential of spread and negative impacts. It must be completed within 8-hrs. of start.

"W[ildland]F[ire]I[mplementation]P[lan] Stage II" means a more detailed wildland fire strategy planning document. It is developed for fires greater than 20 acres that are [larger] more active fires with a greater potential for geographic extent. It must be completed within 24-hrs. of start.

#### **R307-204-5. Burn Schedule.**

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all prescribed fires including those smaller than ~~5~~20 acres:

(a) Project number and project name;

(b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;

(c) Total project acres, description of major fuels, type of burn, ignition method, and planned use of emission reduction techniques to support establishment of the annual emissions goal;

(d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

#### **R307-204-6. Small Prescribed Fires (de minimis).**

(1) A prescribed fire that covers less than 20 acres per burn shall be ignited only when the clearing index is 500 or greater.

(2) A prescribed fire that covers less than 20 acres per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 ~~[under a conditional basis]~~with approval of the executive secretary.

(a) The prescribed fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) ~~The land manager must~~~~[Additional reporting requirements]~~ include~~[ing]~~ hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

#### **R307-204-7. Small Prescribed Pile Fires (de minimis).**

(1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.

(2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 ~~[under a conditional basis]~~with approval of the executive secretary.

(a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) ~~The land manager must~~~~[Additional reporting requirements]~~ include~~[ing]~~ hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

**R307-204-8. Large Prescribed Fires.**

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit to the executive secretary a burn plan, including a fire prescription [~~upon request~~].

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

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

(d) Planned mitigation methods;

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

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

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

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

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

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

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

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

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves [~~or conditionally approves~~] the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the

burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed burn, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

**R307-204-9. Large Prescribed Pile Fires.**

(1) Burn Plan. For a prescribed pile fire that exceeds 30,000 cubic feet per day, the land manager shall submit to the executive secretary a burn plan, including a fire prescription [~~upon request~~].

(2) Pre-Burn Information. For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

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

(d) Planned mitigation methods;

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

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

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

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

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

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

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

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

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed pile fire requiring a burn plan shall be ignited before the executive secretary approves [~~or conditionally approves~~] the burn request.

(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques.

Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

#### **R307-204-10. Requirements for Wildland Fire Use Events.**

(1) Burn Approval Required.

(a) The land manager shall notify the executive secretary of any potential wildland fire use (WFU) event having a [~~wildland fire implementation plan~~] (WFIP) Stage I. The following information will be provided:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day;

(vi) Wilderness or Resource Natural Area designation, if applicable;

(vii) Distance to nearest community;

(viii) Elevation of fire; and

(ix) Fire's airshed number.

(b) The Land Managers shall notify the executive secretary of any potential wildland fire use [~~(WFU)~~] event covering more than 20 acres or having a WFIP Stage II due to higher potential for spread and negative impacts. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the executive secretary as it is being developed:

(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;

(ii) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.

(2) Daily Emission Report for wildland fire use event. By 0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

(a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;

(b) UTM coordinate;

(c) Dates and times of the start and end of the burn;

(d) Black acres by wildland fuel type;

(e) Estimated proportion of wildland fuel consumed by wildland fuel type;

(f) Proportion of moisture in the wildland fuel by size class;

(g) Emission estimates;

(h) Level of public interest or concern regarding smoke; and

(i) Conformance to the wildland fire implementation plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

**KEY: air quality, wildland fire, smoke, land manager**

**Date of Enactment or Last Substantive Amendment:** ~~April 7, 2006~~ **2011**

**Notice of Continuation:** March 4, 2010

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1) (a)

## Environmental Quality, Drinking Water R309-115 Administrative Procedures

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 34696

FILED: 04/14/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating

its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. Updating is needed for several reasons. A 2009 amendment to Section 19-1-301 required the Department to use administrative law judges for most administrative proceedings. Many of the updates are needed to incorporate that statutory change. Updates are also needed to make clarifications and improvements in administrative procedures, and changes based on the Department's accumulated experience with administrative procedures. The purpose of specifying administrative procedures generally is to ensure that all participants will have information about how administrative proceedings will be conducted, and to ensure that the proceedings are conducted fairly and efficiently.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules currently found in Rule R309-115 (Drinking Water) and several other places in DEQ's rules. In addition, the new Rule R305-6 makes many changes to Rule R309-115 and the other currently applicable rules, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the

budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals, partnerships, and other entities can be regulated entities that will be governed by the new rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

**R309. Environmental Quality, Drinking Water.**

**R309-115. Administrative Procedures.**

**R309-115-1. Administrative Procedures.**

Administrative proceedings under Utah Safe Drinking Water Act are governed by Rule R305-6.

**[R309-115-1. Scope of Rule.**

~~(1) This rule R309-115 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 4, Utah Safe Drinking Water Act, and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.~~

~~(2) The executive secretary, or his delegatee as authorized, may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 4, the recipient, or in some situations an intervenor, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.~~

~~(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63G-3 and are not governed by sections R309-115-3 through R309-115-14 of this Rule. Initial orders and notices of violation are further described in R309-115-2(1).~~

~~(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R309-115.~~

~~(5) The Utah Administrative Procedures Act and this rule R309-115 also govern any other formal adjudicative proceeding before the Drinking Water Board.~~

**R309-115-2. Initial Proceedings.**

~~(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:~~

~~(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;~~

~~(b) notices of violation and orders associated with notices of violation;~~

~~(c) orders to comply and orders to cease and desist;~~

~~(d) requests for variances, exemptions, and other approvals;~~

~~(e) certification of water supply operators under R309-300 and backflow technicians under R309-302;~~

~~(f) ratings of water systems under R309-400-4; and~~

~~(g) assessment of fees except as provided in R309-115-14(7).~~

~~(2) Effect of Initial Orders and Notices of Violation.~~

~~(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.~~

~~(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.~~

~~\_\_\_\_\_ (c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.~~

**R309-115-3. Contesting an Initial Order or Notice of Violation.**

~~\_\_\_\_\_ (1) Procedure. Initial orders and notices of violation, as described in R309-115-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Drinking Water Board, Division of Drinking Water, PO Box 144830, Salt Lake City, Utah 84114-4830.~~

~~\_\_\_\_\_ (2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of 63G-3. If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R309-115-6(3) to bring the requested action.~~

~~\_\_\_\_\_ (3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.~~

~~\_\_\_\_\_ (4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.~~

**R309-115-4. Designation of Proceedings as Formal or Informal.**

~~\_\_\_\_\_ (1) Contest of an initial order or notice of violation resulting from proceedings described in R309-115-2(1) shall be conducted as a formal proceeding.~~

~~\_\_\_\_\_ (2) The board in accordance with 63G-3 may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.~~

**R309-115-5. Notice of and Response to Request for Agency Action.**

~~\_\_\_\_\_ (1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with 63G-3. If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.~~

~~\_\_\_\_\_ (2) The Notice shall include a designation of parties under R309-115-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63G-3.~~

**R309-115-6. Parties and Intervention.**

~~\_\_\_\_\_ (1) Determination of a Party. The following persons are parties to an adjudicative proceeding:~~

~~\_\_\_\_\_ (a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;~~

~~\_\_\_\_\_ (b) The executive secretary of the board;~~

~~\_\_\_\_\_ (c) All persons to whom the board has granted intervention under R309-115-6(2); and~~

~~\_\_\_\_\_ (d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules:~~

~~\_\_\_\_\_ (2) Intervention:~~

~~\_\_\_\_\_ (a) A Petition to Intervene shall meet the requirements of 63G-3. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.~~

~~\_\_\_\_\_ (b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R309-115-6(2)(c).~~

~~\_\_\_\_\_ (c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63G-3 may file a Request for Agency Action at the same time the person files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.~~

~~\_\_\_\_\_ (d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.~~

~~\_\_\_\_\_ (e) A Petition to Intervene shall be granted if the requirements of 63G-3 are met.~~

~~\_\_\_\_\_ (3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.~~

~~\_\_\_\_\_ (4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.~~

~~\_\_\_\_\_ (5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.~~

**R309-115-7. Conduct of Proceedings.**

~~\_\_\_\_\_ (1) Role of Board:~~

~~\_\_\_\_\_ (a) The board is the "agency head" as that term is used in Title 63G, Chapter 3. The board is also the "presiding officer," as that term is used in Title 63G, Chapter 3 except:~~

~~\_\_\_\_\_ (i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and~~

~~\_\_\_\_\_ (ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.~~

~~\_\_\_\_\_ (b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.~~

~~\_\_\_\_\_ (2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.~~

~~\_\_\_\_\_ (3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.~~



~~(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.~~

~~(5) Pre-hearing Documents:~~

~~(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete a document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.~~

~~(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.~~

~~(6) Briefs.~~

~~(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63G-3, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.~~

~~(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.~~

~~(7) Schedules:~~

~~(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.~~

~~(b) The presiding officer shall establish a schedule for the matters described in (a) above.~~

~~(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.~~

~~(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.~~

#### **R309-115-8. Hearings.**

~~The presiding officer shall control the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.~~

#### **R309-115-9. Orders.**

~~(1) Recommended Orders of Appointed Presiding Officers:~~

~~(a) The appointed presiding officer shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.~~

~~(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.~~

~~(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.~~

~~(e) The board may modify this procedure with notice to all parties.~~

~~(2) Final Orders. The board shall issue a final order which shall include the information required by 63G-3.~~

#### **R309-115-10. Stays of Orders.**

~~(1) Stay of Orders Pending Administrative Adjudication:~~

~~(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.~~

~~(b) The board may order a stay of the order if the party seeking the stay demonstrates the following:~~

~~(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;~~

~~(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;~~

~~(iii) The stay, if issued, would not be adverse to the public interest; and~~

~~(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.~~

~~(2) Stay of the Order Pending Judicial Review:~~

~~(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.~~

~~(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R309-115-10(1)(b) are met.~~

#### **R309-115-11. Reconsideration:**

~~No agency review under 63G-3 is available. A party may request reconsideration of an order of the presiding officer as provided in 63G-3.~~

~~R309-115-12. Disqualification of Board Members or Other Presiding Officers.~~~~(1) Disqualification of Board Members or Other Presiding Officers.~~~~(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:~~~~(i) Is a party to the proceeding, or an officer, director, or trustee of a party;~~~~(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;~~~~(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;~~~~(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or~~~~(v) Is likely to be a material witness in the proceeding.~~~~(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.~~~~(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.~~~~(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.~~~~**R309-115-13. Declaratory Orders.**~~~~(1) A request for a declaratory order may be filed in accordance with the provisions of 63G-3. The request shall be titled a petition for declaratory order and shall meet the requirements of 63G-3. The request shall also set out a proposed order.~~~~(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R309-115-4(2) above.~~~~(3) The provisions of 63G-3 apply to declaratory proceedings, as do the provisions of this Rule R309-115.~~~~**R309-115-14. Miscellaneous.**~~~~(1) Modifying Requirements of Rules. For good cause, the requirements that would otherwise be imposed by these rules may be waived or modified by order of the presiding officer.~~~~(2) Extensions of Time. If requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R309-115-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.~~~~(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.~~~~(4) Appearances and Representation.~~~~(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.~~~~(b) Any participant may be represented by legal counsel.~~~~(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R309-115-3.~~~~(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.~~~~(7) Requests for Records. This rule does not govern requests for records or related assessment of fees. Requests for records and related assessments of fees for records are governed under the Title 63, Chapter 2, Utah Government Record Access and Management Act.~~~~(8) Grants and loans. Determinations with respect to grants and loans made under R309-700, R309-705 and R309-352 are not governed by Title 63G, Chapter 3, Utah Administrative Procedures Act, or by this rule.~~~~]  
**KEY:** [~~drinking water,~~] **administrative [procedures] proceedings, hearings, adjudicative proceedings**  
**Date of Enactment or Last Substantive Amendment:** [~~August 24, 2001~~] **2011**~~~~**Notice of Continuation:** March 22, 2010~~~~**Authorizing, and Implemented or Interpreted Law:** [~~63G-3; 19-4~~] **19-1-301; 63G-4-102; 63G-4-201 through 205; 63G-4-503**~~

## Environmental Quality, Drinking Water **R309-700-5** Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34552  
FILED: 04/04/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to revise the point system in Table 2 at Section R309-700-5, which is used to calculate interest rates for loans under the state revolving loan program administered by the Division of Drinking Water, to be more compatible with the goals of the Drinking Water Board.

**SUMMARY OF THE RULE OR CHANGE:** This rule defines the State's Drinking Water Revolving Loan Program; including definitions, eligible applicants, eligible projects, funding options, interest rate calculations, project priority calculations, etc.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 73, Chapter 10c

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Information used to calculate interest rates is already included in the funding application. The amended rule simply reallocates the points to be more compatible with the objectives of the drinking Water Board. No additional staff time and no costs or savings are anticipated.
- ◆ **LOCAL GOVERNMENTS:** None anticipated, data collection is already part of the application process.
- ◆ **SMALL BUSINESSES:** None anticipated, data collection is already part of the application process.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None anticipated, data collection is already part of the application process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None anticipated, data collection is already part of the application process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Kenneth Wilde by phone at 801-536-0048, by FAX at 801-536-4211, or by Internet E-mail at kwilde@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011**

**AUTHORIZED BY:** Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.**

**R309-700. Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program.**

**R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.**

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

- (a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;
- (b) The ability of the applicant to repay the loan or other project obligations;
- (c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and
- (d) Whether the drinking water project:
  - (i) meets a critical local or state need;
  - (ii) is cost effective;
  - (iii) will protect against present or potential hazards;
  - (iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;
  - (v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(vi) is needed as a result of an Emergency.  
 (e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
<b>1. PUBLIC HEALTH AND WELFARE (SELECT ONE)</b>	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
<b>2. WATER QUALITY RECORD (SELECT ONE)</b>	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9

D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
5. ABILITY TO MEET FUTURE DEMANDS (Select One)	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
6. OVERALL URGENCY (Select One)	
A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Table 2 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner

determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBI) as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records or the local median adjusted gross income (MAGI) is less than or equal to eighty-percent (80.0%) of the State's median adjusted gross income. When considering funding for planning and design grants and loans described in Sections R309-700-6, 7 and 8, the Board will consider whether or not the applicant's local MAGI meets the above criteria for hardship grant funding. If, in the judgment of the Board, the State Tax Commission data is insufficient, the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filings for a given zip code or city). The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	<del>[13]</del> 16
B. \$501 to \$1,500	<del>[11]</del> 14
C. \$1,501 to \$2,000	<del>[9]</del> 11
D. \$2,001 to \$3,000	<del>[6]</del> 8
E. \$3,001 to \$5,000	<del>[3]</del> 4
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	<del>[16]</del> 19
B. 71 to 80% of State Median AGI	<del>[14]</del> 16
C. 81 to 95% of State Median AGI	<del>[12]</del> 13
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	<del>[15]</del> 17
B. 15 to 25% of project funds	<del>[12]</del> 14
C. 10 to 15% of project funds	<del>[9]</del> 11
D. 5 to <del>[9]</del> 10% of project funds	<del>[6]</del> 8
E. 2 to <del>[4]</del> 5% of project funds	<del>[3]</del> 4
F. Less than 2% of project funds	0
4 <del>[-and-5]</del> . ABILITY TO REPAY LOAN:	
4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
A. Greater than 2.50% of local median AGI	<del>[15]</del> 16
B. 2.01 to 2.50% of local median AGI	<del>[11]</del> 12

- C. 1.51 to 2.00% of local median AGI [7]8
- D. 1.01 to 1.50% of local median AGI 3
- E. 0 to 1.00% of local median AGI 0

[5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)

- A. Greater than 12% of fair market value 15
- B. 8.1 to 12% of fair market value 12
- C. 4.1 to 8.0% of fair market value 9
- D. 2.1 to 4.0% of fair market value 6
- E. 1.0 to 2.0% of fair market value 3
- F. Less than 1% of fair market value 0

6]5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)

- A. [h]Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget[+] and fund has already accumulated a minimum of 10[25]% of said annual DW budget in this reserve fund. 5
- B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund. 5
- [B-]C. [i]Is creating or enhancing a regionalization [p]plan 16
- [E-]D. [h]Has a rate structure encouraging conservation [5]6

TOTAL POSSIBLE POINTS FOR FINANCIAL NEED 100

- (b) Optimizing return on the security account while still allowing the project to proceed.
- (c) Local political and economic conditions.
- (d) Cost effectiveness evaluation of financing alternatives.
- (e) Availability of funds in the security account.
- (f) Environmental need.
- (g) Other criteria the Board may deem appropriate.

**KEY: loans, interest buy-downs, credit enhancements, hardship grants**  
**Date of Enactment or Last Substantive Amendment: [January 28, 2009]2011**  
**Notice of Continuation: March 23, 2010**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104; 73-10c**

**Environmental Quality, Drinking Water**  
**R309-705-6**  
**Applicant Priority System and Selection**  
**of Terms of Assistance**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34553  
 FILED: 04/04/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to revise the point system in Table 2 in Section R309-705-6, which is used to calculate interest rates for loans under the federal revolving loan program administered by the Division of Drinking Water, to be more compatible with the goals of the Drinking Water Board.

**SUMMARY OF THE RULE OR CHANGE:** This rule defines the federal Drinking Water Revolving Loan Program as administered by the Division of Drinking Water including; definitions, eligible applicants, eligible projects, funding options, interest rate calculations, project priority calculations, etc.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 USC 300j et seq. and Title 73, Chapter 10c

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Information used to calculate interest rates is already included in the funding application. The amended rule simply reallocates the points to be more compatible with the objectives of the Drinking Water Board. No additional staff time and no additional costs or savings are anticipated.
- ◆ **LOCAL GOVERNMENTS:** None anticipated, data collection is already part of the application process.
- ◆ **SMALL BUSINESSES:** None anticipated, data collection is already part of the application process.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None anticipated, data collection is already part of the application process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None anticipated, data collection is already part of the application process.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above.

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Kenneth Wilde by phone at 801-536-0048, by FAX at 801-536-4211, or by Internet E-mail at kwilde@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.**  
**R309-705. Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program.**  
**R309-705-6. Applicant Priority System and Selection of Terms of Assistance.**

(1) Priority Determination.  
 The Board may, at its option, modify a project's priority rating based on the following considerations:  
 (a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.  
 (b) Available funding.  
 (c) Acute health risk.  
 (d) Capacity Development (financial, technical, or managerial issues needing resolution to avoid EPA intervention).  
 (e) An Emergency.  
 The Board will utilize Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

TABLE 1

Priority System	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
<b>Total</b>	<b>100</b>

Treatment

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25

C. Treatment system is subject to impending failure, or has failed.	25
-or-	
Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels.	20
-or-	
System equipment is projected to become inadequate without upgrades.	5
<b>Total</b>	<b>75</b>

Storage

Deficiency Description	Points Available
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or-	
System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or-	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
<b>Total</b>	<b>75</b>

Distribution

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
<b>Total</b>	<b>75</b>

Emergencies

Upon the Board finding of an emergency as required by R309-705-9. Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:  
 \* Rate Factor = (Average System Water Bill/Average State Water Bill)  
 \*\* AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBB) as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBB rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02

per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2  
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	<del>[13]</del> 16
B. \$501 to \$1,500	<del>[11]</del> 14
C. \$1,501 to \$2,000	<del>[9]</del> 11
D. \$2,001 to \$3,000	<del>[6]</del> 8
E. \$3,001 to \$5,000	<del>[3]</del> 4
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	<del>[16]</del> 19
B. 71 to 80% of State Median AGI	<del>[14]</del> 16
C. 81 to 95% of State Median AGI	<del>[12]</del> 13
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	<del>[15]</del> 17
B. 15 to 25% of project funds	<del>[12]</del> 14
C. 10 to 15% of project funds	<del>[9]</del> 11
D. 5 to <del>[9]</del> 10% of project funds	<del>[6]</del> 8
E. 2 to <del>[4]</del> 5% of project funds	<del>[3]</del> 4
F. Less than 2% of project funds	0
4 <del>[-and-]</del> 5. ABILITY TO REPAY LOAN:	
4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
A. Greater than 2.50% of local median AGI	<del>[15]</del> 16
B. 2.01 to 2.50% of local median AGI	<del>[11]</del> 12
C. 1.51 to 2.00% of local median AGI	<del>[7]</del> 8
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
<del>[5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)</del>	
A. Greater than 12% of fair market value	<del>15</del>
B. 8.1 to 12% of fair market value	<del>12</del>
C. 4.1 to 8.0% of fair market value	<del>9</del>
D. 2.1 to 4.0% of fair market value	<del>6</del>
E. 1.0 to 2.0% of fair market value	<del>3</del>
F. Less than 1% of fair market value	<del>0</del>
6 <del>]</del> 5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)	
A. <del>[h]</del> Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget <del>[,]</del> and fund has already accumulated a minimum of 10 <del>[25]</del> % of said annual DW budget in this reserve fund.	5
B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
<del>[B-]</del> C. <del>[+]</del> Is creating or enhancing a regionalization plan	16
<del>[C-]</del> D. <del>[h]</del> Has a rate structure encouraging conservation	<del>[5]</del> 6
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED 100	

KEY: SDWA, financial assistance, loans

Date of Enactment or Last Substantive Amendment: ~~January 28, 2009~~ 2011

Notice of Continuation: March 23, 2010

Authorizing, and Implemented or Interpreted Law: 19-4-104; 73-10c

## Environmental Quality, Environmental Response and Remediation R311-201-9 Revocation of Certification

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34698  
FILED: 04/14/2011

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. This rule did not previously identify rules governing administrative proceedings, though it is likely they would have been handled under existing rules. The proceedings are now being proposed in the companion rulemaking to be handled under Rule R305-6. This conforming amendment is being proposed to make that clear.

SUMMARY OF THE RULE OR CHANGE: DEQ is proposing to consolidate rules governing administrative proceedings currently found in several places in DEQ's rules. In addition, the new Rule R305-6 makes many changes to those existing rules, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

## ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new Rule R305-6. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial

enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDATION  
FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.**

**R311-201-9. Revocation of Certification.**

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked [by the Executive Secretary. Any appeal proceedings by the individual shall be conducted in accordance with the requirements of Section 63G-4-102, et seq., using informal procedures]. Procedures for revocation are specified in Rule R305-6.

**KEY:** hazardous substances, ~~petroleum~~ administrative proceedings, underground storage tanks, revocation procedures

**Date of Enactment or Last Substantive Amendment:** ~~February 14,~~ 2011

**Notice of Continuation:** April 18, 2007

**Authorizing, and Implemented or Interpreted Law:** 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503



**Environmental Quality, Environmental  
Response and Remediation  
R311-210  
Administrative Procedures for  
Underground Storage Tank Act  
Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 34699  
FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. Updating is needed for several reasons. A 2009 amendment to Section 19-1-301 required the Department to use administrative law judges for most administrative proceedings. Many of the updates are needed to incorporate that statutory change. Updates are also needed to make clarifications and improvements in administrative procedures, changes based on the Department's accumulated experience with administrative procedures. The purpose of specifying administrative procedures generally is to ensure that all participants will have information about how administrative proceedings will be conducted, and to ensure that the proceedings are conducted fairly and efficiently.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules currently found in Rule R311-210 and several other places in DEQ's rules. In addition, the new rule makes many changes to existing rules governing administrative proceedings, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant.

Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

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

ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDATION  
FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-210. Administrative Procedures.**

##### **R311-210-1. Administrative Procedures.**

Administrative proceedings are governed by Rule R305-6.

#### **[R311-210. Administrative Procedures for Underground Storage Tank Act Adjudicative Proceedings.**

##### **R311-210-1. Definitions.**

Definitions are found in Section R311-200.

##### **R311-210-2. General Provisions.**

(a) In accordance with the Utah Administrative Procedures Act (UAPA), Utah Code Annotated, 1953 as amended, Section 63G-4-102 et seq., these rules set forth procedures which govern orders and notices by the Executive Secretary and adjudicative proceedings before the Executive Secretary, the Board and before the Executive Director. The Executive Secretary may issue UAPA exempt orders or notices of violation as provided in Subsection 63G-4-102(2)(k) or may issue orders or notices under UAPA.

(b) Recognizing the potential for an ever increasing burden from adjudicating a matter, these rules are to facilitate and encourage that disputes be resolved at the lowest level possible.

(c) These rules are not intended to be comprehensive, but are for supplementation, and provide for the inherent needs and unique purposes of proceedings directed or addressed by the Underground Storage Tank Act.

(d) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented.

~~These rules shall also be construed to be in compliance with the UAPA as far as the UAPA is applicable, the Environmental Quality Code (Section 19-1 et seq.) and the Underground Storage Tank Act. Whenever indicated, certain provisions have exclusive application to either UAPA exempt, or UAPA formal or informal proceedings.~~

~~(c) Individuals who are participants to a proceeding, an agency which is a participant to a proceeding, or an individual designated by a partnership, corporation, association or governmental subdivision may represent their interest in the proceeding. Any participant may be represented by an attorney licensed to practice in the State of Utah or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the courts of the State of Utah.~~

~~(f) 1. Issuance of any order or notice shall be made by certified mail to the party's most current address available to the agency. The agency may presume that the most current address available for an owner or operator is provided in the notification form that owners and operators are required to file with the agency. If delivery of certified mail is refused, the issued order or notice shall then be sent by regular mail.~~

~~2. All subsequent papers shall be sent by regular mail to each party or to the party's attorney if an attorney for that party has entered an appearance. Service shall be made at the address of initial service or at an address subsequently provided to the Presiding Officer and all parties.~~

~~3. In matters where the Executive Secretary is a participant, service shall be made to the Executive Secretary and the attorney representing the Executive Secretary.~~

~~(g) Parties that request a determination of responsible parties or apportionment of liability among responsible parties shall pay the costs of the action requested at a rate set by the state legislature if the request is granted. Parties that request agency review of an action which determined responsible parties or apportioned liability shall pay the costs of further proceedings at a rate set by the state legislature. However, when a final determination of liability is made and the requesting party is less than one hundred per cent liable, the costs of the proceedings shall be included in the apportionment decision and the requesting party may recover its costs from the other parties according to each party's apportioned liability. If the agency initiates such proceedings without a requesting party, the agency shall pay the costs of the proceedings and may recover costs of the proceedings as provided above.~~

~~(h) Except as otherwise stated in Section R311-210, informal adjudicative proceedings shall be conducted in accordance with Section 63G-4-203 of UAPA.~~

~~(i) A contested order revoking a certificate of compliance may be, in accordance with Section 19-6-414(3), appealed to the Executive Director. In such contested orders the term "Board" as used in R311-210 means the Executive Director.~~

~~(j) The term "issue" as in issuing an order means the time a signed order is mailed in accordance with these rules. Where delivery of an order or notice is refused, the date of issuance shall be the date the refused order or notice was sent by certified mail.~~

~~(k) Time shall be computed as provided in Rule 6 of the Utah Rules of Civil Procedure.~~

~~(l) At the time these rules or any amendments become effective, they will apply to ongoing adjudicative proceedings.~~

**R311-210-3. Orders and Notices of Violation.**

~~\_\_\_\_\_ (a) All UAPA-exempt orders or notices of violation issued under 63G-4-102(2)(k) are effective upon issuance unless otherwise provided in the order and shall become final if not contested within 30 days after the date issued. Except as provided in subsection R311-210-3(b), failure to timely contest a UAPA-exempt order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal. The contesting party has the burden of proving that an order or notice of violation was contested within 30 days of its issuance.~~

~~\_\_\_\_\_ (b) A party may seek to have the Executive Secretary set aside an order or notice of violation which was not contested within 30 days and became final by following the procedures outlined in the Utah Rules of Civil Procedure for setting aside default judgments.~~

~~\_\_\_\_\_ 1. A motion to set aside an order or notice of violation that became final shall be made to the Executive Secretary.~~

~~\_\_\_\_\_ 2. If a motion to set aside an order or notice of violation that became final is denied, the party may seek reconsideration or agency review on only that decision to deny such motion to set aside the order or notice.~~

~~\_\_\_\_\_ (c) In proceedings involving multiple parties, a party that has an order or notice of violation issued against it which becomes final by not being timely contested is precluded from participating in any further adjudicative proceedings with the other parties on the matter, unless the Executive Secretary sets aside the order under R311-210-3(b) or unless such party is permitted to enter an appearance as Amicus Curiae as provided in R311-210-6(g).~~

~~\_\_\_\_\_ (d) All initial orders and notices of violation issued by the Executive Secretary shall be in a log that is available for public inspection during office hours.~~

**R311-210-4. Contesting a UAPA-exempt Order or Notice of Violation Issued by the Executive Secretary.**

~~\_\_\_\_\_ (a) The validity of any UAPA-exempt order or notice of violation issued by the Executive Secretary may be contested by filing a request for agency action. A request for agency action to contest a UAPA-exempt order or notice of violation and all subsequent proceedings acting on such a request are governed by the UAPA as provided in Subsection 63G-4-102(2)(k).~~

~~\_\_\_\_\_ (b)(1) Except as provided in subparagraph (c)(1), the validity of a UAPA-exempt order or notice of violation may be contested by filing a request for agency action, as specified in Section 63G-4-201 of the UAPA, with the Board at the Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, 168 North 1950 West, 1st Floor, PO Box 144840, Salt Lake City, Utah 84114-4840.~~

~~\_\_\_\_\_ (2) The petitioner's request for agency action shall clearly express the reasons, facts and legal authority which forms the basis for contesting the order or notice of violation. The petitioner shall refer specifically to each numbered fact and violation arrived at in the order or notice of violation and with correspondingly numbered paragraphs shall admit or with appropriate explanation deny or dispute each fact and violation arrived at in the order or notice of violation. If the petitioner has other claims or defenses, the petitioner with reasons, facts and legal authority shall in short plain terms assert such claims or defenses.~~

~~\_\_\_\_\_ (c)(1) A UAPA-exempt notice revoking a certificate of compliance under Section 19-6-414 may be contested by filing a~~

~~request for agency action with the Executive Director of the Department of Environmental Quality at the Department of Environmental Quality, Office of the Executive Director, 168 North 1950 West, 2nd Floor, PO Box 144810, Salt Lake City, Utah 84114-4810.~~

~~\_\_\_\_\_ (2) The petitioner's request for agency action with the Executive Director shall conform with Section 63G-4-201 of the UAPA and the above subparagraph (b)(2).~~

~~\_\_\_\_\_ (d) Any request for agency action must be received for filing within thirty (30) days of the date the Executive Secretary issues the order or notice of violation.~~

~~\_\_\_\_\_ (e) Notice of the time and place of any scheduled hearing for a request for agency action shall be given as provided in Section 63G-4-201(d) of UAPA. If a hearing has not been scheduled, the response shall give notice of the time and place of a pre-hearing conference to appropriately schedule a hearing. Notice of the time and place of a hearing shall be provided promptly after the hearing is scheduled.~~

**R311-210-5. Contesting an Order or Notice of Violation Issued by the Executive Secretary Under UAPA.**

~~\_\_\_\_\_ (a) The recipient of an order or notice of violation issued by the Executive Secretary under UAPA may request agency review, as provided in Section 63G-4-301. Except as provided in subparagraph (b), agency review of a contested order issued under UAPA may be requested by filing a request for review with the Board at the Solid and Hazardous Waste Control Board, UST, 168 North 1950 West, 1st Floor, PO Box 144840, Salt Lake City, Utah 84114-4840.~~

~~\_\_\_\_\_ (b) A notice revoking a certificate of compliance under Section 19-6-414 that is issued by the Executive Secretary under UAPA may be contested by filing a request for review with the Executive Director of the Department of Environmental Quality at the Department of Environmental Quality, Office of the Executive Director, 168 North 1950 West, 2nd Floor, PO Box 144810, Salt Lake City, Utah 84114-4810.~~

~~\_\_\_\_\_ (c) Agency review of an order or notice is governed by Section 63G-4-301.~~

**R311-210-6. Parties and Intervention.**

~~\_\_\_\_\_ (a) The following persons are parties to a proceeding governed by this rule:~~

~~\_\_\_\_\_ 1. The person or persons to whom the challenged order or notice of violation is directed;~~

~~\_\_\_\_\_ 2. The Executive Secretary; and~~

~~\_\_\_\_\_ 3. All persons whose legal rights or interests are substantially affected by the proceeding, and to whom intervention rights have been granted under R311-210-6(d).~~

~~\_\_\_\_\_ (b) In a proceeding requested by the person to whom the challenged order or notice of violation is directed, that person shall be the petitioner and the Executive Secretary or any other non-requesting parties shall be the respondent.~~

~~\_\_\_\_\_ (c) In a proceeding requested by the person requesting intervention, the intervenor shall be the petitioner (provided that intervention is granted), and the Executive Secretary and any persons to whom the challenged order or notice of violation is directed shall be the respondents.~~

~~\_\_\_\_\_ (d) Intervention: A person who is not a party to a proceeding may request intervention under Section 63G-4-207 of~~

the UAPA for the purpose of filing a request for agency action, and may simultaneously file that request.

(c) Any request for intervention and agency action must be received as provided in R311-210-4 within 30 days of the date of the pertinent order or notice of violation. The person seeking intervention shall provide copies of the request and any accompanying motions, notices, and requests to all parties.

(f) Any party may, within 20 days of the receipt of the agency's notice of a request for agency action issued under 63G-4-201(3)(d) and (e) or such earlier time as established by the presiding officer, respond to a request for intervention. If no presiding officer with a general appointment exists, the Chair of the Board may act as presiding officer for purposes of this paragraph.

(g) Persons may be permitted by the presiding officer to enter an appearance as *Amicus Curiae*, subject to conditions established by the presiding officer.

#### **R311-210-7. Presiding Officer.**

(a) In proceedings to review UAPA-exempt orders and notices of violations, the Board is the "agency head" as the term is used in the UAPA.

(b) When acting as agency head, the Board is the "presiding officer" as that term is used in the UAPA, except:

1. the Chair of the Board shall be considered the presiding officer to the extent that these rules allow; and

2. the Board may by order appoint a presiding officer to preside over all or a portion of the proceedings.

(c) When a UAPA proceeding is before the Executive Secretary, the Executive Secretary is the "agency head" and the "Presiding Officer," and the Board is the "superior agency" as those terms are used in the UAPA. When acting as agency head, the Executive Secretary may appoint an individual or panel to be the Presiding Officer.

(d) A presiding officer when appointed by the appointing authority shall be empowered with such authority as granted by the appointing authority and the UAPA, except making final substantive decisions and as may be limited by Section R311-210 or the appointing authority.

#### **R311-210-8. Designation of Formal Proceedings.**

(a) Proceedings pursuant to a request for agency action are designated as formal, including: enforcement, violations, non-compliance, civil penalties, assessments, revocations, lapsed or terminated certificates, abatements, corrective plans, releases, tank tightness, claims, and other matters determining a person's legal interest.

(b) UAPA proceedings before the Executive Secretary including those determining responsible parties and apportioning liability among responsible parties shall be designated formal.

#### **R311-210-9. Conversion of Proceedings.**

(a) In accordance with the UAPA, the presiding officer, may, at any time, convert proceedings it is adjudicating which are designated informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

(b) If multiple issues are part of one proceeding, the presiding officer may separate the proceedings to convert one or more of the matters from formal to informal or informal to formal

while allowing the other matters to proceed at the ongoing designation.

