UTAH STATE BULLETIN

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. 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

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for Public Hearing and Request for Comments on H.B. 211, Community Service Medicaid Pilot Program

The Utah Department of Health (Department) is pleased to invite input regarding the development of a new Community Service Medicaid Pilot Program Section 1115 Waiver demonstration initiative. This pilot represents another effort by the State to transform its Medicaid program. Able bodied individuals in the pilot will be required to give service to the community in exchange for their program benefit. This service will help build a sense of contribution to the program and also add to the client's program experience.

Utah will submit a draft waiver amendment for review by the Centers for Medicare and Medicaid Services (CMS). The formal waiver amendment request will be submitted after public comment is received.

In response to the recently passed H.B. 211, Community Service Medicaid Pilot Program (2011 General Session), the Department will be submitting a Section 1115 Demonstration Waiver amendment authorized by Title XIX of the Social Security Act. The waiver amendment, if approved, will establish a new Community Service Medicaid Pilot Program.

The waiver amendment will allow the state to modify the enrollment rules for the Primary Care Network (PCN) for a selected group of less than 100 people. In addition to the established PCN eligibility guidelines, this new PCN eligible group will be required to perform regular community service as a condition of eligibility. The recipients will receive the same medical benefit afforded to other PCN recipients.

The Department is committed to an extensive public process and wants everyone to have an opportunity to see the draft waiver amendment, weigh in on key provisions of the amendment, and offer comments. The waiver application will be available for public review and comment on November 15, 2011, at: http://health.utah.gov/medicaid/HB211proposal.htm

The Department will provide opportunities for input. An informal work group will meet from 3:30 PM to 5:00 PM on November 10, 2011, at the Cannon Health Building in Room 128, 288 North 1460 West, Salt Lake City, Utah. A formal public hearing will be held following the Medical Care Advisory Committee meeting from 3:30 PM to 5:00 PM on November 17, 2011, at the Cannon Health Building in Room 125, 288 North 1460 West, Salt Lake City, Utah.

The Department will be accepting formal input and comments through December 2, 2011. Comments may be directed to the Utah Department of Health, Division of Medicaid and Health Financing, PO Box 143102, Salt Lake City, Utah 84114-3102, or to: cdevashrayee@utah.gov.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Governor's Proclamation 2011/04/E: Calling the Fifty-Ninth Legislature into the Fourth Extraordinary Session

P R O C L A M A T I O N

WHEREAS, since the close of the 2011 General Session of the 59th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, GARY R. HERBERT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 59th Legislature into the Fourth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 19st day of October 2011, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2011 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 14th day of October 2011.

(State Seal)

Gary R. Herbert
Governor

Greg Bell
Lieutenant Governor

2011/04/E

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between October 01, 2011, 12:00 a.m., and October 14, 2011, 11:59 p.m. are included in this, the November 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 December 1, 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 February 29, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **Proposed Rule** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **Change in Proposed Rule** in response to comments received. If the Division of Administrative Rules does not receive a **Notice of Effective Date** or a **Change in Proposed Rule**, the **Proposed Rule** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Administrative Services, Facilities Construction and Management
R23-32
Rules of Procedure for Conduct of Utah State Building Board Meetings

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 35333
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures for the conduct of Utah State Building Board meetings and to assist the public and anyone wishing to address the Building Board, whether in person or by other established means.

SUMMARY OF THE RULE OR CHANGE: This rule defines and provides the procedures of conduct for the Utah State Building Board meetings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-5-102(2) and Subsection 63A-5-103(1)(e)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule codifies many of the existing practices of the Building Board, provides for electronic meetings and has no anticipated costs. The rule may provide some savings, such as reduced transportation costs.
♦ LOCAL GOVERNMENTS: Local governments will not be affected because this rule codifies many of the existing practices of the Building Board, provides for electronic meetings, and has no anticipated costs. The rule may provide some savings, such as reduced transportation costs.
♦ SMALL BUSINESSES: Small businesses will not be affected because this rule codifies many of the existing practices of the Building Board, provides for electronic meetings, and has no anticipated costs. The rule may provide some savings, such as reduced transportation costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be affected because this rule codifies many of the existing practices of the Building Board, provides for electronic meetings, and has no anticipated costs. The rule may provide some savings, such as reduced transportation costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for affected persons because this rule codifies many of the existing practices of the Building Board, provides for electronic meetings and has no anticipated costs. The rule may provide some savings, such as reduced transportation costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses as described in the paragraphs above.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.
R23-32. Rules of Procedure for Conduct of Utah State Building Board Meetings.
R23-32-1. Purpose.
The purpose of this Rule R23-32 is to establish procedures for the conduct of Utah State Building Board meetings and to assist the public and anyone wishing to address the Building Board, whether in person or by other established means.