#### **R311-210-10. Preliminary Matters to Apportionment and Other Proceedings.**

(a) The Executive Secretary may request owners or operators of a facility that had a release of a regulated substance or any persons identified as potential responsible parties to provide information and documentation pertinent to the identification of other responsible parties. However, this does not prevent the Executive Secretary from determining responsible parties and apportioning liability. If information identifying or otherwise concerning other potentially responsible parties is provided, the forwarding of such information to the Executive Secretary is not to be construed as a request to determine responsible parties or apportion liability.

(b) The Executive Secretary may make a preliminary identification of as many responsible parties as reasonably possible that are to be a part of an initial proceeding. The preliminary identification of responsible parties does not constitute an order. The preliminary identification may be made solely from information provided in the manner described in subsection R311-210-10(a). In making such a determination, the Executive Secretary may assess whether any identification of a responsible party by other parties is without merit, or may find that no grounds exist to identify such person as a responsible party.

(c) Before any proceeding is commenced, the Executive Secretary, or a representative of the Executive Secretary may seek to resolve the impending proceeding by encouraging or facilitating settlement.

#### **R311-210-11. Multiple Issues or Parties.**

(a) Multiple issues may be determined in one proceeding, or in one resulting order or notice of violation.

(b) Multiple issues having been determined in a single proceeding may, if contested, proceed separately.

(c) The naming or identifying of responsible parties as part of an investigation whether or not it results in an order or notice of violation, or as part of an adjudication does not preclude the naming or identifying of different or additional responsible parties in the same investigation or adjudication for different issues, or separate investigations or adjudications concerning different issues.

#### **R311-210-12. Motions.**

(a) In an informal proceeding, a motion or response to a motion may be submitted orally or in writing as directed by the presiding officer.

(b) In a formal proceeding, any motion or response to a motion shall be submitted in writing to the presiding officer, unless otherwise directed by the presiding officer. The motion or response may be accompanied by a short supporting memorandum of fact and law. Supporting or contravening affidavits may be submitted with the motion or response.

(c) Responses to motions must be received by the presiding officer ten days after the motion is submitted, unless otherwise directed by the presiding officer.

(d) Although the agency or parties may file responses as provided in R311-210-12(e), such responses are not required and

the agency or parties will not be subject to default for declining to file responses.

(c) Dispositive motions that concern facts or matters beyond those contained solely within the request for agency action shall be completed 30 days before the scheduled hearing, unless otherwise directed by the presiding officer.

#### **R311-210-13. Record Submission and Review.**

In accordance with Section 63G-4-203(c), in informal proceedings the presiding officer may require parties to submit pertinent information within a designated response period. Parties' access to information shall be as provided in the UAPA. The presiding officer may sanction a party that does not submit information that is requested by the presiding officer. Such sanctions include exclusion of evidence at the hearing, being held in default, or other applicable sanctions found in Rule 37(b) of the Utah Rules of Civil Procedure. If a hearing is scheduled, a party shall submit to the presiding officer any information that was not requested that the party intends to use at the hearing 30 days before the hearing. Failure to timely submit such information may result in the presiding officer excluding the information at the hearing.

#### **R311-210-14. Discovery.**

(a) In formal proceedings, all parties shall submit to the presiding officer all relevant information they possess or are aware of necessary for parties to support their claims or defenses within 30 days after proceedings are commenced, and with newly acquired information within 30 days after the party discovers such information, but not less than 30 days before a formal hearing. The Executive Secretary satisfies this obligation by making the public agency file available for inspection. If a party fails to timely provide the required information, the presiding officer may enter an order of default, exclude evidence, or enter other applicable sanctions found in Rule 37(b) of the Utah Rules of Civil Procedure. Parties submitting the information shall provide notice to all other parties with a list or brief summary of all information being submitted. Parties shall have access to the information submitted to the presiding officer, and to information acquired through agency investigations and other information contained in its files.

(b) In formal proceedings the presiding officer may vary the manner of discovery if it appears appropriate, or upon the motion of a party and for good cause shown. If discovery is varied to be more in accordance with the Utah Rules of Civil Procedure, copies of all discovery conducted between parties shall be provided to the presiding officer at the cost to the party seeking discovery.

(c) In formal proceedings, upon approval by the presiding officer, any party may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon if the information sought is reasonably calculated to lead to the discovery of admissible evidence.

1. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

2. The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. The party submitting the request may move for an order compelling inspection and seek any sanction referred to above in subsection (a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

#### **R311-210-15. Pre-Hearing Matters.**

(a) In proceedings in which a hearing may be held, the presiding officer may, upon written notice to all parties of record, hold a pre-hearing conference. Matters that may be discussed at the pre-hearing conference include: setting a hearing date; formulating or simplifying the issues; obtaining stipulations, admissions of fact and of documents which will avoid unnecessary proof; arranging for the exchange of proposed exhibits or prepared expert testimony; identifying all other proposed exhibits or witnesses; outlining or reviewing procedures to be followed; encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests; and facilitating settlement and other agreements. Any other matters that may expedite the orderly conduct of the proceedings may be discussed.

(b) Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing matters such as a hearing date, and motion and discovery cut off dates. If the parties cannot agree on a joint proposed schedule, the presiding officer may consider proposals by any party.

(c) The presiding officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

#### **R311-210-16. Conduct of Formal Hearings.**

(a) All formal hearings shall be open to the public, unless otherwise ordered by the presiding officer for good cause shown.

(b) The presiding officer shall maintain order and may recess the hearing for the time necessary to regain order if a person engages in disrespectful, disorderly, or contumacious conduct. The presiding officer may take measures to remove a person, including participants from the hearing, if necessary, to maintain order. If a participant shows persistent disregard on matters of order and procedure, the presiding officer may enter a sanction on the person including: restricting the person's participation, putting on evidence, or issuing an order of default.

(c) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency.

(d) In apportionment proceedings, the order of presentation of evidence will be as follows, unless otherwise directed by the presiding officer: the responsible party most recently involved in the facility, with operators having priority over owners; then underground storage tank installation companies, then subsequent responsible parties in the order of recency of involvement in the facility; intervenor(s); the agency; and other interested parties. Argument normally will follow the same order.

For other proceedings, the presiding officer may order the presentation of evidence in a manner deemed appropriate.

(c) Parties may question opposing witnesses on any matter relevant to the issue even though the matter was not covered in direct examination. The presiding officer may limit or exclude friendly cross-examination. The presiding officer shall discourage and may prohibit parties from making their case through cross-examination.

(f) The presiding officer may question any party or witness and may admit any evidence believed relevant or material.

(g) The presiding officer may continue a hearing to another time or place if additional evidence is available or reasonably expected to be available and the presiding officer determines such evidence is necessary for the proper determination of the case.

#### **R311-210-17. Rules of Evidence.**

(a) The presiding officer is not bound by the rules of evidence and need not adhere to the rules as required in civil actions in the courts of this State. Nevertheless, in UAPA proceedings, the Utah Rules of Evidence shall be used as an appropriate guide insofar as they are not inconsistent with the UAPA and these Rules.

(b) In contested proceedings providing a hearing, if a witness' testimony has been reduced to writing and filed with the presiding officer at least 30 days prior to the hearing, the testimony may be placed into the record as an exhibit. Parties shall have an opportunity to cross-examine the witness on the testimony.

#### **R311-210-18. Recommended Orders.**

(a) If the presiding officer in a proceeding is an appointed presiding officer, at the conclusion of the hearing or taking evidence, the presiding officer cannot make any final substantive decisions, but, shall take the matter under advisement and shall submit to the appointing authority recommended orders. The recommended orders shall follow the form in the UAPA for signed and issued orders in informal or formal proceedings. All recommended orders will be public record and copies shall be distributed to all parties.

(b) Any party may, within 20 days of the date the draft order is mailed, delivered, or published, comment on the draft order.

(c) The appointing authority may adopt and sign the recommended orders or any portion of them as final orders; reject the recommended orders or any portion of them and make an independent determination based on the record or order further proceedings. If the appointing authority adopts or rejects a portion of the recommended orders, the appointing authority shall make specific reference to the portion adopted or rejected. If the appointing authority rejects the entire recommended orders, the appointing authority shall specifically state that they are rejected in their entirety. The appointing authority shall cite specifically to the record for the bases of any independent determinations in the final orders.

(d) The appointing authority may remand the matter to the presiding officer to take additional evidence. The presiding officer thereafter shall submit to the appointing authority new recommended orders.

(e) The Board adopting and signing recommended orders as final orders or making independent determinations and signing them as final orders pursuant to a request for agency action to contest an initial order does not constitute agency review, but is open to a request for reconsideration in accordance with Section 63G-4-302 of the UAPA.

(f) The appointing authority may modify this procedure with notice to all parties.

#### **R311-210-19. Stays of Orders.**

(a) Orders of the Executive Secretary are immediately effective upon being issued unless otherwise provided in the order. Upon a timely request for agency action or agency review to contest such orders, any person who desires a stay of the order before the next regular Board meeting may request a stay.

(b) A party seeking a stay of the order of the Executive Secretary shall file a motion with the presiding officer.

(c) The presiding officer may order a stay of the order of the Executive Secretary if the party seeking the stay demonstrates that:

1. The party seeking the stay will suffer irreparable harm unless the stay issues;

2. The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

3. The stay, if issued, would not be adverse to the public interest; and

4. There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the presiding officer.

(d) No bond shall be required from the party requesting the stay.

(e) The Board may grant a stay of its order (or of the order of its appointed presiding officer) during the pendency of judicial review if the standards of R311-210-19(c) are met.

(f) The request for a stay shall be deemed denied if the presiding officer does not issue a written decision to deny or grant a stay of any order within ten working days of the filing of a written motion.

#### **R311-210-20. Standard of Agency Review.**

The standard of review of orders issued by the Executive Secretary following a formal UAPA proceeding that are before the superior agency shall be the standard delineated in Section 63G-4-403(4)(e)-(h) of UAPA.]

**KEY:** [petroleum]administrative proceedings, underground storage tanks[\*], hearings, adjudicative proceedings  
Date of Enactment or Last Substantive Amendment: [October 9, 1998]2011

Notice of Continuation: April 18, 2007

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-403; 63G-4-201 through 205; 63G-4-503

**Environmental Quality, Environmental  
Response and Remediation  
R311-500-9  
Denial of Application and Revocation of  
Certification**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34700

FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. This rule did not previously identify rules governing administrative proceedings, though it is likely they would have been handled under existing rules. The proceedings are now being proposed in the companion rulemaking to be handled under Rule R305-6. This conforming amendment is being proposed to make that clear.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules governing administrative proceedings currently found in several places in DEQ's rules. In addition, the new Rule R305-6 makes many changes to those existing rules, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 19-6-901 et seq. and Section 63G-503 and Sections 63G-201 through 205

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new Rule R305-6. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,  
DURING REGULAR BUSINESS HOURS, AT:  
ENVIRONMENTAL QUALITY  
ENVIRONMENTAL RESPONSE AND  
REMEDATION

FIRST FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

**Environmental Quality, Radiation  
Control  
R313-17  
Administrative Procedures**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34684

FILED: 04/13/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing is a companion rulemaking for DAR No. 34472. Much of the text in Rule R313-17 is to be deleted because the Department of Environmental Quality is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule (Rule R305-6). Rule R313-17 is being updated to clarify the statutory authority behind the rule and that Subsection R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts. An update is also needed to identify the methods that may be used to give the public notice of an agency action. (DAR NOTE: The proposed new Rule R305-6 was published under DAR No. 34472 in the March 15, 2011, issue of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The most significant change to Rule R313-17 is to note that administrative proceedings under the Radiation Control Act will be governed by Rule R305-6. The rule is being updated to clarify the statutory authority behind Rule R313-17. A change is needed to clarify that Subsection R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts. An update is also needed to identify the methods that may be used to give the public notice of an agency action.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload. There is an expected, but unquantifiable, cost savings for the Division of Radiation Control (DRC) when public notice of an agency action is

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-500. Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.**

**R311-500-9. Denial of Application and Revocation of Certification.**

~~[(a) The Executive Secretary may issue a notice denying an application or an initial order or notice of intent to revoke a certification. The initial order or notice shall become final unless contested as outlined in R311-501.~~

~~\_\_\_\_\_ (b)](a) Grounds for denial of an application or revocation of a certification may include any of the following:~~

- (1) Failure to meet any of the application and eligibility criteria established in R311-500-4 and R311-500-5;
- (2) Failure to submit a completed application;
- (3) Evidence of past or current criminal activity;
- (4) Demonstrated disregard for the public health, safety or the environment;
- (5) Misrepresentation or falsification of figures, reports and/or data submitted to the local Health Department or the State;
- (6) Cheating on a certification examination;
- (7) Falsely obtaining or altering a certificate;
- (8) Negligence, incompetence or misconduct in the performance of duties as a Certified Decontamination Specialist;
- (9) Failure to furnish information or records required by the Executive Secretary to demonstrate fitness to be a Certified Decontamination Specialist; or
- (10) Violation of any certification or performance standard specified in this rule.

~~(b) Administrative proceedings regarding the denial of an application or the revocation of certification are governed by Rule R305-6.~~

**KEY: meth lab contractor certification, administrative proceedings, adjudicative proceedings, revocation procedures**

**Date of Enactment or Last Substantive Amendment: [October 14, 2005]2011**

**Notice of Continuation: June 23, 2010**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-901 et seq.; 63G-4-201 through 205; 63G-4-503**



given through the DRC website in lieu of publication in a newspaper.

♦ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the Rule R305-6. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding. There is an expected, but unquantifiable, cost savings for DRC when public notice of an agency action is given through the DRC website in lieu of publication in a newspaper.

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Rusty Lundberg, Director

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**R313. Environmental Quality, Radiation.**

**R313-17. Administrative Procedures.**

**R313-17-1. ~~[Application of Rule]~~Authority.**

~~[This rule applies to proceedings under Title 19, Chapter 3 (Radiation Control Act)]~~The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205.

**R313-17-2. Public Notice and Public Comment Period.**

(1) The Executive Secretary ~~[shall]~~may give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in Section R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by one or more of the following methods:

(a) P[~~p~~]ublication in a newspaper of general circulation in the area affected by the proposed action,

(b) Publication on the Division of Radiation Control website, or

(c) Distribution by an electronic mail server. ~~[Notice shall also be given to persons on a mailing list developed by the~~

Executive Secretary and those who request in writing to be notified.]

**R313-17-3. Administrative Procedures.** ~~[Public Comments, Response to Comments and Requests for Public Hearings.]~~

~~Administrative proceedings under the Radiation Control Act are governed by Rule R305-6.~~

~~(1) During the public comment period provided under R313-17-2, any interested person may submit written comments on the proposed action and may request a public hearing, if no hearing has already been scheduled.~~

~~(2) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.~~

~~(3) Comments received during the public comment period and during any hearing shall be considered in making the final decision.~~

~~(4) At the time of the final decision, the Executive Secretary shall issue a response to comments, which shall include:~~

~~(a) Specific provisions, if any, that have been changed in the final action and the reasons for the change; and~~

~~(b) A brief description and response to all significant comments raised during the public comment period or during any hearing.~~

~~(5) The Executive Secretary's response to public comments shall be available to the public.~~

**R313-17-4. Public Hearings.**

~~(1) This section applies to hearings for public comment on proposed actions specified in R313-17-2. This section does not govern adjudicative proceedings.~~

~~(2) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the proposed action.~~

~~(3) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the proposed action.~~

~~(4) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a proposed action and a request for a hearing within 30 days of public notice under R313-17-2.~~

~~(5)(a) Public notice of the hearing shall be given as specified in R313-17-2.~~

~~(b) The public comment period under R313-17-2 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.~~

~~(c) Whenever possible the Executive Secretary shall schedule a hearing under this section at a time and location convenient to the parties involved.~~

~~(d) Any person at the hearing may submit oral or written statements and data concerning the proposed action. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required.~~

~~(e) A tape recording or written transcript of the hearing shall be made available to the public.~~

**R313-17-5. Administrative Procedures General Provisions.**

~~(1) PURPOSE AND SCOPE~~

~~R313-17-5 through R313-17-13 set out procedures for conducting formal adjudicative proceedings in accordance with the Utah Administrative Procedures Act (UAPA), Section 63G-4-102 et seq. and govern:~~

~~(a) the contest of the validity of initial order or notice of violation as described in R313-17-5(2);~~

~~(b) the contest of proposed imposition of civil penalties under Section 19-3-109; and~~

~~(c) other formal adjudicative proceedings before the Radiation Control Board.~~

~~(2) INITIAL PROCEEDINGS EXEMPT FROM UAPA~~

~~Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Radiation Control Act are not governed by UAPA as specified in Section 63G-4-102(2)(k). This includes, but is not limited to, initial proceedings regarding:~~

~~(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses;~~

~~(b) requests for variances, exemptions, and other approvals;~~

~~(c) notices of violation and orders associated with notices of violation;~~

~~(d) orders to comply and orders to cease and desist;~~

~~(e) impoundment of radioactive material;~~

~~(f) orders for decommissioning;~~

~~(g) declaratory orders; and~~

~~(h) orders for surveying, monitoring, sampling, or information;~~

~~(3) DESIGNATION OF PROCEEDINGS~~

~~(a) Contest of an initial order or notice of violation or proposed imposition of civil penalties shall be conducted as a formal proceeding.~~

~~(b) The Board in accordance with Section 63G-4-202(3) may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.~~

~~(c) Unless otherwise stated in R313, informal adjudicative proceedings shall be conducted in accordance with Section 63G-4-203.~~

~~(4) APPEARANCES AND REPRESENTATION~~

~~(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.~~

~~(b) Any participant may be represented by legal counsel.~~

~~(5) COMPUTATION OF TIME~~

~~Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.~~

**R313-17-6. Commencing a Formal Adjudicative Proceeding.**

~~(1) Except as otherwise permitted by emergency orders as described in Section 63G-4-502, all adjudicative proceedings shall be commenced by either:~~

~~(a) a Notice of Agency Action in accordance with Section 63G-4-201, if proceedings are commenced by the Board; or~~

~~(b) a Request for Agency Action in accordance with R313-17-6(2), if proceedings are commenced by a person other than the Board.~~

~~(2)(a) The validity of initial orders, notices of violation and proposed imposition of civil penalties, as described in R313-17-5(1) and (2), may be contested by filing a written Request for Agency Action with the Board and submitted to:~~

~~Executive Secretary, Utah Radiation Control Board  
Division of Radiation Control  
168 North 1950 West  
PO Box 144850  
Salt Lake City, Utah 84114-4850.~~

~~(b) Any such request is governed by and shall comply with the requirements of Section 63G-4-201(3) and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.~~

~~(c)(i) All initial orders or notices of violation are effective upon issuance and shall become final if not contested within 30 days after the date issued.~~

~~(ii) Issuance of such orders or notices of violation means the time a signed order is mailed by certified mail to the recipient's most current address or hand delivered to the recipient.~~

~~(iii) If delivery by certified mail is refused, the issued order or notice shall be sent by regular first class mail.~~

~~(d) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal.~~

~~(3) RESPONSE TO REQUEST FOR AGENCY ACTION~~

~~In accordance with Section 63G-4-201(3)(d) and (e), notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.~~

~~(4) PRE-HEARING RECORD~~

~~The Executive Secretary shall compile an administrative record prior to a scheduled hearing and give any party the opportunity to supplement the record. The pre-hearing record shall also consist of pleadings or other documents filed prior to the hearing.~~

**R313-17-7. Parties and Intervention.**

~~(1) DETERMINATION OF A PARTY.~~

~~The following persons are Parties to a formal proceeding governed by these rules:~~

~~(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a license application that was approved or disapproved by order of the Executive Secretary;~~

~~(b) The Executive Secretary of the Radiation Control Board; and~~

~~(c) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention under R313-17-7(2).~~

~~(2) INTERVENTION~~

~~A petition for intervention may be filed by a petitioner to commence an adjudicative proceeding in accordance with R313-17-6(2) or to intervene after a notice of agency action or request for agency action has been filed. A petitioner for intervention shall meet the following requirements:~~

~~(a)(i) The request for agency action is timely filed in accordance with R313-17-6(2); or~~

~~(ii) The Petition to Intervene in a proceeding commenced by a party other than the Petitioner for Intervention is filed with the Board, with a copy to all parties, within 20 days from the date of the Notice of Agency Action or Request for Agency Action.~~

~~(b) The Petition to Intervene:~~

~~(i) Identifies the proceedings in which intervention is sought;~~

~~(ii) Contains a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding and the petitioner qualifies as an Intervenor under Section 63G-4-207; and~~

~~(iii) Includes a statement of relief sought from the Board, including the basis thereof.~~

~~(c) Unless modified by the Presiding Officer, any party may respond to a Petition for Intervention during the period allowed for responsive pleadings under Section 63G-4-204. The Chair of the Radiation Control Board may act as Presiding Officer for purposes of this paragraph.~~

~~(d) Intervention may only be granted by order of the Board to a petitioner who meets the requirements of R313-17-7(2) (a) and (b).~~

~~(3) DESIGNATION OF PARTIES~~

~~Unless otherwise designed by the Hearing Officer:~~

~~(a) The person filing a Request for Agency Action shall be the Petitioner and the Executive Secretary shall be the Respondent.~~

~~(b) In a proceeding requested by a Petitioner for Intervention, the person granted Intervenor status shall be the Petitioner. The Executive Secretary and the person to whom the challenged order or notice is directed shall be the Respondents.~~

~~(4) AMICUS CURIAE (Friend of the Court)~~

~~Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).~~

**R313-17-8. Conduct of Proceedings.**

~~(1) ROLE OF BOARD~~

~~(a) The Board is the "agency head" as that term is used in Section 63G-4. The Board is also the "presiding officer," as that term is used in Section 63G-4, except:~~

~~(i) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and~~

~~(ii) The Board may by order appoint one or more Presiding Officers to preside over all or a portion of the proceedings.~~

~~(b) The Chair of the Board may delegate his or her authority as specified in this Rule to another Board member.~~

~~(2) APPOINTED PRESIDING OFFICERS~~

~~Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except grant of intervention, stays of orders and issuance of the final order. As used in these rules, the term Presiding Officer shall mean Presiding Officers if more than one Presiding Officer is appointed by the Board.~~

~~(3) PRE-HEARING CONFERENCES~~

~~The Presiding Officer may direct the Parties to appear at a specified time and place for pre-hearing conferences for the~~

~~purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.~~

~~(4) BRIEFS~~

~~(a) Unless otherwise directed by the Presiding Officer, parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Presiding Officer.~~

~~(b) Response briefs may not be filed unless permitted by the Presiding Officer.~~

~~(5) SCHEDULES~~

~~(a) The Presiding Officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.~~

~~(b) The parties are encouraged to prepare a joint proposed schedule. If the parties cannot agree on a joint proposed schedule, the Presiding Officer may consider proposals by any party.~~

~~(6) EXTENSIONS OF TIME~~

~~Except as otherwise provided by statute, the Presiding Officer may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R313-17-8(5). The Presiding Officer may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.~~

~~(7) MOTIONS~~

~~All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the Presiding Officer. A memorandum in opposition to a motion may be filed within ten days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.~~

~~(8) FILING AND COPIES OF SUBMISSIONS~~

~~The original of any motion, brief, petition for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and to all parties or their counsel of record.~~

**R313-17-9. Hearings:**

~~(1) CONDUCT OF HEARING~~

~~The Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.~~

~~(2) ORDER OF PRESENTATION~~

~~Unless otherwise directed by the Presiding Officer, the Executive Secretary shall present its case first, followed by the Petitioner and any other party, then the Executive Secretary, and other parties if appropriate, shall have the opportunity for rebuttal.~~

**R313-17-10. Orders:**

~~(1) PROPOSED ORDERS BY PARTIES~~

~~Unless otherwise directed by the Presiding Officer, each party may provide proposed orders for the Presiding Officer within ten days of the conclusion of the hearing.~~

~~(2) DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS~~

~~(a) The appointed Officer presiding over the adjudicative proceeding shall prepare a recommended order, provide a copy of~~

~~the order to the Board and mail a copy of the order to all parties or their counsel of record.~~

~~(b) The Board shall review the recommended order and hearing record.~~

~~(c) The Board may give each party the opportunity to make a presentation to the Board specific to the recommended order.~~

~~(d) After deliberation, the Board shall determine whether to accept, reject or modify the recommended order. The Board may remand part or all of the matter to the Presiding Officer for further proceedings.~~

~~(e) The Board may modify this procedure with notice to all parties.~~

~~(3) FINAL ORDERS~~

~~The Board shall issue a final order which shall include the information required by Sections 63G-4-208 or 63G-4-203(1)(i).~~

**R313-17-11. Stays of Orders:**

~~(1) STAY OF ORDERS PENDING ADMINISTRATIVE ADJUDICATION~~

~~(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the Board. If granted, a stay would suspend the challenged Order for the period as directed by the Board.~~

~~(b) The Board may order a stay of the Order that is the subject of the formal adjudicative proceeding if the party seeking the Stay demonstrates the following:~~

~~(i) The party seeking the Stay will suffer irreparable harm unless the stay issues;~~

~~(ii) The threatened injury to the party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;~~

~~(iii) The Stay, if issued, would not be adverse to the public interest; and~~

~~(iv) There is substantial likelihood that the party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.~~

~~(2) STAY OF THE ORDER PENDING JUDICIAL REVIEW~~

~~(a) A party seeking a stay of the Board's final order during judicial review shall file a motion with the Board.~~

~~(b) The Board as Presiding Officer may grant a stay of its order during the pendency of judicial review if the standards of R317-17-11(1)(b) are met.~~

**R313-17-12. Reconsideration:**

~~No agency review under Section 63G-4-301 is available. A party may request reconsideration of an order of the Presiding Officer as provided in Section 63G-4-302.~~

**R313-17-13. Disqualification of Presiding Officer(s):**

~~(1) DISQUALIFICATION OF PRESIDING OFFICER~~

~~(a) A member of the Board or other Presiding Officer shall disqualify himself or herself from performing the functions of the Presiding Officer regarding any matter in which he or she, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:~~

- ~~\_\_\_\_\_ (i) Is a party to the proceeding, or an officer, director, or trustee of a party;~~
- ~~\_\_\_\_\_ (ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;~~
- ~~\_\_\_\_\_ (iii) Knows that he or she has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;~~
- ~~\_\_\_\_\_ (iv) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or~~
- ~~\_\_\_\_\_ (v) Is likely to be a material witness in the proceeding.~~
- ~~\_\_\_\_\_ (b) A member of the Board or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.~~

~~(2) MOTIONS FOR DISQUALIFICATION~~

~~A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the Board.~~

**R313-17-14. Other Forms of Address.**

~~Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R313-17-6.~~

**R313-17-15. Requests for Records.**

~~Requests for records under the Utah Government Record Access and Management Act, Title 63G, Chapter 2, Utah Code Ann., are not governed by R313. See R305-1.~~

~~]~~  
**KEY:** administrative procedures, [public]comment, [public] hearings, [orders]adjudicative proceedings

**Date of Enactment or Last Substantive Amendment:** [September 12, 2002]2011

**Notice of Continuation:** July 10, 2006

**Authorizing, and Implemented or Interpreted Law:** [19-3-103.5; 19-3-104(4); 63G-4-102; 63G-4-201 through 63G-4-205

Environmental Quality, Solid and Hazardous Waste

**R315-2-14**

Violations, Orders, and Hearings

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34701

FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. This amendment is being proposed because the proceedings will be handled under the new rule.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules governing administrative proceedings currently found in several places in DEQ's rules. This provision is proposed for amendment in conformance with that effort. Note that, although this rule did not say so explicitly, Rule R315-12 would have applied to these proceedings.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 19-6-105 and Section 19-6-106 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new Rule R305-6. The

changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 SOLID AND HAZARDOUS WASTE  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

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

~~**[R315-2-14. Violations, Orders, and Hearings.**~~

~~(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous~~

~~waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of R315-1 through R315-101.~~

~~(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:~~

- ~~(1) be in writing;~~
- ~~(2) be addressed to the Executive Secretary;~~
- ~~(3) include the order number;~~
- ~~(4) state the facts;~~
- ~~(5) state the relief sought; and~~
- ~~(6) state the reasons the relief requested should be granted;~~

~~(c) Utah Administrative Procedures Act, 63G-4, and R315-12, shall govern the conduct of hearings before the Board.~~

**KEY: hazardous wastes, administrative procedures**  
**Date of Enactment or Last Substantive Amendment: [January 15, 2010]2011**

**Notice of Continuation: August 24, 2006**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106; 63G-4-201 through 205; 63G-4-503**

Environmental Quality, Solid and  
 Hazardous Waste  
**R315-12**  
 Administrative Procedures

**NOTICE OF PROPOSED RULE**  
 (Repeal and Reenact)  
 DAR FILE NO.: 34702  
 FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. Updating is needed for several reasons. A 2009 amendment to Section 19-1-301 required the Department to use

administrative law judges for most administrative proceedings. Many of the updates are needed to incorporate that statutory change. Updates are also needed to make clarifications and improvements in administrative procedures, changes based on the Department's accumulated experience with administrative procedures. The purpose of specifying administrative procedures generally is to ensure that all participants will have information about how administrative proceedings will be conducted, and to ensure that the proceedings are conducted fairly and efficiently.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules governing administrative proceedings currently found in several places in DEQ's rules. In addition, the new Rule R305-6 makes many changes to Rule R315-12 and the other currently applicable rules, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 19-6-105 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be

speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new Rule R305-6. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 SOLID AND HAZARDOUS WASTE  
 SECOND FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3097  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

**R315. Environmental Quality, Solid and Hazardous Waste.****R315-12. Administrative Procedures.****R315-12-1. Administrative Procedures.**

~~Administrative proceedings under the following acts are governed by Rule R305-6:~~

~~(1) Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act);~~

~~(2) Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal);~~

~~(3) Title 19, Chapter 6, Part 7 (Used Oil Management Act);~~

~~(4) Title 26, Chapter 32a (Waste Tire Recycling); and~~

~~(5) Title 19, Chapter 6, Part 10 (Mercury Switch Removal Act).~~

**[R315-12-1. Application of Rule.**

~~(a) This rule applies to proceedings under Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act), Title 19, Chapter 6, Part 5 (Solid Waste Management Act), Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal), Title 19, Chapter 6, Part 7 (Used Oil Management Act), Title 26, Chapter 32a (Waste Tire Recycling), and Title 19, Chapter 6, Part 10 (Mercury Switch Removal Act).~~

~~(b) For purposes of these rules, an appeal under the Used Oil Management Act shall mean the process of agency decision-making under the Utah Administrative Procedures Act (UAPA), Section 63G-4-101 through 63G-4-209, and the standards, deadlines, procedures, and other requirements for an appeal shall be same as the standards, deadlines, procedures, and other requirements for contesting the validity of an initial order or violation under R315-12.~~

**R315-12-2. Orders, NOVs, and Other Decisions by the Executive Secretary.**~~2.1 INITIAL PROCEEDINGS EXEMPT FROM UAPA~~

~~Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Solid and Hazardous Waste Act are not governed by the provisions of the Utah Administrative Procedures Act (UAPA) as specified in Section 63G-4-102(2)(k). This includes initial proceedings regarding: approval, modification, denial, termination, transfer, revocation, or reissuance of permits; approval for equivalent testing or analytical methods; notices of violation and orders associated with notices of violation; orders for corrective action; and consent orders.~~

~~2.2 INITIAL ORDERS AND NOTICES OF VIOLATION ISSUED BY EXECUTIVE SECRETARY~~

~~(a) The initial orders and notices described in R315-12-2.1 shall be issued by the Executive Secretary.~~

~~(b) An initial order or notice shall become final in 30 days if not contested as described in R315-12-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.~~

**R315-12-3. Contesting the Validity of an Initial Order or Notice of Violation Issued by the Executive Secretary.**

~~3.1 CONTESTING THE VALIDITY OF AN INITIAL ORDER OR NOTICE OF VIOLATION — REQUEST FOR AGENCY ACTION~~

~~(a) The validity of initial orders or notices of violation described in R315-12-2 may be contested by filing a written Request for Agency Action with the Board:~~

~~Solid and Hazardous Waste Control Board~~

~~Division of Solid and Hazardous Waste~~

~~288 North 1460 West~~

~~PO Box 144880~~

~~Salt Lake City, Utah 84114-4880.~~

~~(b) Any such request is governed by and shall comply with the requirements of Section 63G-4-201(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.~~

~~3.2 RESPONSE TO REQUEST FOR AGENCY ACTION~~

~~Notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.~~

~~3.3 UAPA GOVERNS SUBSEQUENT PROCEEDINGS~~

~~A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA. Section 63G-4-102(2)(k) of UAPA.~~

**R315-12-4. Parties and Intervention.**~~4.1 WHO IS A PARTY?~~

~~(a) The following persons are Parties to a proceeding governed by this Rule:~~

~~(1) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by order of the Executive Secretary;~~

~~(2) The Executive Secretary; and~~

~~(3) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under R315-12-4.2.~~

~~(b) In a proceeding requested by the person to whom an initial order or notice of violation is directed, that person shall be the Petitioner and the Executive Secretary shall be the Respondent.~~

~~(c) In a proceeding requested by a person requesting intervention, the Intervenor shall be the Petitioner, provided that Intervention is granted, and the Executive Secretary and the person to whom an initial order or notice of violation is directed shall be the Respondents.~~

~~4.2 INTERVENTION~~

~~(a) A person who is not a party to a proceeding may request intervention under Section 63G-4-207 of UAPA for the purpose of filing a Request for Agency Action, and may simultaneously file that Request. Any such Requests for Intervention and Agency Action must be received by the Board for filing as provided in R315-12-3.1 within 30 days of the date of the challenged order or notice of violation.~~

~~(b) Any Party may, within 20 days or such earlier time as established by the Presiding Officer(s), respond to a Request for Intervention. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.~~

~~4.3 Amicus curiae (Friend of the Court)~~

~~Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).~~



~~4.4 APPEARANCES AND REPRESENTATION~~

~~(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his or its interest in the proceeding.~~

~~(b) Any participant may be represented by an attorney at law.~~

**R315-12-5. Conduct of Proceedings.**~~5.1 ROLE OF BOARD~~

~~(a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:~~

~~(1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and~~

~~(2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.~~

~~(b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member.~~

~~5.2 APPOINTED PRESIDING OFFICERS~~

~~Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R315-12-7.2 regarding orders of Presiding Officers.~~

~~5.3 DESIGNATION OF PROCEEDINGS AS FORMAL OR INFORMAL~~

~~(a) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:~~

~~(1) An order regarding approval, modification, denial, termination, transfer, revocation, or reissuance of a permit;~~

~~(2) An order regarding approval, denial, or modification of a corrective action, clean-up, or closure plan;~~

~~(3) A notice of violation or order associated with a notice of violation; or~~

~~(4) A consent order.~~

~~(b) The Board may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. See Section 63G-4-202(3) of UAPA.~~

~~5.4 PRE-HEARING CONFERENCES~~

~~The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.~~

~~5.5 BRIEFS~~

~~(a) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.~~

~~(b) Response briefs may not be filed unless permitted by the Presiding Officer(s).~~

~~5.6 PARTIES MAY PROPOSE SCHEDULE~~

~~Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in R315-12-5.7. If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.~~

~~5.7 PRESIDING OFFICER(S) SHALL ESTABLISH SCHEDULES~~

~~The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.~~

~~5.8 EXTENSIONS OF TIME~~

~~Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R315-12-5.7. The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.~~

~~5.9 COMPUTATION OF TIME~~

~~Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.~~

~~5.10 MOTIONS~~

~~All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.~~

~~5.11 FILING AND COPIES OF SUBMISSIONS~~

~~The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.~~

**R315-12-6. Hearings.**~~6.1 CONDUCT OF HEARING~~

~~The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.~~

~~6.2 ORDER OF PRESENTATION~~

~~Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.~~

**R315-12-7. Orders.**~~7.1 PROPOSED ORDERS BY PARTIES~~

~~Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.~~

~~7.2 DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS~~

~~(a) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.~~

(b) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record which support the comments.