R23-32-2. Authority.
This Rule R23-32 is authorized under Subsection 63A-5-102(2) which directs that the Building Board "adopt rules of procedure for the conduct of its meetings." The Building Board has administrative rulemaking authority under Subsection 63A-5-103(1)(e).

R23-32-3. Definitions.
(1) "Attendance" means that person attending a Board meeting, either in person or through electronic means as authorized by this Rule.

(2) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.

(3) "Chair" means the person appointed as Chair of the Board by the Governor pursuant to Title 63A, Chapter 5, Utah Code.

(4) "Director" means the Director of the Division of Facilities Construction and Management or duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management.

(6) "Electronic meeting" is as defined in Section 52-4-103.

(7) "GOPB Official" means the Director of the Governor's Office of Planning and Budget or duly authorized designee.

(8) "Open and Public Meetings Laws" means those laws provided by Title 52, Chapter 4, Utah Code.

(9) "Presiding Officer" means the Chair. The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

R23-32-4. Composition of Board.

(1) The Board consists of eight members, seven of whom are voting members appointed by the Governor for terms of four years.

(2) The GOPB Official is a nonvoting member of the Board. As a nonvoting member, the GOPB official shall not be considered as part of the quorum requirement for Board determinations. The GOPB Official shall advise the Presiding Officer of any designee appointed prior to any meeting that the designee will be attending.

R23-32-5. Calling for Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services, Director or GOPB Official may also call for a meeting upon consent of the Chair.

R23-32-6. Compliance with Open and Public Meeting Laws.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Laws. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meeting Laws.

R23-32-7. Presiding Officer and Basic Responsibilities.

(1) The Chair shall be the Presiding Officer at all Board meetings when present in person or through electronic means.

(2) The Chair may choose, either because of unavailability or other reason, an alternate Presiding Officer.

(3) The Presiding Officer shall be able to make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting.

R23-32-8. Secretary to the Board.

(1) The Director shall serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Laws. The Secretary shall coordinate with others that are needed for such compliance with the Open and Public Meetings Laws.

(2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R23-32-9. Meetings.

Meetings shall generally be held on the first Wednesday of the month at 9:00 a.m. at the Utah State Capitol in Salt Lake City, Utah. During Legislative Sessions, the Chair and Director may determine another location. The date, time and location may also be modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R23-32-10. Notice and Agenda.

(1) Notice shall be given of all meetings in accordance with the Open and Public Meeting Laws.

(2) The Director and Presiding Officer shall confer a reasonable time prior to any Board meeting as to the items to be on the agenda. The Presiding Officer shall ultimately determine the matters to be on the agenda, unless a vote of the Board has been undertaken to direct an item to be placed on the agenda. Board members may also contact the Chair about any request for agenda items.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons that may have intended to attend the meeting.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer.

(5) Each agenda shall have an item on it regarding whether there are any matters to be placed on a future agenda.

R23-32-11. Attendance, Quorum and Voting.

(1) The quorum requirement for the Board is set forth in Utah Code Annotated Title 63A, Chapter 5.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least three members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the specific members of such votes shall be recorded by the Secretary.

(4) Members must be in attendance, including by electronic means in accordance with this Rule, in order to vote.

R23-32-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

(1) The GOPB Official may make and second motions, but shall not vote on any motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those that request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion that assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions as are appropriate under their authority.

R23-32-13. Committees.

The Board may appoint committees to investigate or report on any matter which is of concern to the Board.

R23-32-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to be ejected from the meeting.

R23-32-15. Robert's Rules of Order.

All matters not covered by this Rule R23-32 shall be determined by either Robert's Rules of Order, latest published edition, an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or with abbreviated procedures as determined by the Presiding Officer.

R23-32-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R23-32-15 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Laws.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member appearing electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are appearing electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(f) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R23-32-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R23-32 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

KEY: Building Board, conduct, meeting procedures
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law: 63A-5-102(2); 63A-5-103(1)(e)

Education, Administration
R277-106
Utah Professional Practices Advisory Commission Appointment Process

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35341
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated terminology and procedural changes and greater flexibility to select representative Utah Professional Practices Advisory Commission (UPPAC) Members.

SUMMARY OF THE RULE OR CHANGE: The amendments provide updated terminology in Sections R277-106-1 and R277-106-3 and procedural changes in Sections R277-106-4 and R277-106-5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-6-303(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes are terminology and procedural only.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The procedural changes are about a state level commission so there are no costs or savings to local government.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The procedural changes are about a state level commission so there are no costs or savings to persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes are procedural with no compliance costs.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.
R277-106-1. Definitions.

[~~B~~]A. "Board" means the Utah State Board of Education.

[~~D~~]B. "Nomination [~~petition~~]application" means:

(1) written and signed statement by the Superintendent of the school district in which the educator is currently employed, that the Superintendent understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a superintendent, the chair of the local school board shall provide a statement of support for the educator;

(2) written and signed statement by the educator's building principal that the principal understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;

(3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and

(4) the applicant's vita.

C. "Superintendent" means the State Superintendent of Public Instruction.

[~~A~~]D. "UPPAC or Commission" means the Utah Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et. seq.

R277-106-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-303(1)(a) which directs the Board to adopt rules establishing procedures for nominating and appointing Commission members, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-3. UPPAC Notification, Nomination and Application Process.

A. The UPPAC Executive Secretary shall notify school districts, charter schools and education organizations in writing of openings on UPPAC for the upcoming term by May 15 of the year in which the Commission vacancies shall be filled by appointment by the Superintendent.

B. As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.

R277-106-4. UPPAC Selection Process.

A. The [~~Superintendent shall provide all complete and properly filed petitions to the~~]UPPAC Executive Secretary [~~for~~]shall review all complete and properly filed applications and [~~the Executive Secretary's~~]make recommendation(s) to the Superintendent prior to May [~~2~~]30 of the year in which membership on the Commission is sought.

(1) The Executive Secretary may seek additional information to provide to the Superintendent about the experience and qualification of UPPAC applicants.

(2) Recommendations shall maintain a representative balance of six teachers and three other educators.

(3) Recommendations shall give consideration to rural/urban, elementary/secondary and geographical balance of Commission members.

B. The Superintendent shall make Commission appointments prior to June 1 of the year in which Commission members shall begin serving.

C. [~~Two community members shall be selected under Section 53A-6-302(1). Their terms shall be staggered.~~]Community members

(1) Members shall be nominated by the state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state.

(2) The two community members shall not serve concurrent terms.

D. If current Commission members desire to serve for a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 15 of the year in which the member's term expires.

[~~D~~]E. The applications(s) of (a) Commission member(s) seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

R277-106-5. Filling of Vacancies.

A. The UPPAC Executive Secretary shall recommend names to the Superintendent to fill vacancies that occur midyear.

B. The UPPAC Executive Secretary may recommend names of previous applicants for Commission vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented to fill vacancies.

KEY: professional competency, professional practices
Date of Enactment or Last Substantive Amendment: [~~October 16, 2002~~]2011
Notice of Continuation: September 15, 2008
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-303(1)(a); 53A-1-401(3)

Education, Administration
R277-401
Child Abuse-Neglect Reporting by Education Personnel

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35342
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update definitions and child abuse-neglect reporting policy and procedure language for local education agencies (LEAs) and provide clearly for cooperation with law enforcement and the Division of Child and Family Services (DCFS).

SUMMARY OF THE RULE OR CHANGE: The changes provide a new definition in Section R277-401-1 and updating language in Section R277-401-3 consistent with state law.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes to the rule provide updated language consistent with state law for LEA policies and procedures which do not result in any cost or savings.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The changes to the rule provide updated language consistent with state law for LEA policies and procedures which do not result in any cost or savings.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes to the rule provide updated language consistent with state law for LEA policies and procedures which do not result in any cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to the rule provide updated language consistent with state law for LEA policies and procedures.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

R277. Education, Administration.
R277-401. Child Abuse-Neglect Reporting by Education Personnel.
R277-401-1. Definitions.