(c) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.

(d) The Board may modify this procedure with notice to all Parties.

### 7.3 CONTENT OF ORDERS

An order shall include the information required by Sections 63G-4-208 or 63G-4-203(1)(i) of UAPA.

### R315-12-8. Stays of Orders.

#### 8.1 STAY OF THE ORDER OF THE EXECUTIVE SECRETARY

(a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.

(b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:

(1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;

(2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;

(3) The Stay, if issued, would not be adverse to the public interest; and

(4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the ease presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s).

#### 8.2 STAY OF THE ORDER OF THE PRESIDING OFFICER(S)

The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of 8.1(b) are met.

### R315-12-9. Reconsideration.

No agency review under Section 63G-4-301 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63G-4-302 of UAPA.

### R315-12-10. Disqualification of Presiding Officer(s).

#### 10.1 DISQUALIFICATION OF PRESIDING OFFICER

A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:

(a) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(1) Is a party to the proceeding, or an officer, director, or trustee of a Party;

(2) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;

(3) Knows that he/she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;

(4) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or

(5) Is likely to be a material witness in the proceeding.

(b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.

### 10.2 MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.

### R315-12-11. Other Forms of Address.

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R315-12-3.

### R315-12-12. Requests for Records.

Requests for records under the Utah Government Record Access and Management Act, Title 63G, Chapter 2, Utah Code Ann., are not governed by R315. See R305-1, U.A.C.

]

**KEY: hazardous waste; administrative proceedings, hearings, adjudicative proceedings**

**Date of Enactment or Last Substantive Amendment: [December 1, 2006]2011**

**Notice of Continuation: August 24, 2006**

**Authorizing, and Implemented or Interpreted Law: [63G-4-202]19-1-301; 19-6-105; 63G-4-102; 63G-4-201 through 205; 63G-4-503**

## Environmental Quality, Water Quality R317-9 Administrative Procedures

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 34697

FILED: 04/14/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** See the companion rulemaking proposing new administrative procedures rule at Rule R305-6 (DAR No. 34472), published in the March 15, 2011, Bulletin on pg. 53. The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. Updating is needed for several reasons. A 2009 amendment to Section 19-1-301 required the Department to use administrative law judges for most administrative proceedings. Many of the updates are needed to incorporate that statutory change. Updates are also needed to make clarifications and improvements in administrative procedures, and changes based on the Department's accumulated experience with administrative procedures. The purpose of specifying administrative procedures generally is to ensure that all participants will have information about how administrative proceedings will be conducted, and to ensure that the proceedings are conducted fairly and efficiently.

**SUMMARY OF THE RULE OR CHANGE:** DEQ is proposing to consolidate rules currently found in Rule R317-9 and several other places in DEQ's rules. In addition, the new Rule R305-6 makes many changes to Rule R317-9 and the other currently applicable rules, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-1-301 and Section 19-5-104 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **LOCAL GOVERNMENTS:** There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it

would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

◆ **SMALL BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals, partnerships, and other entities can be regulated entities that will be governed by the new rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

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

ENVIRONMENTAL QUALITY  
WATER QUALITY

THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

### **R317. Environmental Quality, Water Quality.**

#### **R317-9. Administrative Procedures.**

##### **R317-9-1. Administrative Procedures.**

Administrative proceedings under Utah Water Quality Act are governed by Rule R305-6.

##### **[R317-9-1. Scope of Rule.**

~~(1) This rule R317-9 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 5, Utah Water Quality Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.~~

~~(2) The executive secretary may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 5, the recipient, or in some situations other persons, may contest that order or notice in a proceeding before the board or, in the case of an adjudication brought to deny or revoke a permit, before the executive director. Either the board or the executive director may appoint a presiding officer to hear the matter.~~

~~(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under subsection 63-46b-1(2)(k) and are not governed by sections R317-9-3 through R317-9-14 of this Rule. Initial orders and notices of violation are further described in R317-9-2(1).~~

~~(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R317-9.~~

~~(5) The Utah Administrative Procedures Act and this rule R317-9 also govern any other formal adjudicative proceeding before the Water Quality Board.~~

##### **R317-9-2. Initial Proceedings.**

~~(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:~~

~~(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;~~

~~(b) notices of violation and orders associated with notices of violation;~~

~~(c) orders to comply and orders to cease and desist;~~

~~(d) eligibility of pollution control equipment for tax exemptions under Utah Code Ann. 19-2-123 through 19-2-127 and R317-1-8;~~

~~(e) requests for variances, exemptions, and other approvals;~~

~~(f) assessment of fees except as provided in R317-9-14(7);~~

~~(g) requests or approvals for experiments, testing or control plans;~~

~~(h) certification of wastewater treatment works operators under R317-10; and~~

~~(i) certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems.~~

~~(2) Effect of Initial Orders and Notices of Violation.~~

~~(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.~~

~~(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.~~

~~(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.~~

##### **R317-9-3. Contesting an Initial Order or Notice of Violation.**

~~(1) Procedure.~~

~~(a) Initial orders denying or revoking a permit may be contested by filing a written Request for Agency Action to the Executive Director, Department of Environmental Quality, PO Box 144810, Salt Lake City, Utah 84114-4810.~~

~~(b) Other initial orders and notices of violation, as described in R317-9-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Water Quality Board, Division of Water Quality, PO Box 144870, Salt Lake City, Utah 84114-4870.~~

~~(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of Subsection 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the presiding officer to determine whether the person has standing under R317-9-6(3) to bring the requested action.~~

~~(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.~~

~~(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.~~

##### **R317-9-4. Designation of Proceedings as Formal or Informal.**

~~(1) Contest of an initial order or notice of violation resulting from proceedings described in R317-9-2(1) shall be conducted as a formal proceeding.~~

~~(2) The presiding officer in accordance with Subsection 63-46b-4(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.~~

##### **R317-9-5. Notice of and Response to Request for Agency Action.**

~~(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with Subsection 63-46b-3(3)(d) and (e). If~~

further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R317-9-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

#### **R317-9-6. Parties and Intervention.**

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the presiding officer has granted intervention under R317-9-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention:

(a) A Petition to Intervene shall meet the requirements of Section 63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R317-9-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under Section 63-46b-3 may file a Request for Agency Action at the same time he files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the presiding officer for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of Subsection 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

#### **R317-9-7. Conduct of Proceedings.**

(1) Role of Executive Director

The Executive Director is the 'agency head' as that term is used in UAPA for proceedings regarding the denial or revocation of

a permit. The Executive Director is also the "presiding officer", as that term is used in UAPA, except the Executive Director may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(2) Role of Board:

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b for all proceedings not specified in R317-9-7(1). The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(3) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed.

(4) Counsel for the Presiding Officer. The Presiding Officer may request that Counsel for the Presiding Officer provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(5) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(6) Pre-hearing Documents:

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete a document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(7) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-46b-

10, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(8) Schedules:

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(9) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(10) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

#### **R317-9-8. Hearings.**

The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

#### **R317-9-9. Orders.**

(1) Recommended Orders of Appointed Presiding Officers:

(a) The appointed presiding officer shall prepare a recommended order for the board or executive director, as appropriate, and shall provide copies of the recommended order to the board or executive director and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board or executive director shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board or executive director shall then determine whether to accept, reject, or modify the recommended order. The board or executive director may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(d) The board or executive director may modify this procedure with notice to all parties.

(2) Final Orders. The board or executive director shall issue a final order which shall include the information required by Section 63-46b-10 or Subsection 63-46b-5(1)(i).

#### **R317-9-10. Stays of Orders.**

(1) Stay of Contested Permit Conditions in UIC or UPDES Permits Pending Final Agency Action:

(a) If a permit applicant files a request for review under this rule for a UIC or UPDES permit that involves a new facility or new injection well, new source, new discharger or recommending discharger, no stay is available and the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action.

(b) If any other permittee files a request for review of a UIC or UPDES permit under this rule in order to contest permit conditions, the effect of the contested permit conditions shall be stayed pending final agency action. The effect of uncontested permit conditions shall be stayed only as described in paragraph R317-9-10(1)(e).

(c) Uncontested conditions which are not severable from those contested under R317-9-10(1)(b) shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities and sources shall be identified by the Presiding Officer. All other provisions of the permit for the existing facility or source shall remain fully effective and enforceable.

(d) Stays based on cross effects. The presiding officer may grant a stay of an order on the grounds that administrative review of one permit may result in changes to another state-issued permit only when each of the permits involved has been challenged as provided in this rule.

(2) Stay of All Other Orders Pending Agency Action:

(a) For any order not described in R317-9-10(1), a party seeking a stay of the challenged order during an adjudicative proceeding shall file a motion with the presiding officer. If granted, a stay would suspend the challenged order for the period as directed by the presiding officer.

(b) The presiding officer may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(3) Stay of Orders Pending Judicial Review:

(a) A party seeking a stay of the presiding officer's final order during the pendency of judicial review shall file a motion with the presiding officer that issued the final order.

(b) The presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R317-9-10(1)(b) are met.

#### **R317-9-11. Reconsideration.**

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in Section 63-46b-13.

**R317-9-12. Disqualification of Board Members or Other Presiding Officers:**

(1) Disqualification of Board Members or Other Presiding Officers:

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

**R317-9-13. Declaratory Orders:**

(1) A request for a declaratory order may be filed in accordance with the provisions of Section 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R317-9-4(2) above.

(3) The provisions of Section 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R317-9.

**R317-9-14. Miscellaneous:**

(1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

(2) Extensions of Time. Except as otherwise provided by statute, and if requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R317-9-7(6). The presiding officer may also postpone hearings. If the Board is presiding officer, the chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation:

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. Admission pro hac vice shall be granted for nonresident applicants only if the applicant associates with an active local member of the Utah State Bar with whom counsel for all parties and the presiding officer may communicate regarding the proceeding and upon whom papers will be served.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R317-9-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63, Chapter 2, Utah Government Record Access and Management Act, are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

(8) Grants and loans. Determinations with respect to grants and loans made under R317-101, R317-102, and R317-103 are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

] **KEY:** [water—pollution]adjudicative proceedings, administrative [procedures]proceedings, hearings

**Date of Enactment or Last Substantive Amendment:** [February 5, 2003]2011

**Notice of Continuation:** February 1, 2008

**Authorizing, and Implemented or Interpreted Law:** [63-46b]19-1-103; 19-5-104; 63G-4-201 through 63G-4-205; 63G-4-503

Environmental Quality, Water Quality  
**R317-801**  
 Utah Sewer Management Program  
 (USMP)

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 34695

FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed rule is required to administer a new program to permit the planning, construction, operation, and maintenance of public wastewater collection systems in Utah.

**SUMMARY OF THE RULE OR CHANGE:** The rule outlines the requirements for issuing permit coverage for all public wastewater collection systems in Utah. The permit will cover requirements for the owners of collection systems to plan, finance, construct, and operate the collection systems. The rule also has requirements for reporting sewer overflows.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-5-105

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The cost to administrate the program will be covered by existing state resources.

◆ **LOCAL GOVERNMENTS:** The proposed rule applies to public entities that own or operate sewer collection systems. There will be a minor additional cost to these entities to fulfill the requirements of the new program. However, many the program requirements are already being performed by the entities. No permitting fees will be assessed. It is estimated that the program will cost approximately \$5,000 to \$7,500 annually for each collection system entity.

◆ **SMALL BUSINESSES:** No impacts to small businesses are anticipated. Small businesses are not regulated by the proposed regulation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule applies to public entities that own or operate sewer collection systems. There will be a minor additional cost to these entities to fulfill the requirements of the new program. However, many the program requirements are already being performed by the entities. No permitting fees will be assessed. It is estimated that the program will cost approximately \$5,000 to \$7,500 annually for each collection system entity.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** It is estimated that the program will cost approximately \$5,000 to \$7,500 annually for each regulated sewer collection system entity.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed rule applies to public entities that own or operate sewer collection systems. The Division does not anticipate a fiscal impact on businesses.

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

ENVIRONMENTAL QUALITY

WATER QUALITY

THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ John Kennington by phone at 801-536-4380, by FAX at 801-536-4301, or by Internet E-mail at jkennington@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/07/2011

**AUTHORIZED BY:** Walter Baker, Director

**R317. Environmental Quality, Water Quality.****R317-801. Utah Sewer Management Program (USMP).****R317-801-1. Applicability and Definitions.**

1.1 APPLICABILITY. Any federal or state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system is required to comply with this rule, R317-801.

1.2 DEFINITIONS. The following definitions are to be used in conjunction with those in R317-1-1 and R317-8-1. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

(1) "BMP" means "best management practice".

(2) "CCTV" means "closed circuit television.

(3) "CIP" means a "Capital Improvement Plan".

(4) "DWO" means "the Utah Division of Water Quality".

(5) "FOG" means "fats, oils and grease".

(6) "I/I" means "infiltration and inflow".

(7) "Permittee" means the federal and state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system or who is in direct responsible charge for operation and maintenance of the sewer collection system.

(8) "SECAP" means "System Evaluation and Capacity Assurance Plan".

(9) "Sewer Collection System" means a system for the collection and conveyance of wastewaters or sewage from domestic, industrial and commercial sources. It does not include systems that collect and convey stormwater exclusively.

(10) "SORP" means "Sewer Overflow Response Plan"

(11) "SSMP" means "Sewer System Management Plan".

(12) "SSO" means "sanitary sewer overflow", the escape of wastewater or pollutants from, or beyond the intended or designed containment of a sewer collection system.



(13) "Class 1 SSO" (Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that:

- (a) effects more than five private structures;
- (b) affects one or more public, commercial or industrial structure(s);
- (c) may result in a public health risk to the general public;
- (d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures;
- (e) discharges to Waters of the state; or,
- (f) is within a drinking water source protection zone(s).

(14) "Class 2 SSO" (Non Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.

(15) "USMP" means the "Utah Sewer Management Program".

### **R317-801-2. General Permit Requirements.**

2.1 GENERAL PERMIT FOR SEWER COLLECTION SYSTEM. All permittees are required to operate under the General Permit for sewer collection systems as required by this rule. R317-801.

#### 2.2 NOTICE OF INTENT REQUIREMENTS.

(1) A permittee shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems between January 15, 2012 and April 15, 2012. A new permittee for a sewer collection system shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems at least three (3) months prior to operation of the system.

(2) Forms and instructions for submitting a Notice of Intent can be obtained online on the DWQ's website.

#### 2.3 EFFECTIVE DATE OF GENERAL PERMIT.

General permit coverage will be in effect when the Notice of Intent has been submitted, approved and declared complete by the Executive Secretary.

### **R317-801-3. General Permit Provisions.**

#### 3.1 PROHIBITIONS.

(1) Any SSO that results in a discharge of untreated or partially treated wastewater to Waters of the state is prohibited.

(2) Any SSO that results in a discharge of untreated or partially treated wastewater that creates a health hazard, nuisance, or is a threat to the environment is prohibited.

#### 3.2 GENERAL SSO REQUIREMENTS.

1) The permittee shall take all feasible steps to eliminate SSOs to include:

- (a) properly managing, operating, and maintaining all parts of the sewer collection system;
- (b) training system operators;
- (c) allocating adequate resources for the operation, maintenance, and repair of its sewer collection system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure an adequate measure of revenues and expenditures in accordance with generally acceptable accounting practices; and,
- (d) providing adequate capacity to convey base flows and peak flows, including flows related to normal wet weather events.

Capacity shall meet or exceed the design criteria of R317-3.

(2) SSOs shall be reported in accordance with the requirements of R317-801-4.

(3) When an SSO occurs, the permittee shall take all feasible steps to:

- (a) control, contain, or limit the volume of untreated or partially treated wastewater discharged;
- (b) terminate the discharge;
- (c) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water; and,
- (d) mitigate the impacts of the SSO.

### **R317-801-4. General Permit SSO Reporting Requirements.**

4.1 SSO REPORTING. SSOs shall be reported as follows:

(1) A Class 1 SSO shall be reported orally within 24 hrs and with a written report submitted to the DWQ within five calendar days. Class 1 SSO's shall be included in the annual USMP report.

(2) Class 2 SSOs shall be reported on an annual basis in the USMP annual report.

4.2 ANNUAL REPORT. A permittee shall submit to DWQ a USMP annual operating report covering information for the previous calendar year by April 15 of the following year.

### **R317-801-5. SSMP Requirements.**

5.1 SSMP. The permittee shall have and implement a written SSMP and shall make it available to DWQ upon request. A copy of the SSMP shall be publicly available at the permittee's office and/or available on the Internet. The SSMP must be publicly noticed by the permittee and approved by the permittee's governing body at a public meeting. The main purpose of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sewer collection system to reduce and prevent SSOs, as well as minimize impacts of any SSOs that occur.

#### 5.2 CONTENTS OF SSMP. The SSMP shall include:

(1) Organization information to include:

- (a) The name or position of the responsible or authorized representative;

- (b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and,

- (c) The chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to DWQ, the public (if needed) and other agencies if applicable (such as County Health Department).

(2) Sewer collection system use ordinances, service agreements, or other legally binding methods, that:

- (a) Prohibit unauthorized discharges into its sewer collection system i.e. I/I, stormwater, chemical dumping, unauthorized debris and cut roots;

- (b) Require that sewers and connections be properly designed and constructed;

- (c) Ensure access for maintenance, inspection, or repairs for portions of the laterals owned or maintained by the permittee;

- (d) Limit the discharge of FOG and other debris that may cause blockages;

(e) Require compliance with pretreatment requirements;  
(f) Provide authority to inspect industrial users; and,  
(g) Provide for enforcement for violations of the requirements.  
(3) An Operations and Maintenance Plan which includes:  
(a) An up-to-date map of the sewer collection system, showing all gravity line segments, manholes, pumping facilities, pressure pipes, gates and all other applicable conveyance facilities;  
(b) A description of routine preventative operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sewer collection system with more frequent cleaning and maintenance targeted at known problem areas. The plan should include regular visual and TV inspection of manholes and sewer pipes and a system of ranking the condition of sewer pipe and manholes. The plan should have an appropriate system to document scheduled and all other types of work activities, such as a maintenance, management, system, or paper work orders;  
(c) A Rehabilitation, Replacement and Improvement Plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each class of deficiencies. Rehabilitation and replacement should focus on sewer pipes that are at risk of failure or prone to more frequent blockages due to pipe defects. The rehabilitation and replacement plan shall include a CIP, if required, that addresses proper management and protection of the infrastructure assets;  
(d) Schedule for training on a regular basis for staff and contractors in operations and maintenance consistent with DWQ continuing education requirements for certified operators; and,  
(e) Providing for equipment and replacement part inventories, including identification of critical replacement parts. (This may include a list of vendors that the equipment and/or part can be purchased from, or local agreements).  
(4) Design and performance provisions which include:  
(a) Design, construction standards and specifications that meet or exceed R-317-3 for the installation of new sewer collection systems, pump stations and other appurtenances and for the rehabilitation and repair of existing sewer collection systems; and,  
(b) Procedures and standards for inspecting, testing and documenting the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.  
(5) A SORP which has the following measures to protect public health and the environment:  
(a) A program to respond to overflows which addresses:  
1. Receipt and documentation of information regarding a sewer overflow;  
2. Dispatch of appropriate crews to the site of the sewer overflow;  
3. Overflow correction, containment, and cleanup including procedures to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to Waters of the state and to minimize or correct any adverse impact on the environment resulting from the sewer overflow;  
4. Preparation of an overflow report by responding personnel; and,  
5. Follow up with affected persons.  
(b) Procedures for prompt notification to the public.

(c) Procedures to notify appropriate regulatory agencies and other potentially affected entities to include:  
1. DWQ to comply with SSO reporting requirements;  
2. County Health Department, local water supply agencies as appropriate, and other affected agencies should the SSO potentially affect the public health or reach the Waters of the state;  
3. Utah Division of Emergency Response and Remediation, if hazardous materials are or may be involved; and,  
4. Any other required UPDES, State, or Federal reporting requirements.  
(d) Procedures to ensure that appropriate staff personnel are aware of and follow the SORP and are appropriately trained.  
(6) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a FOG control plan. Where required, the FOG control plan shall include the following:  
(a) An implementation plan and schedule for a residential and commercial public education outreach for the FOG control plan that promotes proper disposal of FOG;  
(b) A plan for the disposal of FOG generated within the permittee's service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG;  
(c) Sewer collection system use ordinances, service agreements, or other legally binding methods, that prohibit FOG discharges to the system;  
(d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;  
(e) A FOG inspection, monitoring and evaluation plan;  
(f) Identification of resources to do inspections and enforce the FOG control plan; and,  
(g) A maintenance schedule for lines affected by FOG blockages.  
(7) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a SECAP. Where required, the SECAP shall include the following:  
(a) an evaluation of the wastewater collection system's existing hydraulic capacity using historical information such as flow, system records, current zoning, local development options, and maintenance records;  
(b) identification of system deficiencies; and,  
(c) a CIP that includes an appropriate model for the system that can be used to evaluate the hydraulic conditions in the system and identify existing and forecast future deficiencies to provide hydraulic capacity such as for future dry weather peak flow conditions, as well as the appropriate design for storm or wet weather events. The CIP shall establish a short and long term schedule to address the deficiencies and conditions identified, including a priority list, alternative analysis, and schedule for recommended upgrades. The CIP shall include increases in pipe size, I/I reduction plans, increases in pumping capacities and/or redundancies, storage capacity increases and recommended trunk line cleaning schedules or other monitoring activities. The CIP shall identify the sources of funding. The schedule shall be reviewed and adjusted yearly.

5.3 MONITORING, MEASUREMENT, AND SSMP MODIFICATIONS.

(1) The permittee shall maintain relevant information that can be used to establish and prioritize appropriate SSO prevention activities and shall document all monitoring activities (i.e. daily cleaning activities, CCTV video records, manhole inspections, and hot spot activities).

(2) The permittee shall regularly review the effectiveness of each element of the SSMP and shall monitor the SECAP implementation (when required).

(3) The permittee shall annually assess the success of the operation and maintenance plan (i.e. line cleaning, CCTV inspections and manhole inspections, and SSO events) and adjust the operation and maintenance plan as needed based on system performance.

(4) The permittee shall update SSMP elements, as appropriate, based on monitoring or performance evaluations.

(5) The permittee shall regularly identify and illustrate SSO trends, including frequency, location, and volume.

(6) The permittee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every five years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the permittee's compliance with the SSMP, including identification of any deficiencies in the SSMP and steps to correct them.

(7) The permittee shall communicate with the public, as needed, on the development, implementation, and performance of the SSMP. The permittee shall establish a public outreach/communication plan which shall provide the public with the opportunity to provide input to the permittee as the SSMP is developed and implemented.

(8) The SSMP shall be prepared by, or under the direction of, a Utah certified professional engineer.

(9) The SSMP must be completed by the deadlines listed in the Timeframe for Implementation in R317-801-6.

R317-801-6. Certification, Submission and Implementation Requirements.

6.1 TIMELINE FOR NOTICE, SSMP, AND CERTIFICATION. The permittee shall certify to DWQ that a SSMP is in place that is in compliance with the USMP by submitting a notice to DWQ within the time frames identified in the following time schedule:

Table 1. Timeframe for Implementation

Task	Completion Dates by Population			
	>50,000 population	15,001 to 50,000 population	3,501 to 15,000 population	3,500 and Less population

Notice of Intent to be covered by General Permit Between January 15, 2012 and April 15, 2012 (New permittees 3 months prior to operation)

Completion of SSMP (excluding SECAP)	24 months after effective date	30 months after effective date	36 months after effective date	42 months after effective date
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Completion of SECAP when required	36 months after effective date	42 months after effective date	48 months after effective date	60 months after effective date
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6.2 SIGNIFICANT MODIFICATIONS. Significant modification of the SSMP must be public noticed by the permittee and approved by the permittee's governing body at a public meeting. A new notice certifying the revised SSMP is in place shall be sent to DWQ.

6.4 INCOMPLETE REPORTS. If a permittee becomes aware that it failed to submit required information in any notice or report, the permittee shall promptly amend the notice or report.

6.5 CERTIFICATION OF NOTICES AND REPORTS. All notices and reports submitted to DWQ shall be signed and certified as required in R317-8-3.4.

**KEY:** wastewater, sewer management program, sewer collection system

**Date of Enactment or Last Substantive Amendment:** 2011  
**Authorizing, and Implemented or Interpreted Law:** 19-5-105

Health, Administration  
**R380-100**  
 Americans with Disabilities Act  
 Grievance Procedures

**NOTICE OF PROPOSED RULE**  
 (Repeal and Reenact)  
 DAR FILE NO.: 34554  
 FILED: 04/06/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Congress amended the Americans with Disabilities Act (ADA) by passing the ADA Amendments Act (ADAAA) of 2008 (Pub. L. No. 110-325; effective 01/01/2009). This notice of proposed rule amendment updates the Department's complaint procedures, which are required by 28 CFR 35.107(b).

SUMMARY OF THE RULE OR CHANGE: This proposed amendment: 1) updates definitions consistent with the Americans with Disabilities Act Amendments Act; 2) extends the period for filing a complaint from 60 days to 90 days, and provides the executive director with discretion to direct the use of the grievance process for complaints filed more than 90 days after the alleged noncompliance; 3) provides that by filing a complaint or subsequent appeal, the complainant authorizes a confidential review of all relevant records, including records classified as private or controlled under the Government Records Access and Management Act; 4)

permits investigation by a designee of the executive director or director in the event that the Americans with Disabilities Act (ADA) coordinator is unable or unwilling to conduct the investigation; 5) requires prompt delivery of the executive director's final decision to the complainant; and 6) makes other stylistic changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 28 CFR 35.107 and Section 26-1-17 and Subsection 63G-3-102(2)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This amendment has no impact to the state budget. It clarifies and updates existing language. It provides administrative flexibility. Based on past experience, the change that extends the complaint filing window from 60 days to 90 days will not have any fiscal impact on the state.
- ◆ LOCAL GOVERNMENTS: This amendment does not impact local governments. The complaint procedure is available to individuals, not local governments.
- ◆ SMALL BUSINESSES: This amendment does not impact small businesses. The complaint procedure is available to individuals, not small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment imposes no cost or savings to persons other than small businesses, businesses, or local government entities. The amendment clarifies and updates existing language. While the amendment provides for 30 additional days in which an individual may file a complaint, this additional time will not likely produce any additional cost or savings for the individual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment makes no change in compliance costs for affected persons. The amendment clarifies and updates existing language. It provides an additional 30 days in which an individual may file an ADA complaint with the Department of Administrative Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no impact on businesses. It provides a procedure for individuals to follow to file an ADA complaint with the Department of Health.

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

HEALTH  
ADMINISTRATION  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: W. David Patton, PhD, Executive Director

**R380. Health, Administration.**

~~**R380-100. Americans with Disabilities Act Grievance Procedures.**~~

~~**R380-100-1. Authority and Purpose.**~~

~~(1) This rule is promulgated under authority of Section 26-1-17 and Section 63G-3-102(2). As required by 28 CFR 35.107, the Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 and 28 CFR Part 35, 1991 edition.~~

~~(2) The provisions of 28 CFR 35 implement Title II of the Americans with Disabilities Act of 1990, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department of Health.~~

~~**R380-100-2. Definitions.**~~

~~(1) "ADA Coordinator" means the head of the Employee Assistance Section of the Office of Administrative Services within the Department of Health.~~

~~(2) "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.~~

~~(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~(4) "Qualified Individual with a Disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Health.~~

~~**R380-100-3. Filing of Complaints.**~~

~~(1) Any qualified individual with a disability may file a complaint within 180 days of the alleged noncompliance with the provisions Title II of the Americans with Disabilities Act of 1990 or the regulations promulgated thereunder. Complaints should be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the~~

effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(3) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(4) If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

#### **R380-100-4. Investigation of Complaints.**

(1) The ADA coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in R380-100-3(3) of this rule if it is not made available by the complainant.

(2) The coordinator may seek assistance from the Department's legal, human resource, and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator may also consult with the division or office head in reaching a recommendation. Before making any recommendation that would (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

#### **R380-100-5. Recommendation and Decision.**

(1) Within 15 business days after receiving the complaint, the ADA Coordinator shall recommend to the division or office head what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the coordinator is unable to make a recommendation within the 15 business day period, he shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The division or office head may confer with the ADA coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The division or office head shall make his decision within 15 business days. The division or office head shall take all reasonable steps to implement his decision. The decision shall be in writing or in another accessible format suitable to the complainant.

#### **R380-100-6. Appeals.**

(1) The complainant may appeal the division or office head's decision to the executive director within ten business days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator may not also be the executive director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without undue hardship to the Department.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the division or office director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. Before making any decision that would (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the executive director shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

(6) The executive director shall issue his decision within 15 business days after receiving the appeal. It shall be in writing or in another accessible format suitable to the complainant.

(7) If the executive director or his designee is unable to reach a decision within the 15 business day period, he shall notify the individual in writing or by another accessible format suitable to the complainant why the decision is being delayed and the additional time needed to reach a decision.

#### **R380-100-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures; the Federal ADA Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.]

#### **R380-100. Americans with Disabilities Act Grievance Procedures.**

##### **R380-100-1. Authority and Purpose.**

(1) This rule is made under authority of Section 26-1-17 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

**R380-100-2. Definitions.**

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(2) "Department" means the Department of Health created by Section 26-1-4.

(3) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Executive Director" means the executive director of the department.

(7) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(8) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

**R380-100-3. Filing of Complaints.**

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(4) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

**R380-100-4. Investigation of Complaints.**

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R380-100-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

**R380-100-5. Recommendation and Decision.**

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

**R380-100-6. Appeals.**

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

**R380-100-7. Record Classification.**

(1) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R380-100-5 or a final decision upon appeal under Section R380-100-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R380-100-7(2), classified as "private."

**R380-100-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

**KEY: grievance procedures, disabled persons**

**Date of Enactment or Last Substantive Amendment: [1992]2011**

**Notice of Continuation: August 20, 2007**

**Authorizing, and Implemented or Interpreted Law: 26-1-17; 63G-3-102(2)**

**Health, Children's Health Insurance  
Program  
R382-1  
Benefits and Administration**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 34560

FILED: 04/07/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add and update definitions in the rule text, update incorporations by reference, clarify when the Department may cover an abortion, and modify procedures for agency conferences and administrative hearings in accordance with state and federal law.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds and updates definitions in the rule text, updates incorporations by reference, clarifies when the Department may cover an abortion, and modifies procedures for agency conferences and administrative hearings. These changes clarify the procedures that govern Medicaid eligibility, clarify the appeal process through managed care organizations, and specify that the Department of Workforce Services is the agency that conducts fair hearings. This amendment also makes other stylistic changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 40

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Section 6.2 of the State Plan for the Children's Health Insurance Program, published by Division of Medicaid and Health Financing, 04/17/2009
- ◆ Updates Section 8 of the State Plan for the Children's Health Insurance Program, published by Division of Medicaid and Health Financing, 04/17/2009

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this amendment only clarifies fair hearing procedures and the appeal process for the Children's Health Insurance Program (CHIP). This amendment neither increases nor decreases services for CHIP clients, and it does not affect client eligibility.
- ◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any impact to local governments because they do not fund or provide CHIP services and do not determine client eligibility.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this amendment only clarifies fair hearing procedures and the appeal process under CHIP. This amendment neither increases nor decreases services for CHIP clients, and it does not affect client eligibility.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to CHIP providers and to CHIP clients because this amendment only clarifies fair hearing procedures and the appeal process under this program. This amendment neither increases nor decreases services for CHIP clients, and it does not affect client eligibility.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate any compliance costs for a single CHIP provider or any out-of-pocket expenses for a single CHIP client because this amendment only clarifies fair hearing procedures and the appeal process under this program. This amendment neither increases nor decreases services for CHIP clients, and it does not affect client eligibility.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As this proposed rule neither increases nor decreases services no fiscal impact on business is expected. Clarification of the fair hearing and appeals process should assist business with compliance.

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

HEALTH  
CHILDREN'S HEALTH INSURANCE PROGRAM  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011**

**AUTHORIZED BY: W. David Patton, PhD, Executive Director**

**R382. Health, Children's Health Insurance Program.**

**R382-1. Benefits and Administration.**

**R382-1-1. Authority and Purpose.**

This rule implements the Children's Health Insurance Program under Title XXI of the Social Security Act, as adopted in the state under Title 26, Chapter 40 [~~of the Utah Code~~]. It is authorized by Section 26-40-103.

**R382-1-2. Definitions.**

The definitions found in Title 26, Chapter 40 apply to this rule. In addition,

(1) "Applicant" means a child under the age of 19 on whose behalf an application has been made [~~an application~~] for benefits under the Children's Health Insurance Program (CHIP), but who is not an enrollee.

(2) "Department" means the Utah Department of Health.

(3) "Enrollee" means a child under the age of 19 who has applied for and has been found eligible for benefits under CHIP.

**R382-1-3. Nature of Program and Benefits.**

(1) [~~The Children's Health Insurance Program~~]CHIP provides reimbursement to medical providers for the services rendered they render to a child who meets the eligibility [~~requirements~~] and application requirements of Rule R382-10. [~~The Children's Health Insurance Program~~]CHIP provides limited benefits as described in this rule. The Department provides reimbursement coverage under the program only for benefits and levels of coverage for each program benefit:



(a) as provided in rule governing ~~[the Children's Health Insurance Program]~~CHIP;

(b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, ~~[July 1, 2005]~~April 17, 2009 ed., which is adopted and incorporated by reference ~~[, and all applicable laws and rules].~~

(2) ~~[The Children's Health Insurance Program]~~CHIP is not health insurance. A relationship with the Department as the insurer and the enrollee as the insured ~~[is not created]~~does not exist under ~~[the]~~this program.

**R382-1-4. Limitation of Abortion Benefits.**

~~[Abortion is a covered benefit only if necessary to save the life of the mother]~~The Department may only cover abortion in accordance with the provisions of 42 U.S.C. Sec. 1397ee.

**R382-1-5. Providers.**

The Department requires a child to enroll in one of the managed care organizations (MCO) that contracts with the Department under the program.

**R382-1-6. Reimbursement.**

(1) The Department shall reimburse only for benefits as limited in its contracts with the ~~[managed care organizations]~~MCOs.

(2) Payment for services by the contracted ~~[managed care organization]~~MCO and enrollee co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered.

**R382-1-7. Cost Sharing.**

A provider may require an enrollee to pay a co-payment equal to that listed in Section 8 of the State Plan for the Children's Health Insurance Program, ~~[July 1, 2005]~~April 17, 2009 ed., which is adopted and incorporated by reference.

**R382-1-8. ~~[Grievances]~~Agency Conferences, Fair Hearings and Appeals.**

(1) An applicant or enrollee may request an agency conference in accordance with Section R414-301-5 at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act (UAPA).