A. This rule uses the definition of neglected child found in Section 78A-6-105(26).

B. This rule uses the definition of abused child found in Section 78A-6-105(2).

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

D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

R277-401-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to clarify:

(1) the Board's support [~~of early intervention in the child abuse-abuser cycle and of~~]for taking early protective measures towards allegations of child abuse. The daily contact of education personnel with children places them in an ideal position for identifying and referring suspected cases of abuse.

(2) the role of school employees in reporting and participating in investigations of suspected child abuse as required by Section 62A-4a-403.

R277-401-3. Policies and Procedures.

A. Each LEA shall develop and adopt a child abuse-neglect policy.

[~~C.~~](1) School officials shall cooperate with social service and law enforcement agency employees authorized to investigate charges of child abuse and neglect[~~, assisting as asked as members of interdisciplinary child protection teams in providing protective, diagnostic, assessment, treatment, and coordination services~~].

[~~E.~~](2) [~~District~~]LEA policies shall ensure that the anonymity of those reporting or investigating child abuse or neglect is preserved in a manner required by Section 62A-4a-412.

[~~F.~~](3) An [~~district~~]LEA policy may direct a school employee to notify the building principal of the neglect or abuse. Such a report to a principal, supervisor, school nurse or psychologist does not satisfy the employee's personal duty to report to law enforcement or DFS.

(4) LEA policies shall direct school employees to cooperate appropriately with law enforcement and DCFS investigators who come into the school, including:

(a) allowing authorized representatives to interview children consistent with DCFS and local law enforcement protocols;

(b) allowing appropriate access to student records;

(c) making no contact with parents/legal guardians of children being questioned by DCFS or local law enforcement; and

(d) cooperating with ongoing investigations and maintaining appropriate confidentiality.

B. School employee responsibilities

[~~A.~~](1) Any school employee who knows or reasonably believes that a child has been neglected, or physically or sexually abused, shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).

[~~B.~~](2) It is not the responsibility of school employees to prove that the child has been abused or neglected, or determine whether the child is in need of protection. Investigations are the responsibility of the Division of Child and Family Services. Investigation by education personnel prior to submitting a report should not go beyond that necessary to support a reasonable belief that a reportable problem exists.

[~~D.~~](3) Persons making reports or participating in an investigation of alleged child abuse or neglect in good faith are immune from any civil or criminal liability that otherwise might arise from those actions, as provided by law.

KEY: child abuse, education policy, faculty, students
Date of Enactment or Last Substantive Amendment: [~~1987~~]2011
Notice of Continuation: September 6, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Administration
R277-419
Pupil Accounting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35343
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes to reporting procedures and a definition.

SUMMARY OF THE RULE OR CHANGE: The amendments remove language from reporting requirements in Section R277-419-4 and provide a minor change to a definition in Section R277-419-1.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The rule was just recently amended and these changes are for clarification.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The rule was just recently amended and these changes are for clarification.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule was just recently amended and these changes are for clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule was just recently amended and these changes are for clarification.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. Definitions.

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

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

C. "Charter school" means a school that is authorized and operated under Sections 53A-1a-501.6, 53A-1a-515 and 53A-1a-501.3.

D. "Compulsory school age" means:

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

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

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

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

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

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

H. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

I. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

J. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

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

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

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

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

M. "Private school" means an educational institution that is not a charter school but is owned or operated by a private person, firm, association, organization, or corporation, rather than [~~by a public agency~~]subject to governance by the Board consistent with the Utah Constitution.

N. "Program" means an institution within a larger education entity that is designed to accomplish a predetermined curricular objective or set of objectives.

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

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

(1) sickness;

(2) hospitalization;

(3) pending court investigation or action or both; or

(4) other extenuating circumstances beyond the control of the student.

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

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

S. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

T. "School" means an educational entity governed by an LEA that is supported with public funds, includes enrolled or prospectively enrolled full-time students, employs licensed educators as instructors that provide instruction consistent with R277-502-5, has one or more assigned administrators, is accredited consistent with R277-410-3, and administers required statewide assessments to its students.