~~[(a) Agency conferences may be held at the discretion of the Department.~~

~~[(b) A representative authorized in writing may participate in the agency conference.~~

~~[(c) The Department may conduct an agency conference by telephone if the applicant or enrollee does not object.~~

~~]~~ (2) The applicant or enrollee, ~~[the enrollee's-]parent[(s)], legal guardian, or authorized representative [authorized in writing by the enrollee or the enrollee's parent(s)]~~may request an agency action, also called a fair hearing, if he disagrees with an agency decision regarding the individual's eligibility. ~~[An applicant, the applicant's parent(s), or representative authorized in writing by the applicant or the applicant's parent(s) may request an agency action.]~~The request for a fair hearing must be in accordance with the provisions and time limits of Section R414-301-6.

(3) The Department of Workforce Services (DWS) shall conduct fair hearings on eligibility in accordance with the provisions of Section R414-301-6.

~~[(a) Any request for agency action must be in writing clearly stating a desire to commence an agency proceeding, delivered or mailed to the Department, Department of Workforce Services, or the local eligibility office. The request must be mailed within 90 days of the Department's action or initial decision.~~

~~[(b) Proceedings pursuant to requests for agency action under the Children's Health Insurance Program are designated as formal proceedings.~~

~~[(c) An applicant's or enrollee's authorized representative may participate in the administrative proceedings before the Department.~~

~~[(d) The Department may conduct the administrative proceeding, including any hearings, telephonically or by other similar means if the applicant or enrollee does not object.~~

~~[(e) The enrollee may choose not to accept the continued benefits that the Department offers pending an administrative decision.~~

~~[(f) The Department need not conduct a hearing if the sole issue is one of state or federal law or policy.~~

[(3)4] If an enrollee disagrees with a decision of the MCO regarding a covered benefit or service, the enrollee may appeal the decision through the MCO.

(a) An [E]nrollee[s] must exhaust grievance remedies with the [managed care organization]MCO before [they can]he requests an agency action from the Department.

(b) The enrollee may file an appeal with the Department if the enrollee disagrees with the MCO's resolution. The enrollee must file the appeal within 60 days of the date that the MCO sends the resolution notice.

(c) The Department shall conduct a review of the MCO's decision in accordance with the provisions of 42 CFR 438.408 and issue a final decision to the enrollee and the MCO.

(d) The Department shall conduct all appeals in accordance with UAPA.

(e) The enrollee may continue to receive benefits if the enrollee meets the conditions of 42 CFR 438.420.

**KEY: children's health benefits, fair hearings**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2007]~~2011**

**Notice of Continuation: May 30, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40-103**

Health, Children's Health Insurance  
Program  
**R382-10**  
Eligibility

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34561

FILED: 04/07/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement a provision from H.B. 260 of the 2010 General Session of the Legislature, which allows households to use adjusted gross income as reported to the Utah State Tax Commission to become eligible for benefits in the Children's Health Insurance Program (CHIP). (DAR NOTE: H.B. 260 (2010) is found at Chapter 67, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: This amendment implements a provision from H.B. 260 of the 2010 General Session of the Legislature, which allows households to use adjusted gross income as reported to the Utah State Tax Commission to become eligible for CHIP benefits. It also clarifies other income provisions to become CHIP eligible and implements two federally required exclusions from income.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 40

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated impact to the state budget. One-time implementation costs of \$30,000 will be paid by a Robert Wood Johnson Foundation grant.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide CHIP services and do not determine CHIP eligibility.
- ◆ SMALL BUSINESSES: There is no anticipated impact to small businesses. One-time implementation costs of \$30,000 will be paid by a Robert Wood Johnson Foundation grant. Further, this change does not impose any additional fees or costs on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost to other persons or entities. Those CHIP clients who opt to verify their income through the Tax Commission will experience a minor reduction in effort because they will not need to submit paper documentation of income.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost to a single person or entity. A CHIP client who opts to verify income through the Tax Commission will experience a minor reduction in effort because it is unnecessary to submit paper documentation of income.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Accuracy and simplification of income verification through Tax Commission records has the potential to be a cost savings to all parties.

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

HEALTH

CHILDREN'S HEALTH INSURANCE PROGRAM

CANNON HEALTH BLDG

288 N 1460 W

SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: W. David Patton, PhD, Executive Director

**R382. Health, Children's Health Insurance Program.****R382-10. Eligibility.****R382-10-13. Income Provisions.**

(1) To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size.

(a) All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, [is] counts[ed] toward household income, unless this section specifically describes a different treatment of the income.

(b) When a CHIP household is scheduled for a renewal of eligibility, the household may give consent to the eligibility agency to access the household's most recent adjusted gross income from the Utah State Tax Commission. Only CHIP eligible households with no other assistance programs open can elect this option. When the household elects this option, the eligibility agency shall use the adjusted gross income from the most recent tax record as the countable income of the household.

(1)2 The Department [does] may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(2)3 The Department may count [~~Any~~] any income in a trust that is available to, or is received by [a] any of the following household members: [household member]

(a) a parent or spouse of a parent;

(b) an eligible child who is the head of the household;

(c) a spouse of an eligible child if the spouse is 19 years of age or older; or

(d) a spouse who is under 19 years old and is the head of the household [~~is countable income.~~]

(3)4 Payments received from the Family Employment Program, General Assistance, or refugee cash assistance [~~or~~

~~adoption support services as authorized under Title 35A, Chapter 3]~~ is countable income.

([4]5) Rental income is countable income. The following expenses can be deducted:

- (a) taxes and attorney fees needed to make the income available;
- (b) upkeep and repair costs necessary to maintain the current value of the property;
- (c) utility costs only if they are paid by the owner; and
- (d) interest only on a loan or mortgage secured by the rental property.

([5]6) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

([6]7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

([7]8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

([8]9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

([9]10) SSI and State Supplemental Payments are countable income.

([10]11) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

([11]12) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

([12]13) Child Care Assistance under Title XX is not countable income.

([13]14) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

([14]15) Needs-based Veteran's pensions are ~~[not]~~ counted as income. ~~[If the income is not needs-based,]count~~ only the portion of a Veteran's Administration benefit ~~[check-]to~~ which the individual is legally entitled~~[is countable income]~~.

([15]16) ~~The Department may not count the [H]income of a child under the age of 19[is excluded]~~ if the child is not the head of a household.

(17) The Department shall count the income of the spouse of an eligible child if:

- (a) the spouse is 19 years of age or older; or
- (b) the spouse is under 19 years old and is the head of the household.

([16]18) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable

income. The individual must verify enrollment in an educational program.

([17]19) Reimbursements for expenses incurred by an individual are not countable income.

([18]20) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103[-]286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

([19]21) Victim's Compensation payments as defined in Pub. L. No. 101[-]508 are not countable income.

([20]22) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103[-]286 are not countable income.

([21]23) Income of an alien's sponsor or the sponsor's spouse is not countable income.

([22]24) If the household expects to receive less than \$500 per year in taxable interest and dividend income, then they are not countable income.

([23]25) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

([24]26) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111[-]5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

([25]27) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111[-]5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111[-]5, 123 Stat. 115, for certain government retirees are not countable income.

([26]28) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, is not countable income.

([27]29) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111[-]5, 123 Stat. 115, is not countable income.

(30) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(31) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

#### **R382-10-14. Budgeting.**

~~[The following section describes methods that the Department will use to determine the household's countable monthly or annual income.~~

(1) ~~The Department shall count~~<sup>[F]</sup> the gross income for parents and stepparents of any child included in the household size ~~[is counted]~~ to determine a child's eligibility, unless the income is excluded under this rule. The Department may only deduct [Only] required expenses from the gross income [that are required] to make an income available to the individual [are deducted from the gross income]. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) A household with only CHIP coverage may elect upon renewal to have the Department use the most recent adjusted gross income (AGI) from the Utah State Tax Commission.

(a) The eligibility agency shall then use AGI instead of requesting verification of current income. If the use of AGI should result in an adverse change, the household may provide verification of current income.

~~(4)~~<sup>[5]</sup> Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

~~(5)~~<sup>[6]</sup> The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct[s] 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department shall deduct[s] the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

~~(6)~~<sup>[7]</sup> The Department may annualize income for any household and in particular for households that have self-

employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

**KEY: children's health benefits**

**Date of Enactment or Last Substantive Amendment: [October 22, 2009]2011**

**Notice of Continuation: May 19, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-304** Income and Budgeting

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34556

FILED: 04/06/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement income exclusions under the Medicaid program in accordance with federal law.

**SUMMARY OF THE RULE OR CHANGE:** This change implements income exclusions under the Medicaid program that include federal tax refunds and refundable credits that a Medicaid client receives between 01/01/2010, and 12/31/2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111-312. It also implements the exclusion that an individual receives for payments through the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111-291. This amendment also clarifies policy and makes other technical changes throughout the rule text.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 45 CFR 206.10(a)(1)(vii), published by Government Printing Office, 10/01/2010
- ◆ Updates 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), published by Government Printing Office, 10/01/2010

- ◆ Updates 42 CFR 435.601, 435.602, 435.640, 435.725, 435.726, 435.811, 435.831, and 435.832, published by Government Printing Office, 10/01/2010
- ◆ Updates 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, published by Government Printing Office, 04/01/2010
- ◆ Updates 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), and 233.20(a)(4)(ii), published by Government Printing Office, 10/01/2010
- ◆ Updates 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), published by Government Printing Office, 10/01/2010
- ◆ Updates Subsections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011
- ◆ Updates 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, published by Government Printing Office, 10/01/2010
- ◆ Updates Subsection 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011
- ◆ Updates 20 CFR 416.1110 through 416.1112, published by Government Printing Office, 04/01/2010
- ◆ Updates Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011
- ◆ Removes 20 CFR 416.1166a, published by Government Printing Office, 04/01/2002

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only excludes certain refundable credits that most Medicaid recipients are not eligible to receive. In addition, a recipient has ten days to report the receipt of those credits and the agency cannot change eligibility in the month that the client receives the credits when the agency does not know the advance date of receipt.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund Medicaid services and do not determine Medicaid eligibility.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this change only excludes certain refundable credits that most Medicaid recipients are not eligible to receive. In addition, a recipient has ten days to report the receipt of those credits and the agency cannot change eligibility in the month that the client receives the credits when the agency does not know the advance date of receipt.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid

providers and to Medicaid clients because this change only excludes certain refundable credits that most Medicaid recipients are not eligible to receive. In addition, a recipient has ten days to report the receipt of those credits and the agency cannot change eligibility in the month that the client receives the credits when the agency does not know the advance date of receipt.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change can only result in possible savings to a single Medicaid provider or to a Medicaid client.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No impact on business is expected. Clients will have the right to report credits that might affect eligibility and the agency may not deny eligibility during the month of reporting. Savings to business are possible.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011**

**AUTHORIZED BY: W. David Patton, PhD, Executive Director**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-304. Income and Budgeting.**

**R414-304-1. Authority and Purpose.**

(1) This rule is established under the authority of Section 26-18-3.

(2) The purpose of this rule is to establish the income eligibility criteria for determining eligibility for medical assistance programs.

**R414-304-[1]2. Definitions.**

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition:

(a) "Aid to Families with Dependent Children" (AFDC) means a State Plan for aid that was in effect on June 16, 1996.

([a]b) "Allocation for a spouse" means an amount of income that is the difference between the [SS]Social Security Income (SSI) federal benefit rate for a couple minus the federal benefit rate for an individual.

(c) "Arrearages" means payments that the Department did not collect for past months or years.

([b]d) "Basic maintenance standard" or "BMS" means the income level for eligibility for [1931]Family Medicaid coverage under Section 1931 of the Social Security Act, and for coverage of the medically needy based on the number of family members who are counted in the household size.

([e]e) "Benefit month" means a month or any portion of a month for which an individual is eligible for [Medicaid]medical assistance.

(f) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

([d]g) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(h) "Department" means the Utah Department of Health.

(i) "Dependent" means earning less than \$2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(j) "Eligibility agency" means the Department of Workforce Services that determines eligibility for Medicaid under contract with the Department.

(k) "Eligible spouse" means the member of a married couple who is either aged, blind or disabled.

(l) "Factoring" means that the eligibility agency calculates the monthly income by prorating income to account for months when an individual receives a fifth payment when paid weekly, or a third paycheck with paid every other week. Weekly income is factored by multiplying the weekly income amount by 4.3 to obtain a monthly amount. Income paid every other week is factored by multiplying the bi-weekly income by 2.15 to obtain a monthly amount.

(m) "Family Medicaid" means medical assistance for families caring for dependent children. It may be used to refer to family Medicaid coverage for the medically needy or family Medicaid for Low-Income Family and Child Medicaid.

(n) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(o) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(p) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(q) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(r) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(s) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(t) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(u) "Low-Income Family and Child Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws. It may be referred to as Low-Income Family and Child Medicaid or LIFC Medicaid.

(v) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(w) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(e) "Federal poverty guideline" or "FPL" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of poverty means the federal poverty guideline.

(f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

(h) "Poverty-related" refers to any one of a variety of medical assistance programs that use a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

(j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(x) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed 1/3 of the SSI federal benefit rate plus \$20.

([k]y) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may

include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

**R414-304-[2]3. ~~[A, B and D]Aged, Blind and Disabled Non-Institutional and Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.~~**

~~[(1) This rule establishes how the Department treats unearned income to determine eligibility for Aged, Blind and Disabled Medicaid and Aged, Blind and Disabled Institutional Medicaid coverage groups.~~

~~[(2)1] The Department incorporates by reference 42 CFR 435.811 and 435.831, [2008]2010 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, [2008]2010 ed. The Department also incorporates by reference Subsections 404(h)(4) and 1612(b) (24) and (25) of the Compilation of the Social Security Laws in effect January 1, 20[09]11, to determine income and income deductions for Medicaid eligibility. The Department [does]may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.~~

~~[(3)2] The following definitions apply to this section:~~

~~(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.~~

~~(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.~~

~~(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount will not exceed 1/3 of the SSI federal benefit rate plus \$20.~~

~~[(4)3] The eligibility agency [does]may not count [VA-(Veteran's Administration)] (VA) payments for aid and attendance or the portion of a VA payment that [is made]an individual makes because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.~~

~~[(5)4] The eligibility agency may only count[s] as income the portion of a VA check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent [has applied]applies to VA to receive the payment directly, VA [has denied]denies that request, and the dependent does not receive the payment. In [this]that case, the eligibility agency shall also count the amount for a dependent [also counts]as income of the veteran or surviving spouse who receives the payment.~~

~~[(6)5] The eligibility agency may not count Social Security Administration (SSA) reimbursements as income of Medicare premiums[are not countable income].~~

~~[(7)6] The eligibility agency [does]may not count as income[s] the value of special circumstance items if the items are paid for by donors.~~

~~[(8)7] For [A, B and D]aged, blind and disabled Medicaid, the eligibility agency shall count[s] as income two-thirds of current child support [received]that an individual receives in a~~

month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

~~[(9)8] The eligibility agency shall count as income [C]child support payments that [are payments owed]a parent or guardian owes for past months or years[are countable income of the parent or guardian, and will be counted to determine eligibility of the parent or guardian]. The agency shall use [C]countable income of the parent [is used]to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.~~

~~[(10)9] For [A, B and D]aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.~~

~~(1[+]0) The eligibility agency shall count[s] as unearned income[s] the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.~~

~~(1[2]1) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.~~

~~(1[3]2) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.~~

~~(1[4]3) The eligibility agency [does]may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs[The agency does not count as income], and may not count any other grants, scholarships, fellowships, or gifts [from other sources]that [are actually]a client use[d]s to pay for education[or will be used to pay allowable educational expenses]. The eligibility agency shall count as income, in the month that the client receives them, [A]any amount of grants, scholarships, fellowships, or gifts [from other sources that are used or will be used]that the client uses to pay for non-educational expenses[including food and shelter expenses, counts as income in the month received]. Allowable educational expenses include:~~

- (a) tuition;
- (b) fees;
- (c) books;
- (d) equipment;

(e) special clothing needed for classes;  
 (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and

(g) child care necessary for school attendance.

(1[5]4) Except for an individual eligible for the Medicaid Work Incentive (MWI) [P] program, the following provisions apply to non-institutional medical assistance:

(a) For [A, B, or D] aged, blind and disabled Medicaid, the eligibility agency ~~[does] may~~ not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind[;] or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem[s] the spouse's income to the aged, blind[;] or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine[s] household size and whose income counts for [A, B or D] aged, blind and disabled Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) the eligibility agency shall deem[s] income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare[s] the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare[s-it] the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency [does] may not count the ineligible spouse's income and ~~[does] may~~ not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare ~~[is combined and compared-]~~ to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount[;] and one spouse receives SSI, the eligibility agency may only compare ~~[only-]~~ the income of the non-SSI spouse, after allowable deductions, ~~[is compared-]~~ to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare ~~[then-]~~ the income of both spouses, after allowable deductions, ~~[is compared-]~~ to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem[s] income of the non-covered spouse to the covered spouse when that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, ~~[then-]~~ the eligibility agency may only count[s-only] the covered spouse's income. In both cases, the countable income is compared

to 100% of the two-person poverty guideline. If ~~[#]the countable income~~ exceeds the limit, ~~[then income,]the eligibility agency shall compare the income~~, after allowable deductions, ~~[is compared-]~~ to the BMS.

(I) If the non-covered spouse has ~~[deemable-]income to deem to the covered spouse~~, the eligibility agency shall compare the countable income, after allowable deductions, ~~[is compared-]~~ to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have ~~[deemable-]income to deem to the covered spouse~~, ~~[then]the eligibility agency may only compare~~ ~~[only-]~~ the covered spouse's income, after allowable deductions, ~~[is compared-]~~ to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind[;] or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the ~~[Medicaid Work Incentive]MWI~~ program. If both spouses want coverage, however, the eligibility agency shall first determine[s] eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income ~~[will not be deemed-]~~ from a spouse who meets 1619(b) protected group criteria.

(f) The eligibility agency shall determine[s] household size and whose income counts for QMB, SLMB, and QI assistance as described below[;]:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine[s] income of both spouses and compare[s] it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare[;] and the other spouse is aged, blind[;] or disabled and ~~[that spouse either-]~~ does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem[s] income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income ~~[is compared-]~~ to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem[s] income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The agency shall combine[d] countable income ~~[is compared-]~~ to the applicable



percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse~~[s-deemable income]~~ does not exceed the allocation for a spouse, only the eligible spouse's income is counted~~[;]~~ and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income ~~[will not be counted]~~ to determine eligibility for QMB, SLMB or QI assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency ~~[will]~~ may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(1[6]5) For ~~[i]~~ Institutional Medicaid ~~[including]~~ that includes home and community~~[;]~~-based waiver programs, the eligibility agency may only count~~[s only]~~ the client in the household size~~[;]~~ and ~~[counts only the client's]~~ income and deemed income ~~[deemed]~~ from an alien client's sponsor~~[;]~~ to determine the cost of care contribution~~[to cost of care]~~.

(1[7]6) The eligibility agency shall deem~~[s]~~ any unearned and earned income~~[; unearned and earned;]~~ from an alien's sponsor~~[;]~~ and the sponsor's spouse~~[; if any;]~~ when the sponsor ~~[has]~~ sign[ed] an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act ~~[on or]~~ after December 1[9]8, 1997.

(1[8]7) The eligibility agency shall end ~~[S]~~ sponsor deeming ~~[will end]~~ when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. ~~[Beginning a]~~ After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(1[9]8) The eligibility agency may not apply ~~[S]~~ sponsor deeming ~~[does not apply]~~ to applicants who are eligible for Medicaid for emergency services only.

(20[1]9) If ~~[income such as]~~ retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income ~~[only]~~ the amount that is paid to the individual ~~[is counted as income]~~.

(2[4]0) The ~~[Department]~~ eligibility agency ~~[does]~~ may not count as unearned income the additional \$25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may only receive this weekly payment from March 2009 through June 2010.

(2[2]1) The ~~[Department]~~ eligibility agency ~~[does]~~ may not count as unearned income the one-time economic recovery payments that an individual receives under Social Security, Supplemental Security Income, Railroad Retirement, or Veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. It further ~~[does]~~ may not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the

American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(2[3]2) The ~~[Department]~~ eligibility agency ~~[does]~~ may not count as unearned income the Consolidated Omnibus Budget Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(23) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(24) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

#### **R414-304-[3]4. Medicaid Work Incentive Program Unearned Income Provisions.**

~~[----- (1) This rule establishes how the Department treats unearned income for the Medicaid Work Incentive program.~~

(2[1]1) The Department incorporates by reference 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157 and Appendix to Subpart K of 416, 20[08]10 ed. The Department also adopts Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws ~~[in effect January 1, 2009]~~. The Department ~~[does]~~ may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(3[2]2) The ~~[Department]~~ eligibility agency shall allow~~[s]~~ the provisions found in Subsection~~[s]~~ R414-304-[2]3[4]3 through (1[4]3), and (1[8]6) through (2[3]4).

(4[3]3) The eligibility agency shall determine~~[s]~~ income from an ineligible spouse or parent by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments are not allowed as an income deduction.

(5[4]4) For the ~~[Medicaid Work Incentive]~~ MWI ~~[P]~~ program, the income of a spouse or parent is not considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other ~~[Medicaid Work Incentive]~~ MWI ~~[P]~~ program eligibility factors are eligible without paying a Medicaid buy-in premium.

(6[5]5) The eligibility agency shall determine~~[s]~~ household size and whose income counts for the ~~[Medicaid Work Incentive]~~ MWI ~~[P]~~ program as described below:

(a) If the ~~[Medicaid Work Incentive]~~ MWI ~~[P]~~ program individual is an adult and is not living with a spouse, the eligibility agency may only count~~[s only]~~ the income of the individual. The eligibility agency shall include~~[s]~~ in the household size, any dependent children under the age of 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare~~[s]~~ the countable income to 250% of the federal poverty guideline for the household size involved.

(b) If the ~~[Medicaid Work Incentive]~~MWI [P]program individual is living with a spouse, the eligibility agency shall combine[s] their income before allowing any deductions. The eligibility agency shall include[s] in the household size the spouse and any children under the age of 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the eligibility agency shall compare[s] the countable income of the ~~[Medicaid Work Incentive]~~MWI [P]program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the ~~[Medicaid Work Incentive]~~MWI [P]program individual is a child living with a parent, the eligibility agency shall combine[s] the income of the ~~[Medicaid Work Incentive]~~MWI [P]program individual and the parents before allowing any deductions. The eligibility agency shall include[s] in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students, who are living in the home or temporarily absent. After allowable deductions, the eligibility agency shall compare[s] the countable income of the ~~[Medicaid Work Incentive]~~MWI [P]program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

**R414-304-4|5. Family Non-Institutional Medicaid and Institutional Family Medicaid Unearned Income Provisions.**

~~[(1) This rule establishes how the Department treats unearned income to determine eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.]~~

[(2)|] The Department incorporates by reference 42 CFR 435.811 and 435.831, [2008]2010 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), and 233.20(a)(4)(ii), [2008]2010 ed. The Department also incorporates by reference Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 20[09]11. The Department [does]may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

~~[(3) The term "unearned income" means cash received for which the individual performs no service.]~~

[(4)|] The eligibility agency [does]may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

[(5)|] The eligibility agency [does]may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

[(6)|] The eligibility agency [does]may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

[(7)|] The eligibility agency [does]may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to \$30 a calendar quarter per household member. Any amount that exceeds \$30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

[(8)|] The eligibility agency [does]may not count as income the amount deducted from benefit income ~~[that is]~~to repay an overpayment~~[of such benefit income]~~.

[(9)|] The eligibility agency [does]may not count as income the value of special circumstance items paid for by donors.

~~[(10)|] The eligibility agency [does]may not count as income payments for home energy assistance.~~

[(11)|] The eligibility agency [does]may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count[s] the amount that the client does not intend to use or that is more than what is needed for temporary housing.

[(12)|] The eligibility agency [does]may not count as income SSA reimbursements of Medicare premiums.

[(13)|] The eligibility agency [does]may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for Medicaid, the eligibility agency shall count[s] income that the client uses [used] to determine the amount of these payments, unless the income is an excluded income under other laws or regulations.

[(14)|] The eligibility agency [does]may not count as income interest or dividends earned on countable resources. The eligibility agency [does]may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

[(15)|] The eligibility agency [does]may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

[(16)|] The eligibility agency shall count[s] as income SSI and State Supplemental payments received by children who are included in the coverage under ~~[Child, Family, Newborn, or Newborn Plus Medicaid]~~Medicaid programs for families with children, and programs that cover only pregnant women and children.

[(17)|] The eligibility agency shall count[s] unearned rental income. The eligibility agency shall deduct[s] \$30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct[s] the greater of either \$30 or the following actual expenses that the client can verify[-]:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and[-]

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

[(18)|] The eligibility agency shall count[s] deferred income when the client receives the income, ~~[it is received by the~~

~~client if it was.]the client does not defer the income by choice, and the client reasonably expects to receive the income.[not deferred by choice and receipt can be reasonably anticipated.] If the [income was deferred]client defers the income by choice, the agency shall count the income according to when the client could receive the income.[it counts as income when it could have been received.] The eligibility agency shall count as income [±]the amount deducted from income to pay for benefits like health insurance, medical expenses or child care [counts as income]in the month that the client could receive the income.[the income could have been received.]~~

(1[9]7) The eligibility agency shall count[s] the amount deducted from income ~~[that is-]~~to pay an obligation ~~[such as]of~~ child support, alimony or debts in the month ~~that the client could receive the income[ could have been received].~~

(2[0]18) The eligibility agency shall count[s] payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(2[1]19) The eligibility agency may only count[s] as income the portion of a ~~[Veterans Administration]VA~~ check to which the client is legally entitled. If the payment includes an amount for a dependent, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent ~~[has applied]applies~~ to VA to receive the payment directly, VA ~~[has denied]denies~~ that request, and the dependent does not receive the payment. In ~~[this]that~~ case, the eligibility agency shall also count the amount for a dependent ~~[counts-]as~~ income of the veteran or surviving spouse who receives the payment.

(2[2]0) The eligibility agency shall count[s] as income deposits to financial accounts jointly~~[-]~~owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency [does]may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly~~[-]~~held accounts.

(2[3]1) The eligibility agency shall count[s] as unearned income the interest earned from a sales contract on lump sum payments and installment payments when the interest payment is received by or made available to the client.

(2[4]2) The eligibility agency shall count[s] current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount ~~[is divided-]equally~~ among the children unless a court order indicates ~~[a different division]otherwise~~. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who ~~[is receiving]receives~~ the payments.~~[Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past due debts.] If [the Office of Recovery Services is collecting] collects~~ current child support, the eligibility agency shall count the child support [it is counted-]as current even if ~~[the Office of Recovery Services]ORS~~ mails ~~[the-]payment~~ to the client after the month it is collected.

(2[5]3) The eligibility agency shall count[s] payments from annuities as unearned income in the month that the client receives the payments~~[is received].~~

(2[6]4) If ~~[income such as-]retirement~~ income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count[s] the amount paid to the individual.

(2[7]5) The eligibility agency shall deem[s] both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act ~~[on or-]after~~ December 1[9]8, 1997.

(2[8]6) The eligibility agency shall stop[s] deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. ~~[Beginning a]After~~ December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(2[9]7) The eligibility agency may not apply [S]sponsor deeming ~~[does not apply-]to~~ applicants who are eligible ~~[for Medicaid-]for~~ emergency services only.

(3[0]28) The ~~[Department]eligibility agency [does]may~~ not count as unearned income the additional \$25 a week payment to a recipient of unemployment insurance provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. The recipient may receive this weekly payment from March 2009 through June 2010.

(3[1]29) The ~~[Department]eligibility agency [does]may~~ not count as unearned income the one-time economic recovery payments that an individual receives under Social Security, Supplemental Security Income, Railroad Retirement, or Veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115. It further ~~[does]may~~ not count refunds that a government retiree receives pursuant to the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(3[2]0) The ~~[Department]eligibility agency [does]may~~ not count as unearned income the COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(31) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(32) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

**R414-304-[5]6. [A, B and D Medicaid and A, B and D]Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Earned Income Provisions.**

(1) The Department incorporates by reference 42 CFR 435.811 and 435.831, ~~[2008]2010~~ ed., and 20 CFR 416.1110 through 416.1112, ~~[2008]2010~~ ed. The Department ~~[does]may~~ not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) If an SSI recipient has a plan for achieving self[-] support approved by the [~~Social Security Administration~~](SSA), the [~~Department shall~~] eligibility agency may not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self[-]support goals. This income [~~shall be excluded and~~] may include earned and unearned income.

(3) The eligibility agency may not deduct from income [E]xpenses relating to the fulfillment of a plan to achieve self-support[ ~~shall not be allowed as deductions from income~~].

(4) For [~~A, B and D~~] Aged, Blind and Disabled Medicaid, the eligibility agency may not count earned income used to compute a needs-based grant[ ~~is not countable~~].

(5) For [~~A, B and D~~] aged, blind and disabled Institutional Medicaid, the eligibility agency shall deduct \$125 [shall be deducted] from earned income before it determines contribution towards cost of care[ ~~is determined~~].

(6) The eligibility agency shall include [C]apital gains [shall be included] in the gross income from self-employment.

(7) To determine countable net income from self-employment, the [~~state~~] eligibility agency shall allow a 40 [percent] % flat rate exclusion off the gross self-employment income as a deduction for business expenses. For a self-employed individual[s] who ha[ve]s [~~actual~~] allowable business expenses greater than the 40 [percent] % flat rate exclusion amount[;] and who also[if the individual] provides verification of the [~~actual~~] expenses, the eligibility agency shall calculate the self-employment net profit amount[ ~~will be calculated~~] by using the [~~same~~] deductions that are allowed under federal income tax rules.

(8) The eligibility agency may not allow [No]deductions [shall be allowed] for the following business expenses:

- (a) transportation to and from work;
- (b) payments on the principal for business resources;
- (c) net losses from previous tax years;
- (d) taxes;
- (e) money set aside for retirement; and
- (f) work-related personal expenses.

(9) The eligibility agency may deduct [N]net losses of self-employment from the current tax year [may be deducted] from other earned income.

(10) The [~~Department~~] eligibility agency shall disregard[s] earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541. The eligibility agency shall also exclude [F]this income [is also excluded] for individuals described in Subsections 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), 1902(a)(10)(A)(ii)(XII), 1902(a)(10)(A)(ii)(XIII) 1902(a)(10)(A)(ii)(XVIII), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act. The [~~Department~~] eligibility agency [does] may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost[-] of[-] care contribution for long-term care recipients.

(11) The eligibility agency shall count deductions[~~Deductions~~] from earned income [such as]that include insurance premiums, savings, garnishments, or deferred income [are counted] in the month when the client could receive the funds[ ~~could have been received~~].

(12) The [~~Department~~] eligibility agency [does] may not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

#### **R414-304-[6]7. Family Non-Institutional Medicaid and Family Institutional Medicaid Earned Income Provisions.**

[~~————This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.~~]

(1) The Department incorporates by reference 42 CFR 435.811 and 435.831, [2008]2010 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), [2008]2010 ed. The [~~Department~~] eligibility agency [does] may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

[~~————(2) The following definitions apply to this section:~~]

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws.

[~~(3)2~~] The eligibility agency may not count [F]the income of a dependent child [is not countable income] if the child is:

(a) in school or training full-time;

(b) in school or training part-time, which means the child is enrolled for at least half of the hours needed to complete a course, or is enrolled in at least two classes or two hours of school a day [if]and employed less than 100 hours a month; or

(c) is in a job placement under the federal Workforce Investment Act[ ~~(WIA)~~].

(4)[3] For Family Medicaid, the eligibility agency shall allow the AFDC \$30 and 1/3 of earned income deduction [is allowed] if the wage earner [has] receive[d]s 1931 Family Medicaid in one of the four previous months and this disregard [has]is not [been] exhausted.

(5)[4] The [~~Department~~] eligibility agency shall determine[s] countable net income from self-employment by allowing a 40 [percent] % flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-

employed individual provides verification of actual business expenses greater than the 40 ~~[percent]~~% flat rate exclusion amount, the ~~[Department]~~eligibility agency shall allow[s] actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(~~[6]~~5) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(~~[7]~~6) For Family Medicaid, the ~~[Department-]~~eligibility agency shall deduct from the income of clients who work at least 100 hours in a calendar month ~~[child care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size.]~~ a maximum of \$200 a month in child care costs for each child who is under the age of two and \$175 a month in child care costs for each child who is at least two years of age. The maximum deduction of \$175 shall also apply to provide care for an incapacitated adult. The eligibility agency shall deduct from the income of clients who work less than 100 hours in a calendar month a maximum of \$160 a month in child care costs for each child who is under the age of two and \$140 a month for each child who is at least two years of age. The maximum deduction of \$140 a month shall also apply to provide care for an incapacitated adult. ~~[from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per month per child under age 2 and \$175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to \$160.00 per month per child under age 2 and \$140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.]~~

(~~[8]~~7) For Family Institutional Medicaid, the ~~[Department shall]~~eligibility agency shall deduct a maximum of \$160 in child[-] care costs from the earned income of clients who work ~~[ing]~~ at least 100 hours ~~[or more]~~ in a calendar month. The eligibility agency shall deduct a maximum of \$130 in child care costs from the earned income of clients working less than 100 hours in a calendar month. ~~[A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.]~~

(~~[9]~~8) The ~~[Department]~~eligibility agency shall exclude[s] earned income paid by the U.S. Census Bureau to temporary census takers to prepare for and conduct the census, for individuals defined in 42 CFR 435.110, 435.112 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.222, 435.223, and 435.300 through 435.310 and individuals defined in Title XIX of the Social Security Act Sections 1902(a)(10)(A)(i)(III), (IV), (VI), (VII), 1902(a)(10)(A)(ii)(XVII), 1902(a)(47), 1902(e)(1), (4), (5), (6), (7), and 1931(b) and (c), 1925 and 1902(l). The ~~[Department]~~eligibility agency ~~[does]~~may not exclude earnings paid to temporary census takers from the post-eligibility process of determining the person's cost[-] of[-] care contribution for long-term care recipients.

(~~[10]~~9) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household is eligible for 1931 Family Medicaid. The eligibility agency may not deduct ~~[No-]~~health insurance premiums or medical bills ~~[are deducted]~~ from gross income to determine net income for 1931 Family Medicaid.

(~~[1]~~0) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the ~~[state shall]~~eligibility agency shall disregard earned income of the ~~[specified]~~named relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the ~~[state shall]~~eligibility agency shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household is eligible to receive Transitional Medicaid ~~[following]~~under the provisions of Rule R414-303 as long as it meets all other criteria.

(~~[1]~~1) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the ~~[state shall-]~~eligibility agency shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the ~~[twelf]~~12th month of receiving ~~[such]~~the income disregard, if the household continues to have earned income, the household is eligible to receive Transitional Medicaid ~~[following]~~under the provisions of Rule R414-303 as long as it meets all other criteria.

(~~[1]~~2) The ~~[Department-]~~eligibility agency ~~[does]~~may not count as earned income any credit or refund that an individual receives under the provisions of Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, referred to as the Making Work Pay credit.

#### **R414-304-~~[7]~~8. ~~[A, B and D]~~Aged, Blind and Disabled Non-Institutional Medicaid and Family Non-Institutional Medicaid Income Deductions.**

~~[-----]~~(1) This section sets forth income deductions for non-institutional aged, blind, disabled and family Medicaid programs, except for the Medicaid Work Incentive program.