U. "School day" means:

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

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

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

V. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

W. "School of enrollment" means the school where a student takes a majority of his classes; the school designated to receive the student's weighted pupil unit.

X. "School year" means the 12 month period from July 1 through June 30.

Y. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

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

AA. "SSID" means Statewide Student Identifier.

BB. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

CC. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-4B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

DD. "USOE" means the Utah State Office of Education.

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

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

GG. "Youth in Custody (YIC)" means a person under the age of 21 who is:

(1) in the custody of the Department of Human Services;

(2) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or

(3) being held in a juvenile detention facility.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Schools and Programs.

A. Schools

(1) Each school shall receive the appropriate accountability reports from the USOE and other state-mandated reports for the school type and grade range; and

(2) All schools shall submit a Clearinghouse report[~~ per R277-419-3~~]; and

(3) All schools shall employ at least one licensed educator and one administrator.

B. Programs

(1) Students who are enrolled in a program shall remain members of a public school; and

(2) Programs shall not receive separate accountability and other state-mandated reports from the USOE; and

(3) Students reported under a program shall be included in WPU and student enrollment calculations of a school of enrollment; and

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs shall not be required to submit data to the USOE; and

(2) Private schools or programs shall not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-8.

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

(3) Health Department Emergency or Pandemic

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

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

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

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

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

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

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

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

B. Official records

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

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

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

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

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

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

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

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

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

D. Audits

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

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

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership.

A. Eligibility

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-6. High School Completion Status.

A. The final status of all students who enter high school (grades 10-12) shall be accounted for, whether they graduate or leave high school for other reasons. LEAs shall use the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) Graduates are students who earn a basic high school diploma by satisfying one of the options consistent with R277-705-4B or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733.

(2) Other students are completers who have not satisfied Utah's requirements for graduation but who:

(a) shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C; or

(c) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or

(d) pass a General Educational Development (GED) test with a designated score.

(3) Continuing students are students who:

(a) transfer to higher education, without first obtaining a diploma; or

(b) transfer to the Utah Center for Assistive Technology (UCAT) without first obtaining a diploma; or

(c) age out of special education.

(4) Dropouts are students who have no legitimate reason for departure or absence from school or who:

(a) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii); or

(b) are expelled and do not re-enroll in another public education institution; or

(c) transfer to adult education.

(5) Students shall be excluded from the cohort calculation if they:

(a) transfer out of state, out of the country, to a private school, or to home schooling; or

(b) are U.S. citizens who enrolled in another country as a foreign exchange student; or

(c) are non-U.S. citizens who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case they shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code; or

(d) died.

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

C. The USOE shall report a graduation rate for each school, LEA, and the state.

(1) The four-year cohort rate shall be reported on the annual state reports[~~ card, the annual AYP report cards, and the official state graduation report~~].

(2) The three-year cohort graduation rate shall be reported separately for high schools on the official state graduation report.

R277-419-7. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-8. Variances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KEY: education finance, school enrollment
Date of Enactment or Last Substantive Amendment: [~~November 7, ~~]2011
Notice of Continuation: October 5, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

Education, Administration
R277-422
State Supported Voted Leeway, Local Board-Approved Leeway and Local Board Leeway for Reading Improvement Programs

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35344
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 301 (2011 General Session) consolidated the existing thirteen school district tax levies into six property tax levies. This rule is amended to reflect changes to the law and to allow for local matching funds for the K-3 Reading Improvement Program.

SUMMARY OF THE RULE OR CHANGE: The amended rule provides adding and changing definitions, changing terminology throughout the rule, removing unnecessary language, adding current language consistent with state law, and provides requirements for local K-3 Reading Improvement matching funds levies.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. This rule provides language to consolidate local levies as allowed by 2011 legislation.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. Legislation from 2011 outlines new appropriate local levies by local school boards. Costs to local boards should be similar to previous authorized levies. The K-3 Reading Improvement Program previously required matching local funds. Costs under this amended rule should be similar.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to individuals under this amended rule. The process is at the local government level.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule provides criteria for local boards of education. There are no compliance criteria or costs for individuals.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-422. State Supported Voted [~~Leeway, Local Board-Approved Leeway and Local Board Leeway for~~]Local Levy, Board Local Levy and Reading Improvement Program[s].
R277-422-1. Definitions.