(~~[2]~~1) The Department shall appl[ies]y the financial methodologies required by 42 CFR 435.601, and the deductions defined in 42 CFR 435.831, ~~[2005]~~2010 ed., which are incorporated by reference. ~~[Any additional income deductions or limitations are described in this rule.]~~

(~~[3]~~2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii), (iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the ~~[Department-]~~eligibility agency shall deduct[s] from income an amount equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size to determine the spenddown amount.

(~~[4]~~3) To determine eligibility for and the amount of a spenddown under medically needy programs, the ~~[Department-]~~eligibility agency shall deduct[s] from income health insurance premiums the client or a financially responsible family member pays providing coverage for the client or any family members living with the client in the month of payment. The ~~[Department-]~~eligibility agency shall also deduct[s] from income the amount of a health insurance premium the month it is due when the Department pays the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Compilation of the Social Security Laws, ~~[Act, 2005 ed.,]~~ except no deduction is allowed for Medicare premiums that the Department pays for or reimburses to recipients.

(a) The ~~Department~~ eligibility agency shall deduct[s] the entire payment in the month it is due and ~~does~~ may not prorate the amount.

(b) The ~~Department~~ eligibility agency ~~does~~ may not deduct health insurance premiums to determine eligibility for the poverty-related medical assistance programs or ~~[1931]~~ Family Medicaid coverage under Section 1931 of the Compilation of the Social Security Laws.

~~(5)~~4 To determine the spenddown under medically needy programs, the ~~Department~~ eligibility agency shall deduct[s] from income health insurance premiums that the client or a financially responsible family member ~~[paid]~~ pays in the application month or during the three~~[-]~~-month retroactive period. The eligibility agency shall allow the deduction ~~[is allowed]~~ either in the month paid or in any month after the month paid to the extent the full amount was not deducted in the month paid, but only through the month of application.

~~(6)~~5 To determine eligibility for medically needy coverage groups, the ~~Department~~ eligibility agency shall deduct[s] from income medically necessary ~~[medical]~~ expenses that the client verifies only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, a client's spouse, a parent of a dependent client~~[-or]~~, a dependent sibling of a dependent client, a deceased spouse, or a deceased dependent child~~[-]~~;

(b) Medicaid does not cover ~~[F]~~ the medical bill ~~[will not be paid by Medicaid]~~ and it is not payable by a third party~~[-]~~;

(c) The medical bill remains unpaid~~[-]~~ or the client receives and pays for the medical service~~[- was received and paid]~~ during the month of application or during the three-month time~~[-]~~period immediately preceding the date of application. The date that the medical service~~[- was]~~ is provided on an unpaid expense ~~does not matter~~ is irrelevant if the client still owes the provider for the service. Bills for services that the client receive[d]~~s~~ and ~~[paid]~~ pays for during the application month or the three-month time-period preceding the date of application can be used as deductions only through the month of application.

~~(7)~~6 The eligibility agency may not allow ~~[A]~~ a medical expense ~~[cannot be allowed]~~ as a deduction more than once.

~~(8)~~7 The eligibility agency may only allow as an income deduction ~~[A]~~ a medical expense ~~[allowed as a deduction must be]~~ for a medically necessary service. The ~~Department~~ eligibility agency shall ~~[decides]~~ determine whether the service is ~~[if services are]~~ medically necessary.

~~(9)~~8 The ~~Department~~ eligibility agency shall deduct[s] medical expenses in the order required by 42 CFR 435.831(h)(1). When expenses have the same priority, the ~~Department~~ eligibility agency shall deduct[s] paid expenses before unpaid expenses.

~~(10)~~9 A client who pays a cash spenddown may present proof of medical expenses paid during the coverage month and request a refund of spenddown paid up to the amount of bills paid by the client. The following criteria apply:

(a) Expenses for which a refund can be made include medically necessary~~[- medical]~~ expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the ~~[State]~~ Utah Medicaid State Plan~~[-]~~;

(b) The expense must be for a service that the client receive[d]~~s~~ during the benefit month~~[-]~~;

(c) The Department ~~[will]~~ may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown ~~[because]~~ when the client assumes responsibility to pay ~~[any]~~ that expense~~[s used to meet a spenddown]~~;

(d) A refund cannot exceed the actual cash spenddown amount paid by the client~~[-]~~;

(e) The Department ~~[does]~~ may not refund spenddown amounts ~~[paid by]~~ that a client pays based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use the unpaid bills ~~[may be used]~~ to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent ~~[such]~~ that the bills remain unpaid at the beginning of ~~[such]~~ the future month~~[-]~~;

(f) The Department ~~[will]~~ shall reduce ~~[a]~~ the refund amount by the amount of any unpaid obligation that the client owes the Department.

~~(11)~~0 For poverty-related medical assistance, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency ~~[Medical costs cannot be deducted]~~ may not deduct medical costs from income to determine eligibility for poverty-related medical assistance programs. An ~~[1]~~ individual~~[s cannot]~~ may not pay the difference between countable income and the applicable income limit to become eligible for poverty-related medical assistance programs.

~~(12)~~1 When a client must meet a spenddown to become eligible for a medically needy program, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider ~~[cannot]~~ may not use the provider's funds to pay the client's spenddown and that the provider ~~[cannot]~~ may not loan the client money for the client to pay the spenddown.

~~(13)~~2 A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services ~~[received]~~ that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses ~~[cannot]~~ may not be payable by Medicaid or a third party.

(d) For each benefit month, the client ~~[can]~~ may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(1[4]3) The [Department] eligibility agency [cannot] may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, [F]the [Department] eligibility agency [cannot] may not accept spenddown payments from a client if [the] a Medicaid provider loans funds [were loaned] to the client [by a Medicaid provider] to make a spenddown payment.

(1[5]4) The [Department] eligibility agency may only deduct[s-only] the amount of pre[-]paid medical expenses that equals the cost of services in a given month [actually received in the month such expenses are paid]. The eligibility agency may not deduct from income any [P]payments that a client makes for medical services in a month before the client receives the services. [the month services are actually received cannot be deducted from income.]

(1[6]5) For non-institutional Medicaid programs, the [Department] eligibility agency may only deduct[s-institutional medical expenses the client owes only if the expenses are] medically necessary expenses. The Department [decides-] determines whether [if-]services for institutional care are medically necessary.

(1[7]6) The [Department] eligibility agency [does] may not require a client to pay a spenddown of less than \$1.

(1[8]7) [Medicaid-covered-m] Medical costs [incurred-] that a client incurs in a [current-]benefit month [cannot] may not be used to meet spenddown when the client is enrolled in a Medicaid [H]health [P]plan. Bills for mental health services [incurred-]that a client incurs in a benefit month [cannot] may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services [received-]that a client receives in a retroactive or application month that [the]a client [has fully paid]pays [during that time can]may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services [were not provided by the Medicaid-contracted, mental health provider].

#### **R414-304-[8]9. Medicaid Work Incentive Program Income Deductions.**

[-----] (1) This section sets forth income deductions for the Medicaid Work Incentive (MWI) program.

[ (2)1] To determine eligibility for the MWI program, the [Department] eligibility agency shall deduct[s] the following amounts from income to determine countable income that is compared to 250% of the federal poverty guideline:

(a) \$20 from unearned income. If there is less than \$20 in unearned income, the [Department] eligibility agency shall deduct[s] the balance of the \$20 from earned income;

(b) Impairment-related work expenses;

(c) \$65 plus ~~one-half~~ 1/2 of the remaining earned income;

(d) A current[-] year loss from a self-employment business can be deducted only from other earned income.

(3)2) For the MWI program, an individual or household is ineligible if countable income exceeds the applicable income limit. The eligibility agency may not deduct [H]health insurance premiums and medical costs [are not deducted-] from income before comparing countable income to the applicable limit.

([4]3) The [Department] eligibility agency shall deduct[s] from countable income the amount of health insurance premiums paid by the MWI-eligible individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household before determining the MWI buy-in premium.

([5]4) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the [Department] eligibility agency. The client may not meet [F]the MWI premium [cannot be met-]with medical expenses.

([6]5) The [Department] eligibility agency [does] may not require a client to pay a MWI buy-in premium of less than \$1.

#### **R414-304-[9]10. [A, B, and D]Aged, Blind and Disabled Institutional Medicaid and Family Institutional Medicaid Income Deductions.**

[-----] (1) This section sets forth income deductions for aged, blind, disabled and family institutional Medicaid programs.

[ (2)1] The Department applies the financial methodologies required by 42 CFR 435.601 and the deductions defined in 42 CFR 435.725, 435.726, and 435.832, [2005]2010 ed., which are incorporated by reference. The Department applies Subsections 1902(r)(1) and 1924(d) of the Compilation of the Social Security Laws, in effect January 1, 2011, which are incorporated by reference. [Any additional income deductions or limitations are described in this rule.

[-----] (3) The following definitions apply to this section:

[-----] (a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

[-----] (b) "Dependent" means earning less than \$2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.]

([4]2) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the [Department] eligibility agency shall deduct[s] from income health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. The eligibility agency shall deduct [H]health insurance premiums [are deducted-]in the month they are due[-] [F]the payment [is not pro-rated]. The [Department] eligibility agency shall deduct[s] the amount of a health insurance premium for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, except no deduction is allowed for Medicare premiums that the Department pays for or reimburses to recipients.

(b) The [Department] eligibility agency shall deduct[s] from income the portion of a combined premium, attributable to the institutionalized or waiver-eligible client if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver[-]eligible client.

([5]3) The [Department] eligibility agency may only deduct[s] medical expenses from income [only if the expenses meet all of]under the following conditions:

(a) the client receives the medical service [was received by the client];

(b) ~~Medicaid or a third party will not pay the medical bill [the unpaid medical bill will not be paid by Medicaid or by a third party];~~

(c) a paid medical bill can only be deducted ~~[only]~~ through the month ~~[it is paid]~~ of payment. No portion of any paid bill can be deducted after the month of payment.

(~~6~~4) To determine the cost of care contribution for long-term care services, the ~~[Department]~~ eligibility agency ~~[does]~~ may not deduct medical or remedial care expenses that the Department is prohibited from paying ~~[because]~~ when the client incurs the expenses [are incurred during a penalty period imposed due to a] for the transfer of assets for less than fair market value. The ~~[Department]~~ eligibility agency ~~[does]~~ may not deduct medical or remedial care expenses that the Department is prohibited from paying under Section 6014 of the Deficit Reduction Act of 2005, Pub. L. No. 109[-] 171, 120 Stat. 4, ~~[because]~~ when the equity value of the individual's home exceeds the limit set by [such] law. The ~~[Department]~~ eligibility agency may ~~[will]~~ not deduct ~~[such]~~ the expenses during or after the month that the client receives the services [are received nor for any month after the month services are received] even when ~~[such]~~ the expenses remain unpaid.

(~~7~~5) The ~~[Department]~~ eligibility agency ~~[does]~~ may not allow a medical expense as an income deduction more than once.

(~~8~~6) The eligibility agency may only allow as an income deduction [A] a medical expense [allowed as an income deduction must be] for a medically necessary service. The ~~[Department of Health]~~ eligibility agency shall ~~[decides]~~ determine whether the service is [if services are] medically necessary.

(~~9~~7) The ~~[Department]~~ eligibility agency may only deduct ~~[s only]~~ the amount of pre-~~[paid]~~ medical expenses that equals the cost of services in a given month [actually received in the month such expenses are paid]. The eligibility agency may not deduct from income any [P] payments that a client makes for medical services in a month before the client receives the services. [month the services are actually received cannot be deducted from income.]

(~~10~~8) When a client must meet a spenddown to become eligible for a medically needy program or receive Medicaid under a home and community based care waiver, the client must sign a statement that says:

(a) the eligibility agency told the client how spenddown can be met;

(b) the client expects his or her medical expenses to exceed the spenddown amount;

(c) whether the client intends to pay cash or use medical expenses to meet the spenddown; and

(d) that the eligibility agency told the client that the Medicaid provider ~~[cannot]~~ may not use the provider's funds to pay the client's spenddown and that the provider ~~[cannot]~~ may not loan the client money for the client to pay the spenddown.

(~~11~~9) A client may meet the spenddown by paying the eligibility agency the amount with cash or check, or by providing proof to the eligibility agency ~~[proof]~~ of medical expenses that the client owes equal to the spenddown amount.

(a) The client may elect to deduct from countable income unpaid medical expenses for services ~~[received]~~ that the client receives in non-Medicaid covered months to meet or reduce the spenddown.

(b) Expenses must meet the criteria for allowable medical expenses.

(c) Expenses ~~[cannot]~~ may not be payable by Medicaid or a third party.

(d) For each benefit month, the client may choose to change the method of meeting spenddown by either presenting proof of allowable medical expenses to the eligibility agency or by presenting a cash or check payment to the eligibility agency equal to the spenddown amount.

(~~12~~0) The ~~[Department]~~ eligibility agency ~~[cannot]~~ may not accept spenddown payments from a Medicaid provider if the source of the funds is the Medicaid provider's own funds. In addition, [F] the [Department] eligibility agency ~~[cannot]~~ may not accept spenddown payments from a client if ~~[the]~~ a Medicaid provider loans funds [were loaned] to the client [by a Medicaid provider] to make a spenddown payment.

(~~13~~1) The eligibility agency shall require [F] institutionalized clients [are required] to pay all countable income remaining after allowable income deductions to the institution in which they reside as their cost of care contribution [to the cost of their care].

(~~14~~2) A client who pays a cash spenddown[-] or a liability amount to the medical facility in which he resides, may present proof of medical expenses paid during the coverage month and request a refund of spenddown or liability paid up to the amount of bills ~~[paid by the client]~~. The following criteria applies:

(a) Expenses for which a refund can be made include medically necessary medical expenses not covered by Medicaid or any third party, co-payments required for prescription drugs covered under a Medicare Part D plan, and co-payments or co-insurance amounts for Medicaid-covered services as required under the Utah [State] Medicaid State Plan[-].

(b) The expense must be for a service that the client receive[d]s during the benefit month[-].

(c) The ~~[Department]~~ eligibility agency ~~[will]~~ may not refund any portion of any medical expense that the client uses to meet a Medicaid spenddown or to reduce ~~[the]~~ his liability [owed] to the institution ~~[because]~~ when the client assumes that payment responsibility [to pay any expenses used to meet a spenddown or reduce a liability].

(d) A refund cannot exceed the actual cash spenddown or liability amount paid by the client[-].

(e) The ~~[Department]~~ eligibility agency ~~[does]~~ may not refund spenddown or liability amounts paid by a client based on unpaid medical expenses for services that the client receives during the benefit month. The client may present to the eligibility agency any unpaid bills for non-Medicaid-covered services that the client receives during the coverage month. The client may use these unpaid bills ~~[may be used]~~ to meet or reduce the spenddown that the client owes for a future month of Medicaid coverage to the extent ~~[such]~~ that the bills remain unpaid at the beginning of [such] the future month[-].

(f) The Department shall reduce[s] a refund by the amount of any unpaid obligation that the client owes the Department.

(~~15~~3) The ~~[Department]~~ eligibility agency shall deduct[s] a personal needs allowance for residents of medical institutions equal to \$45.



(1[6]4) When a doctor verifies that a single person[;] or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the [Department] eligibility agency shall deduct[s] a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person[;] defined in Subsection R414-304-1[+]2(6), for up to six months to maintain the individual's community residence.

(1[7]5) Except for an individual who is eligible for the Personal Assistance Waiver, an individual [receiving] who receives assistance under the terms of a [H]home and [C]community-[B]based [S]services [W]waiver is eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member[— as if that individual were institutionalized]. The Department applies the provisions of Section 1924(d) of the Compilation of Social Security Laws, or the provisions of 42 U.S.C. 435.726 or 435.832 to determine the deduction for a spouse and family members.

(1[8]6) A client is not eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(1[9]Z) [~~Medicaid covered in~~]Medical costs [~~incurred~~] that a client incurs in a [current] benefit month [~~cannot~~] may not be used to meet spenddown when the client is enrolled in a Medicaid [H]health [P]plan. Bills for mental health services [~~incurred~~] that a client incurs in a benefit month [~~cannot~~] may not be used to meet spenddown if Medicaid contracts with a single mental health provider to provide mental health services to all recipients in the client's county of residence. Bills for mental health services [~~received~~] that a client receives in a retroactive or application month that [~~the~~] a client [~~has fully paid~~] pays [~~during that time can~~] may be used to meet spenddown only if the Medicaid-contracted mental health provider does not provide the services [~~were not provided by the Medicaid-contracted, mental health provider~~].

#### **R414-304-[10]11. Budgeting.**

(1) The Department adopts 42 CFR 435.601 and 435.640, [200+]2010 ed., which are incorporated by reference. The Department also adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, [200+]2010 ed., which are incorporated by reference.

[— (2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "~~Income annualizing~~" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "~~Factoring~~" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "~~Reportable income changes~~" include any change in the source of income and any change that causes income to change by more than \$25. All income changes must be reported for an institutionalized individual.

] (3)2) The [Department] eligibility agency shall do prospective budgeting on a monthly basis.

(4)3) A best estimate of income based on the best available information [~~shall be~~] is considered an accurate reflection of client income in that month.

(5)4) The [Department] eligibility agency shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6)5) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7)6) The [Department] eligibility agency shall count income in the following manner:

(a) For QMB, SLMB, QI-1, [~~Medicaid Work Incentive~~]MWI [P]program, and [A, B, D]aged, blind, disabled, and Institutional Medicaid income [~~shall be~~] is counted as it is received. Income that is received weekly or every other week [~~shall~~] is not [~~be~~] factored[;].

(b) For Family Medicaid programs, income that is received weekly or every other week [~~shall be~~] is factored.

(8)Z) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9)8) Income paid out under a contract [~~shall be~~] is prorated to determine the countable income for each month. [~~Only t~~]The prorated amount [~~shall be~~] is used instead of actual income that a client receives to determine [~~spenddown or eligibility~~] countable income for a month. If the income will be received in fewer months than the contract covers, the income [~~shall be~~] is prorated over the period of the contract. If received in more months than the contract covers, the income [~~shall be~~] is prorated over the period of time in which the money [~~will be~~] is received. The prorated amount of income determined for each month is the amount used to determine eligibility.

(10)9) To determine the average monthly income for farm and self-employment income, the [Department] eligibility agency shall determine the annual income earned during one or more past years, or other applicable time period, and factor[s] in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income [~~shall be~~] is adjusted

during the year when information about changes or expected changes is received by the ~~[Department]~~ eligibility agency.

(1~~[1]~~0) ~~[Student]~~ Countable educational income that a client receive~~[d]~~s other than monthly income ~~[shall be]~~is prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(1~~[2]~~1) Income from Indian trust accounts not exempt by federal law ~~[shall be]~~is prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(1~~[3]~~2) Eligibility for retroactive assistance ~~[shall be]~~is based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method ~~[shall be]~~is used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover~~[-]~~ those specific months in the retroactive period. Income ~~[will not be]~~is factored for retroactive months.

**R414-304-~~[H]~~12. Income Standards.**

~~[(1) This rule sets forth the income standards the Department uses to determine eligibility for Medicaid coverage groups.~~

~~]~~ ((2)1) The Department adopts Subsections 1902(a)(10) (E), 1902(l), 1902(m), 1903(f), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 20~~[03]~~11, which are incorporated by reference.

(3)2) The ~~[Department]~~ eligibility agency shall calculate~~[s]~~ the ~~[A]~~aged and ~~[D]~~disabled poverty-related Medicaid income standard as 100% of the federal non-farm poverty guideline. If an ~~[A]~~aged or ~~[D]~~disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) apply unless the disabled individual or a disabled aged individual has earned income. In ~~[this]~~that case, the income standards of the ~~[Medicaid Work Incentive]~~MWI program apply.

(4)3) The income standard for the ~~[Medicaid Work Incentive Program]~~(MWI~~[s]~~) for disabled individuals with earned income is equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

(a) The ~~[Department]~~ eligibility agency shall charge~~[s]~~ a MWI buy-in premium for the ~~[Medicaid Work Incentive]~~MWI ~~[P]~~program when the countable income of the eligible individual~~s~~ or the couple's income~~[-]~~ or the eligible individual and spouse, when the spouse is also eligible or has deemed income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the ~~[Department]~~ eligibility agency shall charge~~[s]~~ a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household.

(b) The premium is equal to 5% of income when income is over 100% but not more than 110% of the federal poverty guideline, 10% of income when income is over 110% but not over 120% of the federal poverty guideline, or 15% of income when

income is over 120% of the federal poverty guideline. The premium is calculated using only the eligible individual's or eligible couple's countable income multiplied by the applicable percentage.

((5)4) The income limit for pregnant women, and children under one year of age, ~~[shall be]~~is equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) apply.

((6)5) The current Medicaid Income Standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

**R414-304-~~[I]~~13. ~~[A, B and D]~~Aged, Blind and Disabled Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.**

(1) The Department adopts 42 CFR 435.601 and 435.602, ~~[2001]~~2010 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 20~~[04]~~11, which are incorporated by reference.

(2) The eligibility agency shall count the following individuals ~~[shall be counted]~~in the BMS for ~~[A, B and D]~~aged, blind and disabled Medicaid:

- (a) the client;
- (b) a spouse who lives in the same home, if the spouse is eligible for ~~[A, B, or D]~~aged, blind and disabled Medicaid, and is included in the coverage;
- (c) a spouse who lives in the same home, if the spouse has ~~[deemable]~~deemed income above the allocation for a spouse.

(3) The eligibility agency shall count the following individuals ~~[shall be counted]~~in the household size for the 100% of poverty ~~[A or D]~~aged or disabled Medicaid program:

- (a) the client;
- (b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;
- (c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has ~~[deemable]~~deemed income above the allocation for a spouse.

(4) The eligibility agency shall count the following individuals ~~[shall be counted]~~ in the household size for a QMB, SLMB, or QI-1 case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any ~~[deemable]~~ deemed income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has ~~[deemable]~~ deemed income above the allocation for a spouse.

(5) The eligibility agency shall count the following individuals ~~[shall be counted]~~ in the household size for the ~~[Medicaid Work Incentive]~~ MWI [P] program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children who are under the age of 18;

(e) children who are [age-]18, 19, or 20 years of age if they are in school full-time.

(6) Eligibility for ~~[A, B and D]~~ aged, blind and disabled non-institutional Medicaid and the spenddown, if any; ~~[A and D]~~ aged and disabled 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs ~~[shall be]~~ is based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-~~[2]~~ 3;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the ~~[Medicaid Work Incentive]~~ MWI [P] program ~~[shall be]~~ is based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client;

(d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is <sup>[=]</sup>included<sup>[=]</sup> in the BMS, it means that the eligibility agency shall count that family member ~~[shall be counted]~~ as part of the household and also count his [or her] income and resources ~~[shall be counted]~~ to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is <sup>[=]</sup>included<sup>[=]</sup> in the household size, it means that the eligibility agency shall count that family member ~~[shall be counted]~~ as part of the household to determine what income limit applies, regardless of whether the agency counts that family member's income [will be counted] or whether that family member ~~[will]~~ receives medical assistance.

#### **R414-304-~~[13]~~14. Family Medicaid Filing Unit.**

~~[This section provides criteria governing who is included in a family Medicaid household.]~~

(1) The Department adopts 42 CFR 435.601 and 435.602, ~~[2001]~~ 2010 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and

233.20(a)(3)(vi), ~~[2001]~~ 2010 ed., which are incorporated by reference.

(2) For Family Medicaid programs, if a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the ~~[Department-]~~ eligibility agency shall include[s] the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members ~~[do]~~ may not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers ~~[only-]~~ emergency services only under other provisions of Medicaid law.

(3) Except for determinations under 1931 Family Medicaid, the eligibility agency may exclude any unemancipated minor child ~~[may be excluded]~~ from the Medicaid coverage group, and may exclude an ineligible alien child ~~[may be excluded]~~ from the household size<sup>[;]</sup> at the request of the ~~[specified]~~ named relative who is responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size ~~[for deciding]~~ to determine what income limit is applicable to the family. The eligibility agency may not consider [H]income and resources of an excluded child [are not considered when determining] to determine eligibility or spenddown.

(4) The ~~[Department-]~~ eligibility agency [does] may not use a grandparent's income to determine eligibility or spenddown for a minor child<sup>[;]</sup> and may not count the grandparent ~~[is not counted]~~ in the household size. Nevertheless, the eligibility agency shall count as income any cash that a grandparent donates to a minor child or to the parent of a minor child. ~~[A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.]~~

(5) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the eligibility agency shall include the unborn child ~~[is included]~~ in the household size. If a medical authority confirms that ~~[the]~~ a pregnant woman will have more than one child, the eligibility agency shall include all of the unborn children in that household ~~[are included in the household size].~~

(6) If ~~[a-]~~ the parents voluntarily place a child [is- voluntarily placed] in foster care and ~~[is-]~~ in the custody of a state agency, the eligibility agency shall include the parents ~~[are included]~~ in the household size.

(7) The eligibility agency may not include [P]parents in the household size who have relinquished their parental rights ~~[shall not be included in the household size].~~

(8) If a court order places a child in the custody of the state<sup>[;]</sup> and the state temporarily places the child ~~[is temporarily placed]~~ in an institution, the eligibility agency may not include the parents ~~[shall not be included]~~ in the household size.

(9) If the eligibility agency includes or counts a person ~~[is "included" or "counted"]~~ in the household size, ~~[it means that]~~ that family member is counted as part of the household and his<sup>[or her]</sup> income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level applies to determine eligibility for the client or family.

**R414-304-[4]15. ~~[A, B and D]Aged, Blind and Disabled Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.~~**

(1) For ~~[A, B, and D]aged, blind and disabled~~ institutional, and home and community-based waiver Medicaid, the ~~[Department]eligibility agency [shall]may~~ not use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), ~~[2001]2010~~ ed., which is incorporated by reference.

~~[(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.]~~

~~[(4)3] The [Department]eligibility agency shall determine [shall base]eligibility and the contribution to cost of care, which may be referred to as a spenddown, [on]using the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act [on or]after December 1[9]8, 1997. The eligibility agency shall end [S]sponsor deeming [with end]when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. [Beginning a]After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.~~

**KEY: financial disclosures, income, budgeting**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2010]2011~~**

**Notice of Continuation: January 25, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-18-3**

Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-305**  
Resources

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34683

FILED: 04/13/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to implement resource exclusions under the Medicaid program in accordance with federal law.

**SUMMARY OF THE RULE OR CHANGE:** This change implements resource exclusions under the Medicaid program that include federal tax refunds and refundable credits that a Medicaid client receives between 01/01/2010, and 12/31/2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111-312. It also implements the exclusion that an individual receives for payments through the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111-291. Further, this amendment implements a similar exclusion for state tax refunds to keep the treatment of tax refunds consistent with the federal requirement. This amendment also clarifies policy and makes other technical changes throughout the rule text.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Removes Subsection 1902(k) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/1993
- ◆ Updates 42 CFR 435.840, 435.845, published by Government Printing Office, 10/01/2010
- ◆ Updates 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, published by Government Printing Office, 04/01/2010
- ◆ Updates Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011
- ◆ Updates 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), published by Government Printing Office, 10/01/2010
- ◆ Updates Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate a substantial cost to the state budget. Some Medicaid recipients may avoid a loss of eligibility during a month that a tax refund pushes their income above the allowable level. Nevertheless, the Department estimates that the refunds should affect only a small number of recipients and that eligibility costs are negligible.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not determine Medicaid eligibility and do not fund or provide Medicaid services to Medicaid recipients.

♦ **SMALL BUSINESSES:** The Department does not anticipate a substantial impact to small businesses. Some Medicaid recipients may avoid a loss of eligibility during a month that a tax refund pushes their income above the allowable level. Nevertheless, the Department estimates that the refunds should affect only a small number of recipients and that any potential increase in revenue for businesses is negligible. In addition, this change does not impose any new requirements or costs on businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate a substantial impact to Medicaid recipients and to Medicaid providers. Some Medicaid recipients may avoid a loss of eligibility during a month that a tax refund pushes their income above the allowable level. Nevertheless, the Department estimates that any savings to Medicaid recipients are negligible as is any increase in revenue for Medicaid providers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid recipient or to a Medicaid provider. A Medicaid recipient who receives a tax refund above the allowable income level will continue to be eligible for Medicaid services. In addition, a single Medicaid provider may see a potential increase in revenue as a result of this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The policy changes in this rule reflect federal mandates. The fiscal impact on business, if any, is expected to be positive.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: W. David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-305. Resources.**

**R414-305-1. Purpose and Authority.**

This rule is established under the authority of Section 26-18-3 and establishes the resource provisions for Medicaid eligibility.

**R414-305-2. Definitions.**

(1) The definitions in R414-1 and R414-301 apply to this rule.

(2) The following definitions apply in this rule:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers, and the cost of opening and closing a grave site.

(b) "Department" means the Utah Department of Health.

(c) "Eligibility agency" means the Department of Workforce Services that determines eligibility for Medicaid under contract with the Department.

(d) "Penalty period" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a home and community-based waiver due to a transfer of assets for less than fair market value.

(e) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

**R414-305-3. [A, B and D Medicaid and A, B and D]Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions.**

~~[—(1)— This section establishes the standards for the treatment of resources to determine eligibility for aged, blind and disabled Medicaid and aged, blind and disabled institutional Medicaid.~~

~~]~~ ~~(2) To determine eligibility of the aged, blind or disabled, the Department incorporates by reference 42 CFR 435.840, 435.845, 20[09]10 ed., and 20 CFR 416.1201, 416.1202, 416.1205 through 416.1224, 416.1229 through 416.1239, and 416.1247 through 416.1250, 20[09]10 ed. [The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.—]The Department incorporates by reference Section 1917(d), (e), (f) and (g) of the Compilation of the Social Security Laws in effect January 1, 20[09]11. The [Department shall]eligibility agency may not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs.~~

~~[—Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.—]~~

~~[—(3) The definitions in R414-1 and R414-301 apply to this rule, in addition:~~

~~(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.~~

~~(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.~~

~~(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.~~

~~(4)2~~ A resource is available when the ~~[client]~~individual owns it or has the legal right to sell or dispose of the resource for the ~~[client's]~~individual's own benefit.

~~(5)3~~ Except for the Medicaid Work Incentive Program, the resource limit for aged, blind or disabled Medicaid is \$2,000 for a one-person household and \$3,000 for a two-person household.

~~(6)4~~ For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is \$15,000. This limit applies whether the household size is one or more than one.

~~(7)5~~ The ~~[Department]~~eligibility agency shall base[s] non-institutional and institutional Medicaid eligibility on all available resources owned by the ~~[client]~~individual, or ~~[deemed]~~considered available to the ~~[client]~~individual from a spouse or parent. The eligibility agency may not grant eligibility [Eligibility cannot be granted] based upon the ~~[client's]~~individual's intent to or action of disposing of non-liquid resources as described in 20 CFR 416.1240, 20~~[09]~~10 ed., unless Social Security is excluding the resources for an SSI recipient while the recipient takes steps to dispose of the excess resources.

~~(8)6~~ The eligibility agency may not count any [Any] resource or the interest from a resource held within the rules of the Uniform Transfers to Minors Act~~[is not countable]~~. Any money from the resource that is given to the child as unearned income is a countable resource ~~[beginning]~~that begins the month after the child receives it.

~~(9)7~~ The eligibility agency shall count the [The] resources of a ward that are controlled by a legal guardian ~~[are counted]~~as the ward's resources.

~~(10)8~~ The eligibility agency may not count lump [Lump] sum payments ~~that an individual receive[d]~~on a sales contract for the sale of an exempt home ~~[are not counted]~~if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual [shall receive] one three-month extension if more than three months is needed to complete the actual purchase. Proceeds ~~[is]~~are defined as all payments made on the principal of the contract. Proceeds ~~do[es]~~not include interest earned on the principal.

~~(11)9~~ If a resource is ~~[potentially]~~available, but a legal impediment ~~[to making it available]~~exists, the eligibility agency may not count the [it is not a countable] resource until ~~[it can be made]~~it becomes available. The ~~[applicant or recipient]~~individual must take appropriate steps to make the resource available unless one of the following conditions as determined by a person with established expertise relevant to the resource[s] exists:

(a) Reasonable action ~~[would not be successful in making]~~does not allow the resource to become available[-]; and

(b) The ~~[probable]~~cost of making the resource available exceeds its value.

~~(12)10~~ Water rights attached to the home and the lot on which the home sits are exempt ~~[providing]~~as long as [it] the home is the ~~[client's]~~individual's principal place of residence.

~~(13)11~~ For an institutionalized individual, the eligibility agency may not consider a home or life estate ~~[is not considered]~~to be an exempt resource.

~~(14)12~~ To determine eligibility for nursing facility or other long-term care services, the ~~[Department]~~eligibility agency shall exclude[s] the value of the individual's principal home or life estate from countable resources if one of the following conditions is met:

(i) the individual intends to return to the home;

(ii) the individual's spouse resides in the home;

(iii) the individual's child who is under the age of 21, or who is blind or disabled resides in the home; or

(iv) a reliant relative of the individual resides in the home.

~~(15)13~~ Even if the conditions in Subsection R414-305-~~[13]~~~~(14)12~~ are met, an ~~[applicant or client]~~individual is ineligible to receive nursing facility services or other long-term care services if the full equity value of the individual's home or life estate exceeds \$500,000, or increased value according to the provisions of 42 U.S.C. 1396p(f)(1)(C) unless the individual's spouse, or the individual's child who is under the age of 21 or is blind or permanently disabled lawfully resides in the home. The individual may only qualify for Medicaid to cover ancillary services~~[only]~~.

~~(16)14~~ For A, B and D Medicaid, the ~~[Department]~~shall eligibility agency may not count up to \$6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

~~(17)15~~ The eligibility agency may retroactively designate for burial a [A] previously unreported resource that meets the criteria for burial funds found in 20 CFR 416.1231~~[may be retroactively designated for burial]~~ and thereby exempt~~[ed]~~ the resource effective the first day of the month in which it was designated for burial or intended for burial. The eligibility agency may not exempt the funds [cannot be exempted retroactively] more than ~~[2]~~two years retroactively [prior to] before the date of application. The eligibility agency shall treat the resources [Such resources shall be treated] as funds set aside for burial and the amount exempted cannot exceed the limit established for the SSI program.

~~(18)16~~ One vehicle is exempt if it is used for regular transportation needs of the individual or a household member.

~~(19)17~~ The ~~[Department]~~eligibility agency may not count [excludes] resources of an SSI recipient who has a plan for achieving self~~[-]~~ support approved by the Social Security Administration when the resources are set aside under the plan to purchase work-related equipment or meet self~~[-]~~ support goals.

~~(20)18~~ The eligibility agency may not count an [An] irrevocable burial trust ~~[is not counted]~~as a resource. ~~[However]~~Nevertheless, if the owner is institutionalized or on home and community~~[-]~~ based waiver Medicaid, the value of the trust, which exceeds \$7,000, is considered a transferred resource.

~~(21)19~~ The eligibility agency may not count [B] business resources that are required for employment or self-employment~~[are not counted]~~.

~~(22)20~~ For the Medicaid Work Incentive Program, the ~~[Department]~~eligibility agency may not count [excludes] the following additional resources of the eligible individual:

(a) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or

an Individual Retirement Account, even if ~~such~~the funds are available to the individual.

(b) A second vehicle when it is used by a spouse or child of the eligible individual living in the household to get to work.

~~(23)21~~ After qualifying for the Medicaid Work Incentive Program, the eligibility agency may not count the [these-] resources described in Subsection R414-305-~~1~~3~~(22)20~~ [will continue to be excluded throughout the lifetime of]to allow the individual to qualify for other [A, B or D-]Medicaid programs for the aged, blind or disabled~~[-other than], and not solely~~ the Medicaid Work Incentive, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

~~(24)22~~ Assets ~~[shall be deemed from]of~~ an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act ~~[on or]after~~ December 1~~9~~8, 1997, ~~are considered available to the alien. [Sponsor deeming will end]~~The eligibility agency shall stop counting assets from a sponsor when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. [Beginning a]After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

~~(25)23~~ ~~[Sponsor deeming does not apply]~~The eligibility agency shall not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

~~(26)24~~ The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296. During that time period, the eligibility agency may not count state tax refunds for 12 months after the month of receipt.

~~(25)~~ ~~The [Department excludes from countable resources]~~eligibility agency may not count the following resources that an individual receives after December 31, 2012:

(a) Amounts that an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt~~[-]~~;

(b) Amounts that an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt~~[-]~~;

~~(c)~~ Tax credits described in 20 CFR 416.1235 that relate to child tax credits and earned income tax credits for nine months after the month of receipt;

~~(e)d~~ Amounts that an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

~~(26)~~ The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income the following resources:

~~(d)a~~ The value of any reduction in Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

~~(e)b~~ Certain property and rights of federally-recognized American Indians including certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation, ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources), and ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

~~(28)~~ The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

~~(27)29~~ Life estates.

(a) For non-institutional Medicaid, the eligibility agency shall count life estates ~~[shall be counted-]~~as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, the eligibility agency shall count life estates ~~[are countable resources-]~~even if no market exists for the sale of the life estate, unless the life estate can be excluded as defined in ~~[paragraph 14 of this section]~~Subsection R414-305-3(12).

(c) The ~~[client]~~individual may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the ~~[client]~~individual and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the ~~[client's]~~individual's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008
4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590

19 .97480  
 20 .97365  
 21 .97245  
 22 .97120  
 23 .96986  
 24 .96841  
 25 .96678  
 26 .96495  
 27 .96290  
 28 .96062  
 29 .95813  
 30 .95543  
 31 .95254  
 32 .94942  
 33 .94608  
 34 .94250  
 35 .93868  
 36 .93460  
 37 .93026  
 38 .92567  
 39 .92083  
 40 .91571  
 41 .91030  
 42 .90457  
 43 .89855  
 44 .89221  
 45 .88558  
 46 .87863  
 47 .87137  
 48 .86374  
 49 .85578  
 50 .84743  
 51 .83674  
 52 .82969  
 53 .82028  
 54 .81054  
 55 .80046  
 56 .79006  
 57 .77931  
 58 .76822  
 59 .75675  
 60 .74491  
 61 .73267  
 62 .72002  
 63 .70696  
 64 .69352  
 65 .67970  
 66 .66551  
 67 .65098  
 68 .63610  
 69 .62086  
 70 .60522  
 71 .58914  
 72 .57261  
 73 .55571  
 74 .53862  
 75 .52149  
 76 .50441  
 77 .48742  
 78 .47049  
 79 .45357  
 80 .43659  
 81 .41967  
 82 .40295  
 83 .38642  
 84 .36998  
 85 .35359  
 86 .33764  
 87 .32262  
 88 .30859  
 89 .29526  
 90 .28221  
 91 .26955  
 92 .25771  
 93 .24692

94 .23728  
 95 .22887  
 96 .22181  
 97 .21550  
 98 .21000  
 99 .20486  
 100 .19975  
 101 .19532  
 102 .19054  
 103 .18437  
 104 .17856  
 105 .16962  
 106 .15488  
 107 .13409  
 108 .10068  
 109 .04545

**R414-305-[2]4. Family [~~Medicaid and Family~~]Non-Institutional and Institutional Medicaid Resource Provisions.**

~~[(1) This section establishes the standards for the treatment of resources to determine eligibility for Family Medicaid and Family Institutional Medicaid programs.~~

[(2)1] The Department incorporates by reference 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), and 233.20(a)(3)(vi)(A), 20[08]10 ed. [~~The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference.~~] The Department incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 20[09]11. The [~~Department~~]eligibility agency [~~does~~]may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs.~~[Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.]~~

[(3)2] A resource is available when the [~~client~~]individual owns it or has the legal right to sell or dispose of the resource for the [~~client's~~]individual's own benefit.

[(4)3] Except for pregnant women who meet the criteria under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 20[09]11, the resource limit is \$2,000 for a one[-]person household, \$3,000 for a two[-]person household and \$25 for each additional household member. For pregnant women defined above, the resource limit is defined in Section R414-303-11.

[(5)4] Except for the exclusion for a vehicle, the eligibility agency shall use[s] the same methodology for treatment of resources for all medically needy and categorically needy individuals.

[(6)5] To determine countable resources for Medicaid eligibility, the eligibility agency shall consider[s] all available resources owned by the [~~client~~]individual. The agency [~~does~~]may not consider a resource unavailable based upon the [~~client's~~]individual's intent [~~to~~]or action of disposing of non-liquid resources.

[(7)6] The eligibility agency shall count[s] resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

[(8)7] If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an [~~applicant or recipient~~]individual, the eligibility agency shall



count[s] the resources as the ~~[applicant's or recipient's]~~ individual's. The arrangement may be formal or informal.

(1[9]8) If a resource is ~~[potentially]~~ available, but a legal impediment ~~[to making it available]~~ exists, the agency ~~[does]~~ may not count the resource until it ~~[can be made]~~ becomes available. ~~[Before an applicant can be made eligible, or to continue eligibility for a recipient, t]~~ The ~~[applicant or recipient]~~ individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action ~~[would not be successful in making]~~ does not allow the resource to become available[-]; and

(b) The ~~[probable]~~ cost of making the resource available exceeds its value.

(1[4]9) Except for determining countable resources for ~~[1931]~~ Family Medicaid under Section 1931 of the Act, the agency shall exclude[s] a maximum of \$1,500 in equity value of one vehicle.

(1[4]0) The eligibility agency ~~[does]~~ may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count [A] any single household good or personal belonging with a value that exceeds \$1,000 [must be counted] toward the resource limit. The agency [does] may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(1[2]1) The eligibility agency ~~[does]~~ may not count the value of one wedding ring and one engagement ring as a resource.

(1[3]2) For a non-institutionalized individual, the eligibility agency ~~[does]~~ may not count the value of a life estate as an available resource if the life estate is the ~~[applicant's or recipient's]~~ individual's principal residence. If the life estate is not the principal residence, the ~~[rule]~~ provision in Subsection R414-305-~~[4]3~~(2[7]2) shall apply[ies].

(1[4]3) The eligibility agency ~~[does]~~ may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(1[5]4) For a non-institutionalized individual, the eligibility agency ~~[does]~~ may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count[s] as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-~~[4]3~~(1[3]2), (1[4]3), (1[5]4), and (2[7]2) shall apply to the individual's home or life estate.

(1[6]5) The agency ~~[does]~~ may not count as a resource the value of water rights attached to an excluded home and lot.

(1[7]6) The eligibility agency ~~[does]~~ may not count any resource[-] or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count[s] as a resource any money ~~[from such a resource that is given to the]~~ that a child receives as unearned income ~~[and retained]~~, which the child retains beyond the month ~~[received]~~ of receipt.

(1[8]7) The eligibility agency may not count ~~[t]~~ lump sum payments that an individual receive[d]s on a sales contract for the sale of an exempt home ~~[are not counted]~~ if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual ~~[shall receive]~~ one three-month extension, if

more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(1[9]8) The eligibility agency shall count as a resource [R] retroactive benefits received from the Social Security Administration and the Railroad Retirement Board [are not counted as a resource] for the first [9] nine months after receipt.

(20[19]) The eligibility agency shall exclude[s] from resources[-] a burial and funeral fund or funeral arrangement up to \$1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The agency shall separate and clearly designate the burial funds from the non-burial funds. [All such funds must be separated from non-burial funds and clearly designated as burial funds.] The agency may not count as a resource [H] interest earned on exempt burial funds [and] that is left to accumulate [does not count as a resource]. If an individual uses exempt burial funds [are used] for some other purpose, the agency shall count the remaining funds [will be counted] as an available resource [as of] beginning on the date that the funds are withdrawn.

(2[4]0) Assets ~~[shall be deemed from]~~ of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act ~~[on or]~~ after December ~~[9]18~~, 1997, are considered available to the alien. ~~[Sponsor deeming will end]~~ The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. [Beginning a] After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(2[2]1) ~~[Sponsor deeming does not apply]~~ The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(2[3]2) The eligibility agency shall count [B] business resources that are required for employment or self-[-] employment [are not counted]. The [Department] agency shall treat[s] non-business, income-producing property in the same manner as the SSI program [treats it] as defined in 42 CFR 416.1222.

(2[4]3) For ~~[1931]~~ Family Medicaid households who are eligible under Section 1931 of the Act, the eligibility agency ~~[will]~~ may only ~~[not]~~ count as a resource either the equity value of one vehicle that meets the definition of a ~~["]~~passenger vehicle~~["]~~ as defined in Subsection 26-18-2(6)[-] or \$1,500 of the equity of one vehicle, whichever provides the greatest disregard for the household.

(2[5]4) For eligibility under Family-related Medicaid programs, the eligibility agency ~~[will]~~ may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

~~[-----]~~ (26) ~~The agency will not count as a resource, funds received from the Child Tax credit or the Earned Income Tax credit for nine months following the month received. Any remaining~~

funds will count as a resource in the 10th month after being received.

~~]~~ ~~(27)25~~ The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296. During that time period, the eligibility agency may not count state tax refunds for 12 months after the month of receipt.

~~(26)~~ The [Department] eligibility agency may not count the following resources that an individual receives after December 31, 2012:

(a) Funds that an individual receives from the Child Tax credit or the Earned Income Tax credit for nine months after the month of receipt. The agency may not count any remaining funds as a resource in the tenth month after receipt:

(a)b Amounts that an individual receives as a result of the Making Work Pay credit defined in Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt[-];

(b)c Amounts that an individual retains from the economic recovery payments defined in Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for nine months after the month of receipt[-];

(e)d Amounts that an individual retains from the tax credit allowed to certain government employees as defined in Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 for two months after the month of receipt.

(27) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(28) The eligibility agency may not count as income the following resources:

(e)a The value of any reduction in COBRA premiums provided to an individual under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(e)b Certain property and rights of American Indians including certain tribal lands, personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(29) The eligibility agency shall count only the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

#### **R414-305-3]5. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.**

~~(1) This section establishes the standards for the treatment of resources for married couples when one spouse is institutionalized and the other spouse is not institutionalized.~~

~~]~~ (2]1) The eligibility agency shall apply the provisions of 42 U.S.C. 1396r-5 [F]to determine the value of the total joint resources of an institutionalized individual and a community

~~spouse, and the spousal assessed share, the provisions of 42 U.S.C. 1396r-5, which are commonly known as the spousal impoverishment rules, shall apply. Insofar as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.]~~

~~(3]2) The resource limit for an institutionalized individual is \$2,000.~~

~~(4]3) At the request of either the institutionalized individual or the individual's spouse and upon receipt of relevant documentation of resources, the [Medicaid] eligibility agency shall assess and document the total value of resources using the methodology described in Subsection R414-305-3]5(5) as of the first continuous period of institutionalization or application for Medicaid home and community-based waiver services. The [Medicaid] eligibility agency shall notify the requester of the results of the assessment. The agency may not require the individual [does not have]to apply for Medicaid or pay a fee for the assessment.~~

~~(5]4) The assessment is a computation of the total value of resources in which the institutionalized individual or the community spouse has an ownership interest. The spousal share is equal to one-half of the total value computed. The eligibility agency shall count the resources [counted]for the assessment [are]that include those the couple has on the date that one spouse becomes institutionalized or applies for Medicaid for home and community-based waiver services, and the other spouse remains in the community and is not eligible for Medicaid for home and community-based waiver services.~~

~~(a) The community spouse's assessed share of resources is one-half of the total resources. [However]Nevertheless, the protected resource allowance for the community spouse may be less than the assessed share.~~

~~(b) Upon application for Medicaid, the [Medicaid] eligibility agency shall set[s] the protected share of resources for the community spouse when countable resources equal no more than the community spouse's protected share as determined under 42 U.S.C. 1396r-5(f) plus the resource limit for the institutionalized spouse.~~

~~(c) The [Medicaid] eligibility agency shall set[s] the community spouse's protected share of resources at the community spouse's assessed share of the resources with the following exceptions[-]:~~

~~(i) If the spouse's assessed share of resources is less than the minimum resource standard, the protected share of resources is the minimum resource standard[-];~~

~~(ii) If the spouse's assessed share of resources is more than the maximum resource standard, the protected share of resources is the maximum resource standard[-];~~

~~(iii) The [Department] eligibility agency shall use[s] the minimum and maximum resource standards permitted under 42 U.S.C. 1396r-5(f) to determine the community spouse's protected share.~~

~~(d) In making a decision to modify the community spouse's protected share of resources, the [Department] eligibility agency shall [follows]apply the ["]income first[" rule]provisions [found at]of 42 U.S.C. 1396r-5(d)(6).~~

~~(6]5) The [Department] eligibility agency shall count[s] any resource owned by the community spouse in excess of the community spouse's protected share of resources to determine the institutionalized individual's initial Medicaid eligibility.~~

~~[(7)6] After the [Medicaid]-eligibility agency establishes eligibility for the institutionalized spouse, the [Department]-agency shall allow[s] a protected period for the couple to either use excess resources, or change the ownership of resources held jointly or held only in the name of the institutionalized spouse.~~

~~(a) The protected period continues[lasting] until the resources held in the institutionalized spouse's name do not exceed \$2,000, or until the time of the next regularly scheduled eligibility redetermination, whichever occurs first.[for an]~~

~~(b) The institutionalized individual may do the following:~~

~~(i) use resources held in his name for his benefit or for the benefit of his spouse;[-to]~~

~~(ii) transfer resources to the community spouse to bring the resources held only in the name of the community spouse up to the amount of the community spouse's protected share of resources and to bring the resources held only in the name of the institutionalized spouse down to the Medicaid resource limit; or~~

~~(iii) a combination of both.~~

~~[(8)2] The [Department]-eligibility agency [does]may not count resources held in the name of the community spouse as available to the institutionalized spouse beginning the month after the month in which the [Medicaid-eligibility]-agency establishes eligibility.~~

~~[(9)8] If an individual is otherwise eligible for institutional Medicaid, the [Department]-eligibility agency [does]may not count the community spouse's resources as available to the institutionalized individual [because of]due to an uncooperative spouse or because the spouse cannot be located if all of the following criteria are met:~~

~~(a) The individual assigns support rights to the [State]agency;[-]~~

~~(b) The individual [will not be able to get the]cannot get medical care [needed]-without Medicaid;[-]~~

~~(c) The individual is at risk of death or permanent disability without institutional care.~~

#### **R414-305-[4]6. Treatment of Trusts.**

~~[—This section defines requirements for the treatment of assets held in a trust to determine eligibility for Medicaid. The Department applies all provisions of 42 U.S.C. 1396p(d) dealing with trust assets in determining Medicaid eligibility. This section provides additional provisions for particular types of trusts.]~~

~~(1) [Medicaid-Qualifying Trusts established before August 11, 1993.—]The [Department]-eligibility agency shall appl[ies]y the criteria in Section 1902(k) of the Compilation of the Social Security Laws, 1993 ed., [in determining]to determine the availability of trusts established before August 11, 1993.[—This section of the Social Security Act was repealed in 1993, but the provisions still apply to trusts created before the date it was repealed. The requirements of that section are as follows; however, if there is a conflict between the 1993 provisions of Section 1902(k) and the provisions of Subsections R414-305-4(1)(a), (b), and (c), the 1993 provisions of Section 1902(k) control.]~~

~~(a) A Medicaid qualifying trust is a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust. The distribution of [such]-payments is determined by one or more~~

trustees who are permitted to exercise some amount of discretion with respect to the distribution to the individual.

(b) The amount of the trust property that is counted as an available resource to the [applicant or recipient]individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee is permitted to distribute under the terms of the trust for [such]the individual's benefit. This amount of property is counted as available whether or not it is actually disbursed by the trustee or received by the beneficiary. It does not matter whether the trust is irrevocable nor whether it is established for a purpose other than to qualify for Medicaid.

(c) Payments made from the available portion of the trust do not count as income because the available portion of the trust is counted as a resource. If payments are made from any portion of the trust that is not counted as a resource, the payments are counted as income in the month received.

(2) Trust for a Disabled Person under Age 65 established in compliance with 42 U.S.C. 1396p(d)(4)(A). These trusts are commonly known as a special needs trust for a disabled person. Assets held in a trust [complying]that comply with the provisions in Subsection R414-305-[4]6(2) and (4) do not count as available resources.

(a) The individual trust beneficiary must meet the disability criteria found in 42 U.S.C. 1382c(a)(3). The trust must be established and assets transferred to the trust before the disabled individual reaches age 65.

(b) The trust must be established solely for the benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or the court.

(c) The trust may only contain the assets of the disabled individual. The [Department]-eligibility agency shall treat[s] any additions to the trust corpus with assets not belonging to the disabled trust beneficiary as a gift to the trust beneficiary. [Such]The additions irrevocably become part of the trust corpus and are subject to all provisions of Medicaid restrictions that govern special needs trusts.

(d) The trust must be irrevocable. No one may have any right or power to alter, amend, revoke, or terminate the trust or any of its terms, except that the trust may include language that provides that the trust may be amended but only if necessary to conform with subsequent changes to the requirements of 42 U.S.C. 1396p(d)(4) (A) or synonymous state law.

(e) The trust cannot be altered or converted from an individual trust to a "pooled trust" under 42 U.S.C. 1396p(d)(4)(C).

(f) The trust must terminate upon the death of the disabled individual or exhaustion of trust corpus and must include language that specifically provides that upon the death of the beneficiary or early termination of the trust, whichever occurs first, the trustees will notify Medicaid and will pay all amounts remaining in the trust to the State up to the total amount of medical assistance the State has paid on behalf of the individual. The trust shall comply fully with this obligation to first repay the State without requiring the State to take any action except to establish the amount to be repaid.

(g) The sole lifetime beneficiary of the trust must be the disabled individual, and the Medicaid agency must be the preferred remainder beneficiary. Distributions from the trust during the beneficiary's lifetime may be made only to or for the benefit of the disabled individual.

(h) The ~~[Department]~~ eligibility agency shall continue[s] to exclude assets held in the trust from countable resources after the disabled individual reaches age 65. Subsequent additions to the trust other than interest on the corpus after the person turns 65 are not assets of an individual under age 65 and the ~~[Department]~~ agency shall treat[s] the transfer as a transfer of resources for less than fair market value, which may create a period of ineligibility for certain Medicaid services.

(i) A trust that provides benefits to other persons is not an individual special needs trust and does not meet the criteria to be excluded from resources.

(j) A corporate trustee may charge a reasonable fee for services.

(k) The trust may compensate a guardian only as provided by law. The trust may not compensate the parent of a minor child from the trust as the child's guardian.

(l) Additional trusts cannot be created within the special needs trust.

(3) Pooled Trust for Disabled Individuals. A pooled trust is a specific trust for disabled individuals established pursuant to 42 U.S.C. 1396p(d)(4)(C) that meets all of the following conditions[-];

(a) The trust contains the assets of disabled individuals[-];

(b) The trust must be established and managed by an entity that has been granted non-profit status by the Internal Revenue Service. The non-profit entity must submit to the State a letter documenting the non-profit status with the trust documents[-];

(c) The trustees must maintain a separate account for each disabled beneficiary whose assets are placed in the pooled trust; however, for the purposes of investment and management of the funds, the trust may pool the funds from the individual accounts. If someone other than the beneficiary transfers assets to the pooled trust administrator to be used on behalf of that beneficiary of the pooled trust, the ~~[Department]~~ eligibility agency shall treat[s] ~~such~~ the assets as a gift to that beneficiary, which the administrator must add to and manage as part of the balance of the beneficiary's account and which are subject to all provisions of Medicaid restrictions that govern pooled trusts.

(d) Accounts in the trust must be established solely for the benefit of individuals who are disabled as defined in 42 U.S.C. 1382c(a)(3).

(e) The trust must be irrevocable; accounts set up in the trust must be irrevocable.

(f) Individual accounts may be established only by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(g) An initial transfer of funds or any additions or augmentations to a pooled trust account by an individual 65 years of age or older is a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services.

(h) The disabled individual cannot control any spending by the trust.

(i) Individual trust accounts may not be liquidated ~~prior to~~ before the death of the beneficiary without first making payment to the State for medical assistance paid on behalf of the individual.

(j) The trust must include language that specifically provides that upon the death of the trust account beneficiary, the trustees will notify the Medicaid agency and will pay all amounts remaining in the beneficiary's account to the State up to the total medical assistance paid on behalf of the beneficiary. The trust may

retain a maximum of 50~~percent~~% of the amount remaining in the beneficiary's account at death to be used for other disabled individuals if the trust has established provisions by which it will assure that ~~such~~ the retained funds are used only for individuals meeting the disability criteria found in 42 U.S.C. 1382c(a)(3).

(k) A pooled trust that retains some portion of a deceased beneficiary's trust funds must describe how retained funds are used for other disabled persons. Any funds that are placed in an individual beneficiary's account or that are used to set up an account for an individual beneficiary who does not otherwise have funds to place in the pooled trust are subject to all of the provisions of Medicaid restrictions that govern pooled trusts. The pooled trust may include a plan for using retained funds only for incidental, one-time services to qualified disabled individuals who do not have accounts in the pooled trust.

(4) The following provisions apply to both individual trusts and pooled trusts described in Subsection R414-305-~~[4]~~6(2) and (3)[-];

(a) No expenditures may be made after the death of the beneficiary ~~prior to~~ before repayment to the State, except for federal and state taxes and necessary and reasonable administrative costs of the trust incurred in closing the trust[-];

(b) The trust must provide that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If the remaining balance is insufficient to repay all benefits paid, then each state will be paid its proportionate share[-];

(c) The trust or an attached schedule must identify the amount and source of the initial trust property. The disabled individual must report subsequent additions to the trust corpus to the ~~[Medicaid]~~ eligibility agency[-];

(d) If the trust is funded, in whole or in part, with an annuity or other periodic payment arrangement, the State must be named in controlling documents as the preferred remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual[-];

(i) Any funds remaining after full repayment of the medical assistance can be paid to a secondary remainder beneficiary[-];

(ii) The ~~[Department]~~ eligibility agency shall treat[s] any provision or action that does or will divert payments or principal from ~~such~~ the annuity or payment arrangement to someone other than the excluded trust or the Medicaid agency as a transfer of assets for less than fair market value with the exception that any remainder after the Medicaid agency has been fully repaid may be paid to a secondary beneficiary[-];

(e) The ~~[Department]~~ eligibility agency shall count[s] cash distributions from the trust as income in the month received[-];

(f) The ~~[Department]~~ eligibility agency shall count[s] retained distributed amounts as resources beginning the month ~~following~~ which follows the month ~~such~~ that the amounts are distributed. The ~~[Department]~~ agency shall appl[ies]y the applicable resource rules to assets purchased with trust funds and given to the beneficiary as his or her personal possessions. The disabled individual must report the receipt of payments or assets from the trust within ~~[10]~~ten days of receipt. The ~~[Department]~~ agency shall exclude[s] assets purchased with trust funds if the trust retains ownership[-];

(g) The ~~[Department]~~ eligibility agency shall count [s] distributions from the trust covering the individual's expenses for food or shelter as in-kind income to determine Medicaid eligibility in the month paid[-];

(h) If expenditures made from the trust also incidentally provide an ongoing and continuing benefit to other persons, those other persons who also benefit must contribute a pro-rata share to the trust for the expenses associated with their use of the acquisition[-];

(i) Contracts to provide personal services to the disabled individual must be in writing, describe the services to be provided, pay fair market rate consistent with rates charged in the community for the type and quality of services to be provided, and be executed in advance of any services being provided and paid. The ~~[Medicaid]~~ eligibility agency may require a statement of medical need for ~~[such]~~ the services from the individual's medical practitioner. If the person who is to provide the services is a family member or friend, the ~~[Medicaid]~~ eligibility agency may require verification of the person's ability to carry out the needed services[-];

(j) Distributions from the trust made to or for the benefit of a third party that are not for the benefit of the disabled individual are treated as a transfer of assets for less than fair market value and may create a period of ineligibility for certain Medicaid services. This includes such things as payments of the expenses or travel costs of persons other than a medically[-] necessary attendant[-];

(k) The beneficiary must submit an annual accounting of trust income and expenditures and a statement of trust assets to the ~~[Medicaid]~~ eligibility agency upon request or upon any change of trustee.

(5) ~~The eligibility agency may not count [A] assets held in a pooled trust [complying-] that comply with the provisions in Subsection R414-305-4[6](3) and (4) [are not counted-] as available resources.~~

(6) 42 U.S.C. 1396p(d)(4)(B), provides for an exemption from the trust provisions for qualified income trusts (also known as Miller Trusts). Special provisions for this form of trust apply, under federal law, only in those states that do not provide medically needy coverage for nursing facility services. Because Utah covers services in nursing facilities under the medically needy coverage group of the Medicaid program, the establishment of a qualified income trust shall be treated as an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community[-] based services under one of the waiver programs.

**R414-305-5[7]. Transfer of Resources for A, B and D or Family Non-Institutional Medicaid and Family Medicaid.**

~~[There is no sanction-] The eligibility agency may not impose a penalty period for the transfer of resources.~~

**R414-305-6[8]. Transfer of Resources for Institutional Medicaid.**

~~[-----] (1) This section establishes the standards for the treatment of transfers of assets for less than fair market value to determine eligibility for nursing home or other long-term care services under a home and community based services waiver.~~

~~]~~ ~~(2)1] The [Department-] eligibility agency shall appl[ies]y the provisions of 42 U.S.C. 1396p(c) and (e) to determine if a [sanction] penalty period applies for a transfer of assets for less~~

~~than fair market value. [In so far as any provision of this rule is inconsistent with applicable federal law, the applicable federal law governs over the inconsistent rule provision.]~~

~~(3)2] If an individual or the individual's spouse transfers the home or life estate or any other asset on or after the look-back date based on an application for long-term care Medicaid services, the transfer requirements of 42 U.S.C. 1396p(c) and (e) apply.~~

~~(4)3] If an individual or the individual's spouse transfers assets in more than one month [on or-] after February [8]7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the [sanction] penalty period. The [Department-] eligibility agency shall appl[ies]y partial month [sanctions-] penalty periods for transferred amounts that are less than the monthly average private pay rate for nursing home services.~~

~~(5)4] In accordance with 42 U.S.C. 1396p(c), the [sanction-] penalty period for a transfer of assets that occurs [on or-] after February [8]7, 2006, begins the first day of the month during or after which assets [were] are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise [be receiving] receive institutional level care based on an approved application for Medicaid, but for the application of the [sanction] penalty period, whichever is later.~~

~~(a) If a previous [sanction] penalty period is [already-] in effect on the date that the new [sanction] penalty period [would-] begin, the new [sanction] penalty period begins immediately after the previous one ends.~~

~~(b) [Sanction] The eligibility agency shall apply penalty periods [are applied-] consecutively so that they do not overlap.~~

~~[-----] (6) If an individual or spouse transfers assets in more than one month before February 8, 2006, the uncompensated value of all transfers that occurred in each month are combined to determine the sanction period. The Department repeats this calculation for each month during which transfers occurred.~~

~~-----] (a) For assets transferred before February 8, 2006, the sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction period ends.~~

~~-----] (b) If the total value of assets transferred in one month does not exceed the average private pay rate and the transfer occurred before February 8, 2006, the Department does not apply partial month sanctions.~~

~~]~~ ~~(7)5] If assets are transferred during any [sanction] penalty period, the [sanction] penalty period for those transfers [will] does not begin until the previous [sanction] penalty period [has expired] expires.~~

~~(8)6] If a transfer occurs, or the [Medicaid-] eligibility agency discovers an unreported transfer[-] after the agency approves an individual [has been approved-] for Medicaid for nursing home or home and community[-] based services, the [sanction] penalty period shall begin[s] on the first day of the month after the month that the individual transfers the asset[-] is transferred].~~

~~(9)7] The statewide average private-pay rate for nursing home care in Utah that the eligibility agency shall use[d] to calculate the [sanction] penalty period for transfers is \$4,526 per month.~~

~~(10)8] To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which~~

establishes that the resource transferred ~~[can]~~may only be used to benefit the spouse, disabled child, or disabled individual, and ~~[is]~~must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in ~~[such]~~the agreement that ~~[would]~~benefit another person at any time nullif[ies]y the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4)[;] that meets the criteria in Section R414-305-~~[4]~~6 does not have to meet the actuarially sound test.

~~(11)9~~ The ~~[Department shall]~~eligibility agency may not impose a ~~[sanction]~~penalty period if the total value of a whole life insurance policy is:

- (a) irrevocably assigned to the [s]State;~~[and]~~
- (b) the recipient is the owner of and the insured in the policy; and
- (c) no further premium payments are necessary for the policy to remain in effect.

~~(11)10~~ ~~[At the time of the client's death]~~When the individual dies, the [s]State shall distribute the benefits of the policy as follows:

(i) ~~The State may distribute [U]up to \$7,000 [can be distributed]~~to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the [client]individual cannot exceed \$7,000[;].

(ii) ~~The State may distribute [A]an amount [to the state]~~that [is not more than]does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the [client]individual.

(iii) ~~The State may distribute to a remainder beneficiary named by the individual [A]any amount that remain[ing]s after payments are made as defined in Subsection R414-305-~~[6]~~8(~~11)9~~(d)(i) and Subsection R414-305-~~[6]~~8(~~11)9~~(d)(ii)[~~will be made to a remainder beneficiary named by the client~~].~~

~~(12)10~~ If the ~~[Medicaid]~~eligibility agency determines that a ~~[sanction]~~penalty period applies for an otherwise eligible institutionalized person, the ~~[Medicaid-eligibility]~~agency shall notify the individual that the Department ~~[will]may~~ not pay the costs for nursing home or other long-term care services ~~[because of the sanction]during the penalty period~~. The notice shall include when the ~~[sanction]~~penalty period begins and ends.

~~(a)~~ The individual may request a waiver of the ~~[sanction]~~penalty period based on undue hardship.

~~(b)~~ The individual must send a written request for a waiver of the ~~[sanction]~~penalty period due to undue hardship to the ~~[Medicaid-eligibility]~~agency within 30 days of the date printed on the ~~[sanction]~~penalty period notice.

~~(c)~~ The request must include an explanation of why the individual believes undue hardship exists.

~~(d)~~ The ~~[State will]~~eligibility agency shall make a decision on the undue hardship request within 30 days of receipt of the request.

~~(13)11~~ An individual who claims an undue hardship as a result of a ~~[sanction]~~penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources ~~[cannot]may not~~ access the asset immediately; however, the ~~[Department will]~~eligibility agency shall require[s] the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource[;].

(i) The ~~[State]agency~~ may determine that it is unreasonable to require the ~~[client]individual~~ to take action if a knowledgeable source confirms ~~[based on facts showing that it is doubtful]that [those]the individual's efforts [will]cannot~~ succeed[;].

(ii) The ~~[State]agency~~ may determine that it is unreasonable to require the ~~[client]individual~~ to take action based on evidence that ~~[it would be more]the individual's action is more~~ costly than the value of the resource[;] and

(b) Application of the ~~[sanction]~~penalty period for a transfer of resources ~~[would]deprives~~ the individual of medical care, ~~[such that]endangers~~ the individual's life or health~~[would be endangered]~~, or ~~[would]deprives~~ the individual of food, clothing, shelter, or other necessities of life.

~~(14)12~~ If the ~~[State]~~eligibility agency waives the ~~[sanction]~~penalty period based on undue hardship, the ~~[Medicaid-eligibility]~~agency ~~[will]shall~~ notify the individual. The Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The ~~[Medicaid-eligibility]~~agency ~~[will]shall~~ notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the ~~[Medicaid-eligibility]~~agency, verify to the ~~[Medicaid-eligibility]~~agency ~~[that individual has taken]~~all reasonable actions. The ~~[State]agency~~ shall review the undue hardship waiver and the actions of the individual ~~[has taken]~~to try to regain the transferred assets. The time period for the review ~~[shall]may~~ not exceed six months. Upon ~~[such]review~~, the ~~[State will]agency shall~~ decide ~~[if]whether~~:

(a) The individual must take additional steps and whether undue hardship still exists, in which case the ~~[Medicaid-eligibility]~~agency ~~[will]shall~~ notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) The individual has taken all reasonable steps without success, ~~[they have proven unsuccessful and additional steps will likely be unsuccessful]~~, in which case the ~~[Medicaid-eligibility]~~agency ~~[will]shall~~ notify the individual that it requires no further action, ~~[s are required and i]~~If the individual continues to meet eligibility criteria, the ~~[Department will]~~eligibility agency may not apply the ~~[sanction]~~penalty period; or

(c) The individual has not taken all reasonable steps, in which case the ~~[Department will]~~eligibility agency shall discontinue the undue hardship waiver[;]. The eligibility agency shall then apply the penalty period [the sanction period will then be applied]and the individual ~~[will be]is~~ responsible to repay Medicaid for services and benefits that the individual received during the months that the undue hardship waiver was in place.

~~(15)3~~ Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the ~~[State]eligibility agency~~ may determine that the individual cannot recover or regain the transferred resource. If the ~~[State]agency~~ decides that the assets cannot be recovered and that applying the ~~[sanction]~~penalty period ~~[will]may~~ result in undue hardship, the ~~[Department will]agency may~~ not apply a ~~[sanction]~~penalty period or ~~[will]shall~~ end a ~~[sanction]~~penalty period that has already begun.

(1)(6)(4) The ~~[State]~~ eligibility agency shall base[s] its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The ~~[State]~~ agency may not compare[s] the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide ~~[if]~~ whether the financial situation creates an undue hardship. The ~~[Medicaid-eligibility]~~ agency shall send ~~[a]~~ written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision ~~[that is mailed to the individual]~~ to file a request for a fair hearing.

(1)(7)(5) The eligibility agency shall consider ~~[F]~~ the portion of an irrevocable burial trust that exceeds \$7,000 ~~[is considered]~~ a transfer of resources. The ~~[Department]~~ agency shall deduct[s] the value of any fully paid burial plot~~[-as defined in R414-305-1(3)(a).]~~ from ~~[such]~~ the burial trust first before determining the transferred amount~~[-transferred].~~

#### **R414-305-7(9). Home and Community-Based Services Waiver Resource Provisions.**

(1) The resource limit for home and community-based waiver programs is \$2,000.

(2) ~~[Following]~~ After the ~~[initial]~~ first month of eligibility, the eligibility agency shall ~~[continued—eligibility—is determined]~~ determine eligibility by counting only the resources that belong to the ~~[client]~~ individual.

(3) For married ~~[clients]~~ individuals, the eligibility agency shall apply the provisions for spousal impoverishment resources ~~[rules apply]~~ as defined in Section R414-305-3(5).

#### **R414-305-8(10). Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, and Qualifying Individual Resource Provisions.**

(1) To determine eligibility for Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, and Qualifying Individuals, the ~~[Department]~~ eligibility agency shall appl[ies]y the resource limit defined in 42 U.S.C. Sec.1396d(p)(1)(C).

(2) The ~~[Department]~~ eligibility agency shall determine[s] countable resources in accordance with the provisions of Section R414-305-~~[1]~~ 3.

#### **R414-305-9(11). Treatment of Annuities.**

~~[This section defines how annuities are treated in the determination of eligibility for Medicaid.]~~

(1) An individual must report any annuities in which either the individual or the individual's spouse has any interest at application for Medicaid, at each review, and as part of the change reporting requirements. Parents of a minor individual must report any annuities in which the child or either of the parents has an interest.

(2) For annuities purchased ~~[on or]~~ after February 8, 2006, in which the individual or spouse has an interest, the provisions in 42 U.S.C. 1396p(c) appl[ies]y. The ~~[Department]~~ eligibility agency shall treat[s] annuities purchased ~~[on or]~~ after February 8, 2006, ~~[that]~~ which do not meet the requirements of 42 U.S.C. 1396p(c), as a transfer of assets for less than fair market value.

(3) With the exception of annuities that meet the criteria in Subsection R414-305-~~[9]~~ 11(4), the eligibility agency shall count annuities in which the individual, the individual's spouse or a minor individual's parent has an interest ~~[are counted]~~ as an available resource to determine Medicaid eligibility, whether they are irrevocable or non-assignable. The ~~[Department]~~ agency shall presume[s] that a market exists ~~[that will]~~ to purchase annuities or the stream of income from annuities, ~~[and therefore, they are]~~ which make them available resources. The individual ~~[can]~~ may rebut the presumption that the annuity ~~[can]~~ may be sold by providing evidence that the individual has been rejected by several entities in the business of purchasing ~~[annuities]~~ annuities or the revenue stream from annuities, in which case, the ~~[Department]~~ agency ~~[will]~~ may not consider the annuity as an available resource.

(4) For individuals eligible under the aged, blind, or disabled category of Medicaid, the ~~[Department]~~ eligibility agency shall exclude[s] an annuity from countable resources in the form of the periodic payment if it meets the requirements of ~~[this subsection (4)]~~ Subsection R414-305-11(4). For Family-Related Medicaid programs, the agency shall count all annuities ~~[are countable]~~ as resources if the individual can access the funds, even if the annuities qualify as retirement funds or plans.

(a) The annuity is either an individual retirement annuity according to Section 408(b) of the Internal Revenue Code (IRC) of 1986 or a deemed Individual Retirement Account under a qualified employer plan according to Section 408(q) of the IRC; or

(b) The annuity is purchased with the proceeds from one of the following:

(i) As described in Sections 408(a), (c), or (p) of the IRC, a traditional IRA, accounts or trusts which are treated as a traditional IRA, or a simplified retirement account;

(ii) A simplified employee pension (Section 408(p) of the IRC); or

(iii) A Roth IRA (Section 408A of the IRC); and

(c) The annuity is irrevocable and non-assignable, the individual who was the owner of the retirement account or plan is receiving equal periodic payments at least quarterly with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.

(d) If the individual purchases or annuitizes ~~[such]~~ the annuities ~~[on or]~~ after February 8, 2006, ~~[then]~~ the annuities must name the State as the preferred remainder beneficiary in the first position upon the individual's death, or as secondary remainder beneficiary after a surviving spouse or minor or disabled child.

(5) Annuities purchased after February 8, 2006, in which the individual or the spouse has an interest are a transfer of assets for less than fair market value unless the annuity names the State as the preferred remainder beneficiary in the first position, or in the second position after a surviving spouse, or a surviving minor or disabled child, up to the amount of medical assistance paid on behalf of the institutionalized individual.

(a) The State shall give individuals who have purchased annuities before applying for long-term care Medicaid, 30 days to request the issuing company to name the State as the preferred remainder beneficiary and to verify that fact to Medicaid.

(b) The individual must verify to the ~~[Medicaid]~~ eligibility agency that the change in beneficiary has been made by the date requested by the ~~[Medicaid-eligibility]~~ agency.

(c) If the change of beneficiary is not completed and verified, the annuities are a transfer of resources and the ~~[Department]~~eligibility agency shall apply the ~~[applicable sanction]~~penalty period. If the ~~[Medicaid]~~eligibility agency has approved institutional Medicaid coverage pending verification, Medicaid coverage for long-term care ends and the ~~[sanction]~~penalty period ~~[will]~~begin ~~[effective]~~the day after the closure date.

(6) The ~~[Department]~~eligibility agency shall treat[s] an annuity purchased before February 8, 2006, as an annuity purchased on or after February 8, 2006, if the individual or spouse take any actions that change the course of payments to be made or the treatment of the income or principal of the annuity. ~~[Such]~~These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or other similar actions. Routine changes and automatic events that do not involve an action or decision from the individual or spouse do not cause an annuity purchased before February 8, 2006, to be treated as one purchased on or after February 8, 2006.

(7) If a ~~[sanction]~~penalty period for a transfer of assets begins because the individual or the individual's spouse has not changed an annuity to name the State as the preferred remainder beneficiary of the annuity, the ~~[sanction]~~penalty period for a transfer ~~[will]~~does not end until the individual completes and verifies the change of beneficiary [the date such change of beneficiary has been completed and verified] to the ~~[Medicaid]~~eligibility agency. The eligibility agency may not rescind the ~~[sanction]~~penalty period~~[will not be rescinded]~~.

(8) If the individual or spouse does not provide all information about annuities for which they have an interest by the requested due date~~[If all information about annuities the individual or spouse has an interest in is not provided by the requested due date]~~, the ~~[Medicaid]~~eligibility agency ~~[will]~~shall deny the application. The individual may reapply, but may not protect the original application date~~[will not be protected]~~.

(9) The issuer of the annuity ~~[must]~~shall inform the ~~[Medicaid]~~eligibility agency of any change in the amount of income or principal being withdrawn from the annuities, any change of beneficiaries, or any sale or transfer of the annuity. The issuer of the annuity ~~[must]~~shall also inform the ~~[State]~~agency if a surviving spouse or a surviving minor or disabled child attempts to transfer the annuity or any portion of the annuity to someone other than the ~~[Medicaid]~~agency.

**KEY: Medicaid, resources**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2010]~~2011

**Notice of Continuation:** January 31, 2008

**Authorizing, and Implemented or Interpreted Law:** 26-18-3; 26-1-5

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-501-3** Preadmission Authorization

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34562

FILED: 04/07/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify that a nursing facility must submit an authorization request to the Department no later than the next business day after the date of admission. This change is at the request of business.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies that a nursing facility must submit an authorization request to the Department no later than the next business day after the date of admission.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only clarifies when a nursing facility must submit an authorization request to the Department. This change does not affect nursing facility services for Medicaid clients.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide nursing facility services for Medicaid clients.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any fiscal impact to small businesses because this change only clarifies when a nursing facility must submit an authorization request to the Department. This change does not affect nursing facility services for Medicaid clients.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any fiscal impact to either nursing facility providers or to Medicaid clients because this change only clarifies when a nursing facility must submit an authorization request to the Department.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single nursing facility provider or to a Medicaid client because this change only clarifies when a nursing facility must submit an authorization request to the Department.



COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulated business requested this change to give them an additional day to get permission to admit a patient. Fiscal impact should be positive.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: W. David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review.**

**R414-501-3. Preadmission Authorization.**

(1) A nursing facility will perform a preadmission assessment when admitting a nursing facility applicant. Preadmission authorization is not transferable from one nursing facility to another.

(2) A nursing facility must obtain ~~[prior]~~ approval from the Department ~~[before]~~ when admitting a nursing facility applicant. The nursing facility must submit a request for prior approval to the Department no later than the next business day after the date of admission. A request for prior approval may be in writing or by telephone and will include:

- (a) the name, age, and Medicaid eligibility of the nursing facility applicant;
- (b) the date of transfer or admission to the nursing facility;
- (c) the reason for acute care inpatient hospitalization or emergency placement, if any;
- (d) a description of the care and services needed;
- (e) the nursing facility applicant's current functional and mental status;
- (f) the established diagnoses;
- (g) the medications and treatments currently ordered for the nursing facility applicant;
- (h) a description of the nursing facility applicant's discharge potential;

(i) the name of the hospital discharge planner or nursing facility employee who is requesting the prior approval;

(j) the Preadmission Screening and Resident Review (PASRR) Level I screening, except the screening is not required for admission to an intermediate care facility for people with mental retardation; and

(k) the Preadmission Screening and Resident Review (PASRR) Level II determination, as required by 42 CFR 483.112.

(4) If the Department gives a telephone prior approval, the nursing facility will submit to the Department within five working days a preadmission transmittal for the nursing facility applicant, and will begin preparing the complete contact for the nursing facility applicant. The complete contact is a written application containing all the elements of a request for prior authorization plus:

- (a) the preadmission continued stay transmittal;
- (b) a history and physical;
- (c) the signed and dated physician's orders, including physician certification; and
- (d) an MDS assessment completed no later than 14 calendar days after the resident is admitted to a nursing facility.

(5) The requirements in Section R414-501-3 do not apply in cases in which a facility is seeking Retroactive Authorization described in Section R414-501-5.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: [~~October 14, 2009~~2011**

**Notice of Continuation: August 20, 2009**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 63G-3-304(1)(a)**

**Health, Health Systems Improvement,  
Emergency Medical Services  
R426-5  
Statewide Trauma System Standards**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34680

FILED: 04/12/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to simplify and reduce the duplication of resources required of hospitals seeking designation as a trauma center.

**SUMMARY OF THE RULE OR CHANGE:** The rule change eliminates duplication in the present rule which requires a state site designation team for American College of Surgeons (ACS) Verified Trauma Centers and reduces the burden of

reporting required for trauma centers already verified by the ACS.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-252

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be \$6,000 savings per year by eliminating the expense of two surveyors for ACS-verified trauma centers.
- ◆ LOCAL GOVERNMENTS: No hospitals currently designated at Trauma Centers by the Department are owned by local government entities.
- ◆ SMALL BUSINESSES: There are no acute care hospitals in Utah employing fewer than 30 employees.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be \$1,000 savings per year by eliminating the need to file duplicate/separate applications for trauma center designation in Level I and Level II trauma centers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Cost savings of up to \$1,000 per year are expected for any person affected by this rule change. No compliance burden is expected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will reduce the fees paid by hospitals voluntarily seeking a trauma center designation as well as the reporting requirement, while still protecting the public

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT,  
EMERGENCY MEDICAL SERVICES  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: W. David Patton, PhD, Executive Director

## **R426. Health, Health Systems Improvement, Emergency Medical Services.**

### **R426-5. Statewide Trauma System Standards.**

#### **R426-5-6. Trauma Center Designation Process.**

- (1) ~~[Hospitals wishing designation recognition shall complete a Department application as outlined in R426-5-7.]~~
- (2) ~~The Department shall, upon receipt of the completed application and appropriate fees, verify compliance to the designation level sought in accordance with protocols established by the department.~~
- (3) ~~Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-7.~~
- (4) ~~The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.~~

#### **R426-5-7. Trauma Center Verification Process.**

- (1) ~~Hospitals seeking voluntary designation and [A] all designated Trauma Centers desiring to remain designated, shall apply for [verification] designation by submitting the following information to the Department at least [six months] 30 days prior to the [anniversary date of initial designation] date of the scheduled site visit:~~
- (a) A completed and signed application and appropriate fees for trauma center verification;
  - (b) A letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;
  - (c) The data specified under R426-5-8 are current;
  - (d) [The minutes of pertinent hospital committee meetings for the previous year as specified by the Trauma Review Subcommittee, for example, trauma conferences, surgical morbidity and mortality meetings, emergency department or trauma death audits] Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.
  - (e) [A brief narrative report of trauma outreach education activities for the previous year] Level III Level IV and Level V trauma centers must submit a complete Department approved application[;].
  - ~~(f) A brief narrative report of trauma research activities for the previous year including protocols and publications.~~
- (2) ~~[All trauma centers desiring to apply for verification shall submit the required application and appropriate fees to the Department no later than January 1.] Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification visit.~~

~~\_\_\_\_\_ (3) Upon receipt of a verification application from the Department, accompanied by the information specified under R426-5-7(1)(a) through (f), the Trauma Review Committee shall conduct a review and report the results to the Department.] Hospitals desiring to be Level III, Level IV or Level v Trauma Centers must be designated by hosting a formal site visit by the Department.~~

~~[\_\_\_\_\_ (4) Every three years, the Level I and II Trauma Centers must submit written documentation detailing the results of an American College of Surgeons site visit.~~

~~\_\_\_\_\_ (5) Every three years from the date of initial designation or from a date specified by the Department, the Trauma Review Subcommittee shall conduct a formal site visit for each designated Level III, IV, or V trauma center and report the results to the Department.~~

~~] ([6]3) The Department and [the Trauma Review Committee]its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements[which may include].~~

~~[\_\_\_\_\_ (a) Site visits to observe, unannounced, an actual trauma resuscitation, including the care and treatment of a trauma patient.~~

~~\_\_\_\_\_ (b) Interview or survey prehospital care providers who frequent the trauma center, to ascertain that the pledged level of trauma care commitment is being maintained by the trauma center.~~

~~] \_\_\_\_\_ (4) Trauma centers shall be designated for a period of three years unless he designation is rescinded by the Department for non-compliance to standards set forth in R426-5-6 or adjusted to coincide with the American College of Surgeons verification timetable.~~

~~\_\_\_\_\_ (5)The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.~~

**R426-5-[8]7. Data Requirements for an Inclusive Trauma System.**

(1) All hospitals shall collect, and quarterly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions:  
 admitted to the hospital for 24 hours or longer; transferred in or out of your hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

(c) Exclusion criteria are ICD9 Diagnostic Codes:

930-939.9 (foreign bodies)

905-909.9 (late effects of injury)

910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:

Database Record Number

Institution ID number

Medical Record Number

Social Security Number

Patient Home Zip Code

Sex

Date of Birth

Age Number and Units

Patient's Home Country

Patient's Home State

Patient's Home County

Patient's Home City

Alternate Home Residence

Race

Ethnicity

(ii) Injury:

Date of Injury

Time of Injury

Blunt, Penetrating, or Burn Injury

Cause of Injury Description

Cause of Injury Code

Work Related Injury (y/n)

Patient's Occupational Industry

Patient's Occupation

Primary E-Code

Location E-Code

Additional E-Code

Incident Location Zip Code

Incident State

Incident County

Incident City

Protective Devices

Child Specific Restraint

Airbag Deployment

(iii) Prehospital:

Name of EMS Service

Transport Origin Scene or Referring Facility

Trip Form Obtained (y/n)

EMS Dispatch Date

EMS Dispatch Time

EMS Unit Arrival on Scene Date

EMS Unit Arrival on Scene Time

EMS Unit Scene Departure Date

EMS Unit Scene Departure Time

Transport Mode

Other Transport Mode

Initial Field Systolic Blood Pressure

Initial Field Pulse Rate

Initial Field Respiratory Rate

Initial Field Oxygen Saturation

Initial Field GCS-Eye

Initial Field GCS-Verbal

Initial Field GCS-Motor

Initial Field GCS-Total

Inter-Facility Transfer

(iv) Referring Hospital:

Transfer from Another Hospital (y/n)

Name or Code

Arrival Date

Arrival Time

Discharge Date  
 Discharge time  
 Transfer Mode  
 Admitted or ER  
 Procedures  
 Pulse  
 Capillary Refill  
 Respiratory Rate  
 Respiratory Effort  
 Blood Pressure  
 Eye Movement  
 Verbal Response  
 Motor Response  
 Glasgow Coma Score Total  
 Revised Trauma Score Total  
 (v) Emergency Department Information:  
 Mode of Transport  
 Arrival Date  
 Arrival Time  
 Discharge Time  
 Discharge Date  
 Initial ED/Hospital Pulse Rate  
 Initial ED/Hospital Temperature  
 Initial ED/Hospital Respiratory Rate  
 Initial ED/Hospital Respiratory Assistance  
 Initial ED/Hospital Oxygen Saturation  
 Initial ED/Hospital Systolic Blood Pressure  
 Initial ED/Hospital GCS-Eye  
 Initial ED/Hospital GCS-Verbal  
 Initial ED/Hospital GCS-Motor  
 Initial ED/Hospital GCS-Total  
 Initial ED/Hospital GCS Assessment Qualifiers  
 Revised Trauma Score Total  
 Alcohol Use Indicator  
 Drug Use Indicator  
 ED Discharge Disposition  
 ED Death  
 ED Discharge Date  
 ED Discharge Time  
 (vi) Emergency Department Treatment:  
 Procedures Done (pick list)  
 Paralytics used prior to GCS (y/n)  
 (vii) Admission Information:  
 Admit from ER or Direct Admit  
 Admitted from what Source  
 Time of Hospital Admission  
 Date of Hospital Admission  
 Hospital Procedures  
 Hospital Procedure Start Date  
 Hospital Procedure Start Time  
 (viii) Hospital Diagnosis:  
 ICD9 Diagnosis Codes  
 Injury Diagnoses  
 Co-Morbid Conditions  
 AIS Score for Diagnosis (calculated)  
 Injury Severity Score  
 (ix) Quality Assurance Indicators:  
 Hospital Complications  
 (x) Outcome:

Discharge Time  
 Discharge Date  
 Total Days Length of Stay  
 Total ICU Length of Stay  
 Total Ventilator Days  
 Disposition from Hospital  
 Destination Facility  
 (xi)Charges:  
 Payment Sources

#### **R426-5-[9]8. Trauma Triage and Transfer Guidelines.**

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

#### **R426-5-[10]9. Noncompliance to Standards.**

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-5.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

#### **R426-5-[11]10. Statutory Penalties.**

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

#### **KEY: emergency medical services, trauma, reporting, trauma center designation**

**Date of Enactment or Last Substantive Amendment:** [~~March 15, 2010~~]**2011**

**Notice of Continuation:** July 18, 2007

**Authorizing, and Implemented or Interpreted Law:** 26-8a-252

## Human Services, Recovery Services **R527-250** Emancipation

### **NOTICE OF PROPOSED RULE** (New Rule)

DAR FILE NO.: 34685

FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to clarify how the Office of Recovery Services (ORS) will determine the appropriate emancipation date for IV-D child support cases, specifically when determining the child's normal and expected year of graduation pursuant to Section 78B-12-219 for Utah child support order issued on or after 07/01/1994.

**SUMMARY OF THE RULE OR CHANGE:** This new rule establishes the appropriate emancipation dates for IV-D child support cases with Utah child support order issued on or after 07/01/1994. The normal and expected year of graduation is kindergarten plus twelve years of school, with the expected month of graduation as May, unless the parents provide the office with documentation of a specific graduation date for their child. The emancipation date for a child who receives a high school diploma or another documented form of high school equivalency is when the child turns 18 years of age or upon receipt of the child's high school diploma or high school equivalency. A child that drops out of school is not considered emancipated until the age of 18 or the graduation of the normal and expected graduating, whichever occurs later. Parents are required to provide the office with the appropriate documentation to support an emancipation date other than the standard established in this rule. All changes to the child support amount due will be effective the month following the emancipated date based on the 18th birthday, expected graduation date, or other appropriate dates as described in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 62A-11-303 and Section 62A-11-401 and Section 78B-12-102 and Section 78B-12-219

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There should be a small savings to the state budget because ORS will no longer be required to determine what month a child graduates, May or June. Because each county in the state graduates in different months, if the child is 18 prior to graduation, ORS employees are required to review the case and determine what month the child will graduate to establish the appropriate emancipation month and date on ORSIS. Once the date is determined, ORSIS is adjusted accordingly. If the emancipation date is set to 18 years of age or to May of the normal and expected year of graduation, ORS employees will no longer be required to take the time determine the appropriate month.
- ◆ **LOCAL GOVERNMENTS:** Administrative rules of the office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government; therefore there are no anticipated costs or savings for any local governments due to this rule.
- ◆ **SMALL BUSINESSES:** Because the rule only changes internal procedures for the office in determining an appropriate emancipation date for IV-D child support cases

with Utah child support order issued on or after 07/01/1994, there will not be compliance costs for small businesses. Employers will continue to receive an amended income withholding order or a termination of income withholding order from the office when a child emancipates.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because the rule only changes internal procedures for the office in determining an appropriate emancipation date for IV-D child support cases with Utah child support order issued on or after 07/01/1994, there will not be compliance costs for other affected persons. Employers will continue to receive an amended income withholding order or a termination of income withholding order from the office when a child emancipates.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the rule only changes internal procedures for the office in determining an appropriate emancipation date for IV-D child support cases with Utah child support order issued on or after 07/01/1994, there will not be compliance costs for other affected persons. Employers will continue to receive an amended income withholding order or a termination of income withholding order from the office when a child emancipates.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule does not create or cause any fiscal impact on businesses. The rule only changes internal procedures for when the office in determining an appropriate emancipation date for IV-D child support cases with Utah child support order issued on or after 07/01/1994. Employers currently receive an amended income withholding order or a termination of income withholding order when a child emancipates. The office will continue to send employers these documents upon a child's emancipation.

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

HUMAN SERVICES  
 RECOVERY SERVICES  
 515 E 100 S  
 SALT LAKE CITY, UT 84102-4211  
 or at the Division of Administrative Rules.

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2011**

**AUTHORIZED BY: Mark Brasher, Director**

**R527. Human Services, Recovery Services.****R527-250. Emancipation.****R527-250-1. Purpose and Authority.**

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

2. The purpose of this rule is to outline how ORS/CSS will apply Utah statute when determining the appropriate emancipation date for IV-D child support cases, particularly when determining the "child's normal and expected year of graduation" referenced in U.C.A. 78B-12-219 for Utah child support orders issued on or after July 1, 1994.

**R527-250-2. Normal and Expected Year of Graduation.**

1. For a child attending school in Utah, the normal and expected year of graduation is based on kindergarten plus twelve years of school, unless an exception is listed below.

2. For a child attending school in Utah, ORS/CSS will presume that the normal and expected month of graduation is May of the expected graduating year, unless the parents provide documentation of a specific graduation date for their child.

3. If a deviation to the "kindergarten plus twelve years" standard is known at the time of entry of the child support order, the expected year of graduation is altered accordingly. If a child has been held back a grade or experienced another delay in education before the child support order is entered, the "expected" year of graduation will be changed to extend the support obligation based on the known facts about the delay in education. If the child has been advanced a grade or experienced some other acceleration in education before the child support order is entered, the "expected" year of graduation will be changed to potentially shorten the support obligation based on the facts about the acceleration in education.

4. If a deviation to the "kindergarten plus twelve years" standard is not known until after the entry of the child support order, the "expected" year of graduation is not altered based on the new facts unless the child receives an early high school diploma or other high school equivalency diploma.

**R527-250-3. Early Graduation, High School Equivalency Diploma, and General Educational Development (GED).**

A child who receives a high school diploma or another documented form of high school equivalency is no longer enrolled in school or expected to graduate with the normal graduating class. The emancipation date will be determined based on when the child becomes 18 years of age or that child's high school diploma or high school equivalency date.

**R527-250-4. Dropping Out of School.**

A child who no longer attends school is not considered emancipated until becoming 18 years old or the graduation of the normal and expected graduating class, whichever occurs later.

**R527-250-5. Burden of Proof.**

1. ORS/CSS will enforce child support based on the "kindergarten plus twelve years" standard until a parent or guardian has provided appropriate documentation to support an emancipation date other than that standard.

2. A parent or guardian requesting the deviation from the standard is responsible for gathering the appropriate documentation and providing the information to ORS/CSS.

3. Changes to the child support amount due will not be effective until the month following the emancipation date based on the 18th birthday, normal and expected graduating class, or other appropriate date as described above.

4. Changes to the child support amount which are based on a date other than the 18th birthday or the "kindergarten plus twelve year" standard will not be effective until the month following the determined date of emancipation or the month following when the parent or guardian provides sufficient documentation to support the new emancipation date, whichever occurs later. If an over collection occurs due to the parent not providing documentation, the parent will be responsible for recovering any overpaid amounts without involving ORS/CSS.

**KEY: child support, emancipation**

**Date of Enactment or Last Substantive Amendment: 2011**  
**Authorizing, Implemented, or Interpreted Law: 62A-11-303; 62A-11-401; 78B-12-102; 78B-12-219**

Public Safety, Criminal Investigations  
and Technical Services, Criminal  
Identification  
**R722-300**  
Concealed Firearm Permit and  
Instructor Rule

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34679

FILED: 04/12/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to address statutory changes made in H.B. 214, H.B. 257S1, and S.B. 36S1, in the 2011 General Session; to clarify new fees set forth in H.B. 214, to clarify changes in fees for non-resident applicants, to clarify the procedures for initial applications with added requirements, and for clarification of requirements for renewal applications. (DAR NOTE: H.B. 214 (2011) is found at Chapter 99, Laws of Utah 2011, and will be effective 05/10/2011. H.B. 257S1 (2011) is found at Chapter 368, Laws of Utah 2011, and will be effective 05/10/2011. S.B. 36S1 (2011) is found at Chapter 193, Laws of Utah 2011, and will be effective 05/10/2011.)

**SUMMARY OF THE RULE OR CHANGE:** Response to statutory change and clarification of certain aspects of the licensing process.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 53, Chapter 5

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** No aggregate anticipated cost or savings to the state budget. This rule amendment addresses the changes in the actual process of applying for a Concealed Firearm Permit (CFP), the renewal of the permit, and the changes in fees. The statutory changes made will not affect the state budget nor are there any anticipated costs or savings.

◆ **LOCAL GOVERNMENTS:** No aggregate anticipated cost or savings to local government. This rule amendment addresses the changes in the actual process of applying for a CFP, the renewal of the permit, and the changes in fees. The statutory changes made will not affect local government nor are there any anticipated costs or savings.

◆ **SMALL BUSINESSES:** No aggregate anticipated cost or savings to small businesses. This rule amendment addresses the changes in the actual process of applying for a CFP, the renewal of the permit, and the changes in fees. The statutory changes made will not affect small businesses nor are there any anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No aggregate anticipated cost or savings to persons other than small business, businesses, or local government entities. This rule amendment addresses the changes in the actual process of applying for a CFP, the renewal of the permit, and the changes in fees. The statutory changes made will not affect persons other than small business, businesses, or local government entities nor are there any anticipated costs or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No compliance costs. As this amended rule addresses changes in the actual process for applying for a CFP, the renewal of the CFP, and the changes in fees there are not anticipated compliance costs for any of the persons addressed in aggregate cost information above.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule does not have any fiscal impact on businesses because it only describes the procedures necessary for an individual to obtain a concealed firearms permit or a concealed firearm instructor certification.

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

PUBLIC SAFETY  
CRIMINAL INVESTIGATIONS AND TECHNICAL  
SERVICES, CRIMINAL IDENTIFICATION  
3888 W 5400 S  
TAYLORSVILLE, UT 84118

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011**

**AUTHORIZED BY: Alice Moffat, Bureau Chief**

**R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.**

**R722-300. Concealed Firearm Permit and Instructor Rule.**

**R722-300-2. Authority.**

This rule is authorized by Section ~~[53-5-704(16)]~~53-5-704(17) which provides that the commissioner may make rules necessary to administer Title 53, Chapter 5.

**R722-300-3. Definitions.**

(1) Terms used in this rule are defined in Sections 53-5-702, 53-5-711, 76-10-501.

(2) In addition:

(a) "applicant" means an individual seeking to obtain or renew a permit, a temporary permit, an instructor certification, or a LEOJ permit from the bureau;

(b) "certified firearms instructor" means an individual certified by the bureau pursuant to Section ~~[53-5-704(8)]~~53-5-704(9) who can certify that an applicant meets the general firearm familiarity requirement under Section ~~[53-5-704(7)]~~53-5-704(8);

(c) "certified firearms instructor official seal" means a red, self-inking stamp containing the information required in Subsection ~~[53-5-704(10)(a)(iii)(C)]~~53-5-704(11)(a)(iii) which meets the design requirements described on the bureau's website;

(d) "crime of violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States which has, as an element, the use, threatened use, or attempted use of physical force or a dangerous weapon;

(e) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(f) "FBI" means the Federal Bureau of Investigation;

(g) "instructor certification" means a concealed firearm instructor certification issued by the bureau pursuant to Section ~~[53-5-704(8)]~~53-5-704(9);

(h) "LEOJ permit" means a permit to carry a concealed firearm issued to a judge or law enforcement official by the bureau pursuant to 53-5-711;

(i) "nonresident" means a person who:

(i) does not live in the state of Utah; or

(ii) has established a domicile outside Utah, as that term is defined in Section 41-1a-202.

(†)(j) "NRA" means the National Rifle Association;

~~(j)~~(k) "offense involving domestic violence" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

- (i) Section 77-36-1; or
- (ii) 18 U.S.C Section 921(a)(33);

~~(k)~~(l) "offense involving moral turpitude" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving conduct which:

- (i) is done knowingly contrary to justice, honesty, or good morals;
- (ii) has an element of falsification or fraud; or
- (iii) contains an element of harm or injury directed to another person or another's property;

~~(l)~~(m) "offense involving the use of alcohol" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States involving any of the conduct described in:

- (i) Section 32A-12-209;
- (ii) Section 32A-12-220;
- (iii) Section 41-6a-501(2) related to the use of alcohol;
- (iv) Section 41-6a-526; or
- (v) Section 76-10-528 related to carrying a dangerous weapon while under the influence of alcohol;

~~(m)~~(n) "offense involving the unlawful use of narcotics or controlled substances" means:

- (i) any offense listed in Section 41-6a-501(2) involving the use of a controlled substance;
- (ii) any offense involving the use or possession of any controlled substance found in Title 58, Chapters 37, 37a, or 37b; or
- (iii) the crime of carrying a dangerous weapon while under the influence of a controlled substance pursuant to Section 76-10-528;

~~(n)~~(o) "past pattern of behavior involving unlawful violence" means verifiable incidents, regardless of whether there has been an arrest or conviction, that would lead a reasonable person to believe that an individual has a violent nature and would be a danger to themselves or others, including an attempt or threat to commit suicide.

~~(o)~~(p) "permit" means a permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-704;

~~(p)~~(q) "POST" means the Utah Department of Public Safety, Division of Peace Officer Standards and Training;

~~(q)~~(r) "revocation" means the permanent deprivation of a permit, instructor certification, or certificate of qualification. Revocation of a permit, instructor certification, or certificate of qualification does not preclude an individual from applying for a new permit, instructor certification, or certificate of qualification if the reason for revocation no longer exists;

~~(r)~~(s) "suspension" means the temporary deprivation, for a specified period of time, of a permit, instructor certification, or certificate of qualification; and

~~(s)~~(t) "temporary permit" means a temporary permit to carry a concealed firearm issued by the bureau pursuant to Section 53-5-705.

#### **R722-300-4. Application for a Permit to Carry a Concealed Firearm.**

(1)(a) An applicant seeking to obtain a permit must submit a completed permit application packet to the bureau.

(b) The permit application packet shall include:

(i) a written application form provided by the bureau which shall include the address of the applicant's permanent residence;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

~~(v) a non-refundable processing fee of \$65.25, in the form of cash, check, money order, or credit card, which consists of a \$35.00 fee established by Section 53-5-707 and a \$30.25 FBI fingerprint processing fee;~~ (v) a non-refundable processing fee of \$60.00 for Utah residents and \$65.00 for nonresidents, in the form of cash, check, money order, or credit card, which consists of the fee established by Section 53-5-704 and 53-5-707, along with the FBI fingerprint processing fee;

(vi) evidence indicating that the applicant has general familiarity with the types of firearms to be concealed as required by Subsection ~~[53-5-704(5)(d)]53-704(6)(d);~~ ~~and~~

(vii) any mitigating information that the applicant wishes the bureau to consider when determining whether the applicant meets the qualifications set forth in Subsection 53-5-704(2)(a); and

(viii) if the applicant is a nonresident who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law, a copy of the applicant's current concealed firearm permit or concealed weapon permit issued by the applicant's state of residency.

(2) An applicant may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection ~~[53-5-704(5)(d)]53-704(6)(d)~~ by submitting a signed certificate, issued within one year of the date of the application, bearing a certified firearms instructor's official seal, certifying that the applicant has completed the required firearms course of instruction established by the bureau.

(3) If the applicant is employed as a law enforcement officer, the applicant:

(i) shall not be required to pay the application fee; and

(ii) may establish evidence of general familiarity with the types of firearms to be concealed as required in Subsection ~~[53-5-704(5)(d)]53-5-704(6)(d)~~ by submitting documentation from a law enforcement agency located within the state of Utah indicating that the applicant has successfully completed the firearm qualification requirements of that agency within the last five years.

(4)(a) Upon receipt of a complete permit application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements found in Subsections 53-5-704(2) and (3).

(b) The background investigation shall consist of the following:



(i) sending the fingerprint card to the FBI for a review of the applicant's criminal history record pursuant to Section 53-5-706; and

(ii) verifying the accuracy of the information provided in the application packet through a search of local, state and national records which may include, but is not limited to, the following:

- (A) the Utah Computerized Criminal History database;
- (B) the National Crime Information Center database;
- (C) the Utah Law Enforcement Information Network;
- (D) state driver license records;
- (E) the Utah Statewide Warrants System;
- (F) juvenile court criminal history files;
- (G) expungement records maintained by the bureau;
- (H) the National Instant Background Check System;
- (I) the Utah Gun Check Inquiry Database;
- (J) Immigration and Customs Enforcement records; and
- (K) Utah Department of Corrections Offender Tracking System; and

(L) the Mental Gun Restrict Database.

(5)(a) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a), the bureau shall consider any mitigating circumstances submitted by the applicant.

(b) If the applicant does not meet the qualifications set forth in Subsection 53-5-704(2)(a) because the applicant has been convicted of a crime, the bureau may find that mitigating circumstances exist if the applicant was not convicted of a registerable sex offense, as defined in Subsection 77-27-21.5(1)(n), and the following time periods have elapsed from the date the applicant was convicted or released from incarceration, parole, or probation, whichever occurred last:

- (i) five years in the case of a class A misdemeanor;
- (ii) four years in the case of a class B misdemeanor; or
- (iii) three years in the case of any other misdemeanor or infraction.

(c) Notwithstanding any other provision, the bureau may not grant a permit if the applicant does not meet the qualifications in Subsection 53-5-704(2)(a)(viii).

(6)(a) If the bureau determines that the applicant meets the requirements found in Subsection 53-5-704(2) and (3), the bureau shall issue a permit to the applicant within 60 days.

(b) The permit shall be mailed to the applicant at the address listed on the application.

(7)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection 53-5-704(2) and (3), the bureau shall mail a letter of denial to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section [53-5-704(15)]53-5-704(16).

#### **R722-300-5. Application for a Concealed Firearms Instructor Certification.**

(1)(a) An applicant seeking to be certified as a Utah concealed firearms instructor must submit a completed instructor certification application packet to the bureau.

(b) The instructor certification application packet shall include:

(i) a written instructor certification application form provided by the bureau;

(ii) a photocopy of a state-issued driver license or identification card;

(iii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph;

(iv) a non-refundable processing fee of \$50.00, in the form of cash, check, money order, or credit card;

(v) evidence that the applicant has completed a firearm instructor training course from the NRA or POST, or received training equivalent to one of these courses, [a current NRA certification or its equivalent] as required by Subsection [53-5-704(8)(a)(iii)]53-5-704(9)(a)(iii); and

(vi) evidence that the applicant has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection [53-5-704(8)(e)]53-5-704(9)(c), within one year of the date of the application.

~~[(2) An applicant may meet the requirements of Subsection 53-5-704(8)(a)(iii) by providing a certificate of completion from one of the following:~~

- ~~(a) a NRA firearms instructor training program; or~~
- ~~(b) a POST firearms instructor training program.~~

~~(4) When reviewing an application for certification the bureau shall conduct a background investigation to ensure that the instructor is eligible to possess a firearm under Section 76-10-503 and federal law.~~

[(5)](2)(a) If the bureau determines that an applicant meets the requirements found in Subsection [53-5-704(8)]53-5-704(9), the bureau shall issue an instructor certification to the applicant.

(b) An instructor certification identification card shall be mailed to the applicant at the address listed on the application.

[(6)](3)(a) If the bureau determines that the applicant does not meet the requirements found in Subsection [53-5-704(8)]53-5-704(9), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section [53-5-704(15)]53-5-704(16).

#### **R722-300-6. Renewal of a Concealed Firearms Permit or Concealed Firearms Instructor Certification.**

(1)(a) An applicant seeking to renew a permit or an instructor certification must submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau which shall include the current address of the applicant's permanent residence;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card which is [~~\$10.00~~]\$15.00 fee to renew a permit or \$25.00 fee to renew an instructor certification.

(2) In addition to the items listed in Subsection (1)(b), an instructor seeking to renew an instructor certification must submit

evidence that the instructor has completed the course of instruction provided under the direction of the bureau and passed the certification test provided in Subsection ~~[53-5-704(8)(e)]~~53-5-704(9)(c), within one year of the date of the application.

(3) A renewal packet may be submitted no earlier than 60 days prior to the expiration of a current permit or certification.

(4) A fee consisting of \$7.50 will be collected for renewal packets submitted on a permit or an instructor certification that has been expired for more than thirty days but less than one year.

(b) Renewal packets for a permit or an instructor certification which has been expired for more than one year will not be accepted and the applicant will have to re-apply for a permit or an instructor certification.

(5) When renewing a permit or an instructor certification the bureau shall conduct a background investigation.

(6)(a) If the bureau determines that the applicant meets the requirements to renew a permit or an instructor certification, the bureau shall mail the renewed permit or instructor certification identification card to the applicant.

(b) The renewed permit or instructor certification identification card shall be mailed to the applicant at the address listed on the renewal application.

(7)(a) If the bureau determines that the applicant does not meet the requirements to renew a permit or an instructor certification, the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section ~~[53-5-704(15)]~~53-5-704(16).

#### **R722-300-8. Application for a LEOJ Permit.**

(1)(a) In order to obtain a LEOJ permit under Section 53-5-711, an applicant must submit a completed permit application packet to the bureau as provided by R722-300-4.

(b) In addition, the applicant must provide written documentation to establish to the satisfaction of the bureau that:

(i) the applicant is a law enforcement official or judge as defined in Section 53-5-711; and

(ii) that the applicant has completed the course of training required by Subsection 53-5-711(2)(b).

(2) When reviewing an application for a LEOJ permit the bureau shall conduct the same background investigation as if the individual were seeking a permit.

(3)(a) If the bureau finds that the applicant meets the requirements found in Subsection 53-5-711(2), the bureau shall issue a LEOJ permit to the applicant.

(b) The LEOJ permit shall be mailed to the applicant at the address listed on the application.

(4)(a) If the bureau finds that the applicant does not meet the requirements found in Subsection 53-5-711(2), the bureau shall mail a denial letter to the applicant, return receipt requested.

(b) The denial letter shall state the reasons for denial and indicate that the applicant has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Subsection ~~[53-5-704(15)]~~53-5-704(16).

#### **R722-300-10. Suspension or Revocation of a Permit to Carry a Concealed Firearm, Concealed Firearms Instructor Certification, or a LEOJ Permit.**

(1) A permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the permit holder does not meet the requirements found in Subsection 53-5-704(2);

(b) the bureau determines that the permit holder has committed a violation under Subsection 53-5-704(3); or

(c) the permit holder knowingly and willfully provided false information on an application for a permit, or a renewal of a permit.

(2) An instructor certification may be suspended or revoked for any of the following reasons:

(a) the bureau determines that the instructor has become ineligible to possess a firearm under Section 76-10-506 or federal law; or

(b) the instructor knowingly and willfully provided false information to the bureau.

(3) A LEOJ permit may be suspended or revoked for any of the following reasons:

(a) the bureau determines that a LEOJ permit holder is no longer employed as a law enforcement official or judge; or

(b) a LEOJ permit holder fails to provide proof of annual requalification by November 30 of each year as required by Section 53-5-711.

(4)(a) If the bureau suspends or revokes a permit, an instructor certification, or a LEOJ permit, the bureau shall mail a notice of agency action to the permit holder, instructor, or LEOJ permit holder, return receipt requested,

(b) The notice of agency action shall state the reasons for suspension or revocation and indicate that the permit holder, instructor, LEOJ permit holder has a right to request a review hearing before the board by filing a petition for review within 60 days as provided in Section ~~[53-5-704(15)]~~53-5-704(16).

**KEY: concealed firearm permit, concealed firearm permit instructor**

**Date of Enactment or Last Substantive Amendment: [January 7, 2011**

**Authorizing, and Implemented or Interpreted Law: 53-5-701 through 53-5-711**

**Tax Commission, Administration**  
**R861-1A-43**  
**Electronic Meetings Pursuant to Utah**  
**Code Ann. Section 52-4-207**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34687

FILED: 04/14/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 52-4-207 allows an agency to hold an electronic meeting if the agency creates a rule governing the use of electronic meetings. This amendment allows more flexibility for tax commissioners to participate in an open meeting by electronic means.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provides that up to three commissioners may participate electronically in a meeting open to the public, and if only one commissioner is present at the anchor location, that commissioner shall conduct the meeting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.
- ◆ LOCAL GOVERNMENTS: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.
- ◆ SMALL BUSINESSES: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--The amendment allows an additional commissioner to participate in an open meeting by telephone.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TAX COMMISSION  
 ADMINISTRATION  
 210 N 1950 W  
 SALT LAKE CITY, UT 84134-0002  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R861. Tax Commission, Administration.**  
**R861-1A. Administrative Procedures.**  
**R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.**

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

~~[(2)](3)(a)~~ The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection ~~[(2)](3)(a)~~ shall direct the public on how to participate electronically in the meeting.

**KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements**  
**Date of Enactment or Last Substantive Amendment: ~~February 23,~~ 2011**  
**Notice of Continuation: March 20, 2007**  
**Authorizing, and Implemented or Interpreted Law: 52-4-207**

Tax Commission, Motor Vehicle  
**R873-22M-27**  
 Issuance of Special Group License  
 Plates Pursuant to Utah Code Ann.  
 Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 34686  
 FILED: 04/14/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment provides a mechanism for revoking search and rescue special group license plates for an individual who no longer qualifies for that license plate.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments place in rule current division practice in determining who qualifies for a search and rescue special group license plate, at the request of search and rescue groups; provides procedures for revoking a special group

license plate; and conforms the revocation procedures for the firefighter special group license plate to match the revocation procedures for the search and rescue special group license plate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-418 and Section 41-1a-419 and Section 41-1a-420 and Section 41-1a-421

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Immaterial increase in revenue as a person who is no longer eligible to have a search and rescue plate will pay \$5 to replace those plates.

◆ LOCAL GOVERNMENTS: None--The fees involved are state fees.

◆ SMALL BUSINESSES: Immaterial cost as a person who is no longer eligible to have a search and rescue plate will pay \$5 to replace those plates.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Immaterial cost as a person who is no longer eligible to have a search and rescue plate will pay \$5 to replace those plates.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The statutory fee for a new license plate has always applied to a person who is no longer eligible to have a special group license plate. Search and rescue groups, however, want to actively enforce revoking the plate of a person who is no longer eligible for the plate. As a result, there may be some revocations, and the persons who have had their plates revoked will pay a \$5 fee for a new license plate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Immaterial cost as a person who is no longer eligible to have a search and rescue plate will pay \$5 to replace those plates.

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

TAX COMMISSION  
MOTOR VEHICLE  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

**R873. Tax Commission.**

**R873-22M. Motor Vehicle.**

**R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.**

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by a total of five characters and numerals.

(2)(a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3)(a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9)(a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11)(a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has ~~notified~~ provided the individual described in Subsection (11)(b)(i) at least 30 days notice that the license plate will be revoked.

(12)(a) To qualify for a search and rescue special group license plate, an applicant must present one of the following:

(i) an official identification card issued by a county sheriff's office identifying the applicant as an employee or volunteer of that county's search and rescue team; or

(ii) a letter on letterhead of the county sheriff's office of the county in which the search and rescue team is located, identifying the applicant as an employee or volunteer of that county's search and rescue team.

(b) The division shall revoke a search and rescue special group license plate issued under Section 41-1a-418 upon receipt of written notification from the county sheriff's office of the county in which the search and rescue team is located, indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the search and rescue team has provided the individual described in Subsection (12)(b)(i) at least 30 days notice that the license plate will be revoked.

~~(12)~~(13) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates.

**KEY: taxation, motor vehicles, aircraft, license plates**

**Date of Enactment or Last Substantive Amendment:**  
~~[December 22, 2009]~~2011

**Notice of Continuation: March 12, 2007**

**Authorizing, and Implemented or Interpreted Law: 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421**

## Technology Services, Administration **R895-2** Americans with Disabilities Act (ADA) Complaint Procedure

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34681

FILED: 04/12/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to establish a procedure to provide for resolution of complaints filed in accordance with the ADA. The ADA State Coordinating Committee is a defunct committee. The change in the rule has removed reference to this committee. Additionally, the rule has been amended to include revisions to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

**SUMMARY OF THE RULE OR CHANGE:** The ADA State Coordinating Committee is a defunct committee. The change in the rule has removed reference to this committee. Additionally, the rule has been amended to include revisions to the ADAAA.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63F-1-206 and Section 63G-3-201

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no impact to the state budget, as the change just removes reference to a committee that is no longer operational. There is no impact to the operational procedure for filing ADA complaints.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments, as the change just removes reference to a committee that is no longer operational. There is no impact to the operational procedure for filing ADA complaints.

◆ **SMALL BUSINESSES:** There is no impact to small businesses, as the change just removes reference to a committee that is no longer operational. There is no impact to the operational procedure for filing ADA complaints.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to other persons, as the change just

removes reference to a committee that is no longer operational. There is no impact to the operational procedure for filing ADA complaints.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance cost for affected persons, as the change just removes reference to a committee that is no longer operational. There is no impact to the operational procedure for filing ADA complaints.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The modification to the rule will have no fiscal impact to businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 TECHNOLOGY SERVICES  
 ADMINISTRATION  
 ROOM 6000 STATE OFFICE BUILDING  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011**

**AUTHORIZED BY:** J Stephen Fletcher, CIO and Executive Director

**R895. Technology Services, Administration.**

**R895-2. Americans With Disabilities Act (ADA) Complaint Procedure.**

**R895-2-2. Definitions.**

(1) "Department" mean the Utah Department of Technology Services.

(2) "Department ADA Coordinator" means an individual, appointed by the executive director of the Department of Technology Services', who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

~~(3) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:~~

- ~~(a) Governor's Office of Planning and Budget;~~
- ~~(b) Department of Human Resource Management;~~
- ~~(c) Division of Risk Management;~~
- ~~(d) Division of Facilities Construction Management; and~~
- ~~(e) Office of the Attorney General.~~

] ~~([4]3)~~ "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

~~([5]4)~~ "Major life activities" ~~[means functions such as eating for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working]~~ include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

~~([6]5)~~ "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Technology Services, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

**R895-2-4. Investigation of Complaint.**

(1) The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Subsection 3(3) of this rule if it is not made available by the individual.

(2) When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and administrative services staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(a) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;

(b) facility modifications; or

~~(c) reclassification or reallocation in grade[; the coordinator shall consult with the ADA State Coordinating Committee].~~

**R895-2-6. Appeals.**

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow review of all information classified as private or controlled, by the department's executive director or designee.

(4) The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve the executive director or designee to:

- (a) an expenditure of funds which is not absorbable and would require appropriation authority;
- (b) facility modifications; or
- (c) reclassification or reallocation in grade [~~the executive director or designee shall also consult with the State ADA Coordinating Committee~~].

(6) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(7) If the executive director or designee is unable to reach a decision within the ten working day period, the executive director or designee shall notify the individual in writing or by another acceptable suitable format why the decision is being delayed and the additional time needed to reach a decision.

**KEY: developmentally disabled, disabilities act**  
**Date of Enactment or Last Substantive Amendment: [July 25, 2006]2011**  
**Notice of Continuation: February 15, 2011**  
**Authorizing, and Implemented or Interpreted Law: 63G-3-201; 63F-1-206**

Transportation, Operations,  
 Maintenance  
**R918-5**  
 Construction or Improvement of  
 Highway

**NOTICE OF PROPOSED RULE**  
 (New Rule)  
 DAR FILE NO.: 34693  
 FILED: 04/14/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to comply with the requirements of Subsection 72-6-107(5) to establish procedures for hearing evidence that a region within the department violated the construction bid limit and administering sanctions for a violation.

**SUMMARY OF THE RULE OR CHANGE:** The rule establishes procedures for hearing evidence that a region within the department violated the construction bid limit and administering sanctions for a violation.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201 and Section 72-6-107 and Section 72-6-109

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated cost or savings to the state budget because the procedures are handled within the department and sanctions for violations are imposed among its regions.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated cost or savings to local government because the procedures are handled within the department and sanctions for violations are imposed among its regions.
- ◆ **SMALL BUSINESSES:** There are no anticipated cost or savings to small business because the procedures are handled within the department and sanctions for violations are imposed among its regions.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the procedures are handled within the department and sanctions for violations are imposed among its regions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs or savings to affected persons because the procedures are handled within the department and sanctions for violations are imposed among its regions.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no anticipated cost or savings to businesses because the procedures are handled within the department and sanctions for violations are imposed among its regions.

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

TRANSPORTATION  
 OPERATIONS, MAINTENANCE  
 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:**

- ◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: John Njord, Executive Director

**R918. Transportation, Operations, Maintenance.**

**R918-5. Construction or Improvement of Highway.**

**R918-5-1. Authority.**

This rule is required by Section 72-6-107 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Section 72-1-201.

**R918-5-2. Purpose and Background.**

Section 72-6-107 requires that any construction or improvement project whose estimated cost for labor and materials exceeds the Bid Limit defined in Section 72-6-109 shall be performed under contract awarded to the lowest responsible bidder. Construction or improvement projects with estimated costs for labor and materials lower than that Bid Limit may be performed by force account. That same section also directs the Department to establish a procedure whereby evidence that a region violated that law may be heard, and also directs the Department to establish sanctions for a region found to be in violation. This rule establishes those procedures and sanctions.

**R918-5-3. Definitions.**

(1) "Bid Limit" is the dollar amount set forth in Section 72-6-109.

(2) "Department" means the Utah Department of Transportation.

(3) "Region" means one of the four regions of the Utah Department of Transportation.

(4) "Project" means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one road, within a half-mile proximity and occurs within the same calendar year.

**R918-5-4. Process to Hear Evidence of Violations.**

(1) There is established within the Department a "Bid Limit Hearing Board" (the Board), consisting of persons in the following positions:

(a) Director of Operations (Chair);

(b) Engineer for Construction;

(c) Engineer for Maintenance;

(d) Director of Project Development;

(e) UDOT Internal Auditor;

(f) One UDOT Region Director (appointed by the Deputy Director on a case-by-case basis); and

(g) Deputy Engineer for Maintenance (Secretary/Recorder, non-voting).

(2) Any person, corporation, government agency, or UDOT group, having reasonable evidence that a region violated any provision of Section 72-6-107, may request that the Board be convened to hear that evidence, by making a written request/complaint to the Department's Deputy Director.

(3) Upon receiving a complaint of an alleged violation, the Deputy Director shall direct the Board to convene, by notifying the Chair that a complaint has been received.

(4) The Board shall convene no later than 30 days after the Deputy Director receives the complaint.

(5) During the hearing, the complainant shall present objective evidence that the estimated cost of the project for labor and materials exceeded the Bid Limit. The evidence shall include credible cost data to support the allegation. The accused region shall be afforded the opportunity to defend itself against any and all allegations, by presenting credible evidence of its own.

(6) Having heard evidence from both parties, the Board shall privately deliberate on the evidence heard, and return a verdict either supporting the complainant's claim of a violation, or finding the claim unsubstantiated. The verdict shall be based on a simple majority vote. The Board shall then notify the Deputy Director of its verdict and recommendation for sanction.

(7) The Deputy Director, upon receiving the Board's verdict of a violation and recommendation for sanction, shall administer a sanction against the region in violation. The Deputy Director has discretion to administer either the standard sanction outlined in Section R918-5-5, or whatever other corrective action he or she deems appropriate.

**R918-5-5. Standard Sanction for Violation.**

The standard sanction for a region found in violation of the provisions of Section 72-6-107 by exceeding the Bid Limit for labor and materials, is a penalty to be taken from that region's Operations budget (commonly known as the "Code 1" budget), and distributed equally among the other three regions. The standard amount of the penalty is the larger of:

(1) the total cost of the project for labor and materials, less the Bid Limit in effect at the time the project began, or

(2) \$100,000.

**KEY: maintenance, construction, improvement projects, bid limits**

**Date of Enactment or Last Substantive Amendment: 2011**

**Authorizing, and Implemented or Interpreted Law: 72-1-201, 72-6-107, 72-6-109**

Workforce Services, Employment  
Development  
**R986-200-205**  
How to Determine Who Is Included in  
the Household Assistance Unit

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34677

FILED: 04/11/2011



**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to accept and include parents listed on birth certificates.

**SUMMARY OF THE RULE OR CHANGE:** Some states allow individuals to be listed as a parent on the birth certificate who would not be included in the household for Department programs. By making this proposed change, those individuals will now be included and the Department can count the income and assets of those individuals.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-3-301 et seq. and Subsection 35A-1-104(5)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs of any persons or other entities to comply with these changes because there are no costs or fees associated with these proposed changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES  
EMPLOYMENT DEVELOPMENT  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011**

**AUTHORIZED BY: Kristen Cox, Executive Director**

**R986. Workforce Services, Employment Development.****R986-200. Family Employment Program.****R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.**

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

**KEY: family employment program**

**Date of Enactment or Last Substantive Amendment: [January 13, 2011**

**Notice of Continuation: September 8, 2010**

**Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.**

## Workforce Services, Employment Development **R986-700** Child Care Assistance

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34678

FILED: 04/11/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to increase the age off time.

**SUMMARY OF THE RULE OR CHANGE:** The current rule provides that unused child care assistance will age off in 60 days. The Department is in the process of changing financial service providers and the age off time will change to 90 days. Eventually the Department will also change the name of the electronic benefit card so we are eliminating mention of the Horizon card.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-3-310

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs of any persons or other entities to comply with these changes because there are no costs or fees associated with these proposed changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with these changes for any persons because this is a federally-funded program and

there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 WORKFORCE SERVICES  
 EMPLOYMENT DEVELOPMENT  
 140 E 300 S  
 SALT LAKE CITY, UT 84111-2333  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2011

AUTHORIZED BY: Kristen Cox, Executive Director

#### **R986. Workforce Services, Employment Development.**

##### **R986-700. Child Care Assistance.**

##### **R986-700-703. Client Rights and Responsibilities.**

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours

per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client;

(g) a copy of the two party check on a need to know basis; and

(h) the month the client is scheduled for review or reestablishment.

(10) ~~If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.~~ Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

##### **R986-700-718. Provider Disqualification.**

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) [~~which includes the Horizon card~~] and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each

client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

**KEY: child care**

**Date of Enactment or Last Substantive Amendment: [January 4, 2011]**

**Notice of Continuation: September 8, 2010**

**Authorizing, and Implemented or Interpreted Law: 35A-3-310**

**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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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 May 31, 2011.

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 August 29, 2011, 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.

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**The Changes in Proposed Rules Begin on the Following Page**

**Environmental Quality, Air Quality  
R307-328  
Gasoline Transfer and Storage**

**NOTICE OF CHANGE IN PROPOSED RULE**  
DAR FILE NO.: 34349  
FILED: 04/13/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 01/05/2011, the Air Quality Board proposed revisions to Rule R307-328, the Stage I vapor recovery rule. The proposal eliminated the current December to March testing window and replaced the current testing and vapor tightness standards with the more stringent standards in the federal Maximum Achievable Control Technology (MACT) for Gasoline Distribution Facilities. During the review of the rule, several representatives of local refineries identified a problem with the proposal. Railcar gasoline cargo tanks are tested for vapor tightness using different procedures, and the proposed rule change would have expanded the scope of the current rule by requiring these tanks to be tested using the same procedures as truck cargo tanks. This change in proposed rule revises the original rule amendment to clarify that railcar cargo tanks may use the alternate testing methods for railcars established in the MACT. This is consistent with Utah's current rule and the long-standing methods established in both the MACT and the New Source Performance Standards (NSPS) for Gasoline Distribution Facilities.

**SUMMARY OF THE RULE OR CHANGE:** This change in proposed rule revises the original rule amendment to clarify that railcar cargo tanks may use the alternate testing methods for railcars established in the MACT at 40 CFR 63.425(i). Additionally, changes were made to the date when the new testing standards would be required. This is due to taking this Change in Proposed Rule (CPR) action. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2011, issue of the Utah State Bulletin, on page 28. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-101 and Subsection 19-2-104(1) (a)

**MATERIALS INCORPORATED BY REFERENCES:**  
◆ Adds 40 CFR 63.425(i), published by Government Printing Office, July 1, 2009

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No cost or savings is anticipated for state budget as this change does not create any new requirements.
- ◆ **LOCAL GOVERNMENTS:** No cost or savings is anticipated for local government as this change does not create any new requirements.
- ◆ **SMALL BUSINESSES:** No cost or savings is anticipated for small businesses as this change does not create any new requirements.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings is anticipated for persons other than small businesses, businesses, or local government entities as this change does not create any new requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No cost or savings is anticipated for affected persons as this change does not create any new requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No cost or savings is anticipated for businesses as this amendment does not create any new requirements.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 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](mailto:kkreykes@utah.gov)

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

**THIS RULE MAY BECOME EFFECTIVE ON:** 06/07/2011

**AUTHORIZED BY:** Bryce Bird, Acting Director

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**R307. Environmental Quality, Air Quality.  
R307-328. Gasoline Transfer and Storage.**

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**R307-328-2. Applicability.**

- (1) Gasoline Cargo Tanks. R307-328 applies to the owner or operator of any gasoline cargo tank that loads or unloads gasoline in Utah.
- (2) Gasoline Dispensing. R307-328 applies to the owner or operator of any bulk terminal, bulk plant, stationary storage

container, or service station located in Utah that dispenses 10,000 gallons or more in any one calendar month.

(3) This rule applies to all gasoline cargo tanks and gasoline dispensing facilities that operate within Utah according to the compliance schedule defined in section 328-9 of this rule.

(4) All references to 40 CFR in R307-328 shall mean the version that is effective as of the date referenced in R307-101-3.

**R307-328-3. Definitions.**

The following additional definitions apply to R307-328.

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Gasoline cargo tank" means gasoline cargo tank as defined in 40 CFR 63.421~~[, effective as of the date referenced in R307-101-3,]~~ that is hereby [adopted and] incorporated by reference.

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**R307-328-7. Vapor Tightness Testing.**

(1) Gasoline cargo tanks ~~[-]and their vapor collection systems shall be tested annually for leakage in accordance with the test methods and vapor tightness standards in 40 CFR 63.425(e)[, effective as of the date referenced in R307-101-3,]~~ which are hereby incorporated by reference.

(2) Each owner or operator of a gasoline cargo tank shall have documentation in their possession demonstrating that the gasoline cargo tank has passed the annual test in (1) above within the preceding twelve months.

(3) The vapor tightness documentation described in (2), as well as record of any maintenance performed, shall be retained by the owner or operator of the gasoline cargo tank for a two year period and be available for review by the executive secretary or the executive secretary's representative.

(4) The owner or operator of a railcar gasoline cargo tank may use the testing, recordkeeping, and reporting requirements in 40 CFR 63.425(i), that is hereby incorporated by reference, as an alternative to the annual testing requirements in (1) through (3) above.

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**R307-328-9. Compliance Schedule.**

(1) Effective May 1, 2000, all Facilities located in Davis, Salt Lake, Utah, and Weber Counties shall be in compliance with this rule.

(2) All other facilities located in Utah, shall be in compliance with this rule according to the following phase-in schedule:

(a) Facilities located in Box Elder, Cache, Tooele and Washington Counties shall be in compliance with this rule by April 30, 2009.

(b) Facilities located in Emery, Iron, Juab, Millard, Sevier, Summit and Uintah Counties shall be in compliance with this rule by April 30, 2010.

(c) All facilities located in Utah shall be in compliance with this rule by April 30, 2011.

(3) If this implementation schedule results in a scheduling and/or financial hardship for an individual facility, that facility may request a six-month extension from the Executive Secretary of the Utah Air Quality Board. A maximum of two six-month extensions may be granted. Regardless of extension requests submitted, all facilities must be in compliance with this rule not later than April 30, 2011.

(4) A request for an extension must be documented and contain valid reasons why a facility will not able to meet the phase-in schedule indicated in (2)(a) or (b) above. A late start on preparation or planning is not a valid reason to grant an extension. The request for extension must also contain a proposed implementation schedule that shows compliance to this rule at the earliest possible date, but no later than April 30, 2011.

(5) The vapor tightness testing standard in R307-328-7(1) shall apply to tests conducted after ~~[April 6,]~~ June 7, 2011. All gasoline cargo tanks shall be tested using the vapor tightness testing standard in R307-328-7(1) by ~~[April 6,]~~ June 7, 2012.

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**KEY: air pollution, gasoline transport, ozone**  
**Date of Enactment or Last Substantive Amendment: 2011**  
**Notice of Continuation: March 15, 2007**  
**Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104(1)(a)**

**End of the Notices of Changes in Proposed Rules Section**





# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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.

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## Capitol Preservation Board (State), Administration **R131-4** Capitol Preservation Board General Procurement Rule

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34675  
FILED: 04/11/2011

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R131-4 is enacted under the authority of Section 63C-9-301 which directs the Capitol Preservation Board to make rules to govern, administer and regulate the executive director and staff. This rule requires the Capitol Preservation Board to adopt rules that are substantially similar to the requirements of the Utah Procurement Code, Title 63G, Chapter 6. Rule R131-4 ensures the fair and equitable treatment of all persons who deal with the Capitol Preservation Board, provides increased economy in Capitol Board Preservation Board procurement activities, and fosters effective broad-based competition within the free enterprise system.

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 Capitol Preservation Board and executive director have not received written comments, either in support or opposition to Rule R131-4.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R131-4 rule requires the Capitol Preservation Board to adopt rules that are substantially similar to the requirements of the Utah Procurement Code, Title 63G-6. Rule R131-4 ensures the fair and equitable treatment of all persons who deal with the Capitol Preservation Board, provides increased economy in Capitol Board Preservation Board procurement activities and fosters effective broad-based competition within the free enterprise system. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at [abachman@utah.gov](mailto:abachman@utah.gov)  
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at [agamble@utah.gov](mailto:agamble@utah.gov)  
◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at [ldye@utah.gov](mailto:ldye@utah.gov)

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 04/11/2011

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Environmental Quality, Air Quality  
**R307-210**  
 Stationary Sources

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 34557  
 FILED: 04/06/2011

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) states that the Air Quality Board may make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: On 11/01/2006, the Air Quality Board proposed for comment amendments to Rule R307-210. The changes in Rule R307-210 were to update the incorporation of standards of performance for new stationary sources by reference in the rule. The effective date was 03/15/2007. No oral or written comments were 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: Under the Clean Air Act (42 U.S.C. 7411(c)), "Each State may develop and submit to the Administrator of Environmental Protection Agency (EPA) a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards." Utah was delegated authority to permit new sources many years ago and intends to maintain that authority rather than allowing the federal government the authority to permit and enforce these standards within Utah. To maintain that authority, Utah must adopt and implement the provisions of 40 CFR Part 60, the regulation implementing 42 U.S.C. 7411. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at jkarmazyn@utah.gov

AUTHORIZED BY: Bryce Bird, Acting Director

EFFECTIVE: 04/06/2011

Environmental Quality, Radiation  
 Control  
**R313-26**  
 Generator Site Access Permit  
 Requirements for Accessing Utah  
 Radioactive Waste Disposal Facilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 34555  
 FILED: 04/06/2011

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-3-104 provides the Radiation Control Board authority to make rules to protect the public and environment from sources of radiation. Section 19-3-106.4 requires a generator or waste collector (Broker) of Low-level radioactive waste to obtain a site access permit prior to transferring or shipping waste to a commercial radioactive waste treatment or disposal facility located in Utah. The purpose of this rule is to establish criteria and terms and conditions upon which the Executive Secretary issues permits to generators accessing a land disposal facility located within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency 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: It is necessary to continue this rule because it establishes the requirements and conditions for issuing a site access permit to generators or brokers. Once a permit is issued, it allows them to ship waste to a commercial radioactive waste facility in Utah. The rule also provides regulation for compliance inspections of shipments.

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Hultquist by phone at 801-536-4623, by FAX at 801-536-4250, or by Internet E-mail at [jhultquist@utah.gov](mailto:jhultquist@utah.gov)

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 04/06/2011

Money Management Council,  
Administration

**R628-10**

Rating Requirements to be a Permitted  
Depository

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 34676

FILED: 04/11/2011

**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 51-7-17(4) allows public treasurers to invest in permitted depositories, or out of state depositories, that meet the criteria of the Rules of the Money Management Council. Also Subsection 51-7-18(2)(b) (iv) states that the Money Management Council may write rules that govern deposits of public funds in permitted depositories.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments either for or against 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 is needed to establish a standard for public treasurers to evaluate the financial condition of permitted depositories to determine if placing public funds in these depositories would expose these funds to risk. As deposits in permitted depositories are an allowed investment for public treasurers under the Money Management Act (Title 51, Chapter 7) there must be a rule in place to provide criteria for a public treasurer to do so. Therefore, this rule should be continued.

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

MONEY MANAGEMENT COUNCIL  
ADMINISTRATION  
ROOM 180 UTAH STATE CAPITOL COMPLEX  
350 N STATE ST  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at [apedroza@utah.gov](mailto:apedroza@utah.gov)

AUTHORIZED BY: William Wallace, Chair

EFFECTIVE: 04/11/2011

Natural Resources; Oil, Gas and  
Mining; Coal

**R645-106**

Exemption for Coal Extraction  
Incidental to the Extraction of Other  
Minerals

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 34550  
FILED: 04/04/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-3(20)(a) specifically provides that coal mining operations as defined in the Act do not include the extraction of coal incidental to the extraction of other minerals.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One written comment was received in December 2010, and it was in support of renewal.

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 necessary to identify the percentage of incidental coal that is allowed in other mineral mining before the coal mining act and regulations are applicable to an extraction operation. This rule should be continued so Utah's coal program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/04/2011

**Natural Resources; Oil, Gas and  
Mining; Oil and Gas**

**R649-10**

**Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 34551  
FILED: 04/04/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides the rulemaking authority to the Board of Oil, Gas and Mining for regulation of the oil and gas industry. Also, the Administrative Procedures Act (APA) at Title 63G, Chapter 4 was approved by the Legislature and Subsection 63G-4-102(6) specifies that it does not preclude an agency from enacting a rule provided the rule complies with the APA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One written comment was received in December 2010, and it was in support of renewal.

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 exists as a vehicle for Division decisions to be appealed to the Board of Oil, Gas and Mining should disagreements arise between the public and the Division. This rule also states the method the Division uses to begin the process of informal adjudicative proceedings, enabling the public to pursue remedy at an informal level prior to Board formal matters, and therefore the rule should be continued.

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

NATURAL RESOURCES  
OIL, GAS AND MINING; OIL AND GAS  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 04/04/2011

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 04/14/2011

**Natural Resources, Water Rights  
R655-10**

**Dam Safety Classifications, Approval Procedures and Independent Reviews**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 34690  
FILED: 04/14/2011

**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 73-5a-101 grants the state engineer authority to make rules controlling the construction and operation of dams for the purpose of protecting public safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment received and reviewed since it was enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory obligation continues and there is a continuing need for the rule to provide guidance for Dam Safety Classifications, Approval Procedures, and Independent Reviews. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
WATER RIGHTS  
ROOM 220  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**Natural Resources, Water Rights  
R655-11  
Requirements for the Design,  
Construction and Abandonment of  
Dams**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 34691  
FILED: 04/14/2011

**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 73-5a-101 grants the state engineer authority to make rules controlling the construction and operation of dams for the purpose of protecting public safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment received and reviewed since it was enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory obligation continues and there is a continuing need for the rule to provide guidance for requirements for the design, construction, and abandonment of dams. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
WATER RIGHTS  
ROOM 220  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 04/14/2011

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 comment received and reviewed since it was enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory obligation continues and there is a continuing need for the rule to provide guidance for minimum operational requirements for dams. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WATER RIGHTS  
 ROOM 220  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

**Natural Resources, Water Rights  
 R655-12**

**Requirements for Operational Dams**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 34692  
 FILED: 04/14/2011

**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 73-5a-101 grants the state engineer authority to make rules controlling the construction and operation of dams for the purpose of protecting public safety.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

AUTHORIZED BY: Michael Styler, Executive Director

EFFECTIVE: 04/14/2011

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

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

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

### Education

#### Administration

No. 34429 (AMD): R277-709. Education Programs Serving Youth in Custody  
Published: 03/01/2011  
Effective: 04/08/2011

### Environmental Quality

#### Air Quality

No. 34350 (AMD): R307-110-28. Regional Haze  
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Published: 02/01/2011  
Effective: 06/07/2011

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No. 34240 (AMD): R313-25-8. Technical Analyses  
Published: 12/01/2010  
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No. 34240 (CPR): R313-25-8. Technical Analyses  
Published: 03/01/2011  
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Published: 03/01/2011  
Effective: 04/13/2011

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No. 34315 (AMD): R414-1-5. Incorporations by Reference  
Published: 01/01/2011  
Effective: 04/05/2011

No. 34316 (AMD): R414-54-3. Services

Published: 01/01/2011  
Effective: 04/05/2011

No. 34317 (AMD): R414-59-4. Client Eligibility Requirements

Published: 01/01/2011  
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No. 34314 (AMD): R414-61. Home and Community-Based Services Waivers

Published: 01/01/2011  
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No. 34267 (AMD): R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review

Published: 12/15/2010  
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No. 34320 (AMD): R432-600. Abortion Clinic Rule

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Published: 03/01/2011  
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No. 34449 (REP): R592-4. Standards for Minimum Charges for Escrow Services  
Published: 03/01/2011  
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No. 34447 (NEW): R592-15. Submission of a Schedule of Minimum Charges for Escrow Services  
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No. 34446 (AMD): R651-601-15. Special Use Permit  
Published: 03/01/2011  
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No. 34364 (AMD): R651-611. Fee Schedule  
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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/>).

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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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**ABBREVIATIONS**

AMD = Amendment  
 CPR = Change in proposed rule  
 EMR = Emergency rule (120 day)  
 NEW = New rule  
 EXD = Expired  
 NSC = Nonsubstantive rule change  
 REP = Repeal  
 R&R = Repeal and reenact  
 5YR = Five-Year Review

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