A. "Ad valorem property tax" means a tax based on the assessed value of real estate or personal property.

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

C. "Board local levy" means a state-supported program under Section 53A-17a-164 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program.

[~~C~~]D. "Common Data Committee" means a committee established by the USOE responsible to determine consensus estimates for student enrollments and assessed valuations. The Committee includes representatives from the Governor's Office of Planning and Budget, the Legislative Fiscal Analyst's Office, and the Utah State Tax Commission.

[~~D. "Local board leeway program" or "local board-approved leeway program" means a state-supported program in which a local board authorizes a property tax levy under Section 53A-17a-134 to cover a portion of the costs within the school district's general fund of the state-supported minimum school program. The levy may require voter approval under Section 53A-17a-134(4). These funds shall be spent for class size reduction or other purposes in a district if the local board determines that the average class size in the school district is not excessive.~~

]E. "Free or reduced meal applications" means the applications received by a school district or charter school under the Board-supervised federal Child Nutrition Program.

[~~E~~]F. "Local board" means the school board members elected to govern a school district.

[~~F. "Local board leeway for reading improvement" means a local board leeway program in which a local board authorizes a property tax levy under Section 53A-17a-151 to cover a portion of the costs of a school district K-3 Reading Improvement Program established in Section 53A-17a-150.~~

]G. "State-supported" means a formula-based state contribution of [~~money~~]funds to the voted [~~leeway~~]local levy program and the [~~b~~]Board[~~-approved leeway~~] local levy program as defined in Section 53A-17a-133(3) and Section 53A-17a-[~~134(2)~~]164(3).

H. "USOE" means the Utah State Office of Education.

I. "Voted [~~leeway program" or "state-supported voted leeway program~~]local levy" means a state-supported program in which a voter-approved property tax levy[~~ approved~~] under Section 53A-17a-133 is authorized to cover a portion of the costs within the general fund of the state-supported minimum school program in a district.

J. "Weighted pupil unit (WPU)" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-422-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(e) which directs the Board to establish rules for school productivity and cost effectiveness measures, federal programs, school budget formats, and financial, statistical, and student accounting requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify requirements, timelines, and clarifications for the state-supported voted[~~,~~] local levy, board[~~ approved, and~~] local levy, and [~~board leeway for~~] reading improvement program[~~s~~].

R277-422-3. Requirements and Timelines for State-Supported Voted [~~Leeway~~]Local Levy.

A. A local board may establish a state-supported voted [~~leeway~~]local levy program following an election process that approves a special tax. The election process is provided for under Section 53A-17a-133(2).

B. Local boards which have approved voted local levy or voted leeway programs since 1965 may set an annual fiscal year fixed tax rate levy for the voted [~~leeway~~]local levy equal to or less than the levy authorized by the election.

C. Effective January 1, 200[~~7~~]9, a school district may budget an increased amount of ad valorem property tax revenue from a voted [~~leeway~~]local levy in addition to revenue from new growth without required compliance with the advertisement requirements if the voted [~~leeway~~]local levy is or was approved:

(1) on or after January 1, 2003;

(2) within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax; and

(3) for a voted [~~leeway~~]local levy approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

D. Effective January 1, 200[~~7~~]9, a school district may levy a tax rate without [~~having to comply with~~]meeting the advertisement requirements of Section 59-2-919 if:

(1) the levy exceeds the certified tax rate as the result of a school district budgeting an increased amount of ad valorem property tax derived from a voted [~~leeway~~]local levy;

(2) the voted [~~leeway~~]local levy was approved on or after January 1, 2003;

(3) the voted [~~leeway~~]local levy was approved within the four-year period immediately preceding the year in which the school district seeks to budget an increased amount of ad valorem property tax revenue derived from the voted [~~leeway~~]local levy; and

(4) for a voted [~~leeway~~]local levy approved or modified on or after January 1, 2009, the proposition submitted to the electors contains the following statement: A vote in favor of this tax means that (name of school district) may increase revenue from this property tax without advertising the increase for the next five years.

E. An election to consider adoption or modification of a [~~state-approved~~]voted [~~leeway~~]local levy program is required.

F. A local board may continue an existing [~~state-supported~~]voted [~~leeway~~]local levy program despite a majority vote opposing a modification of the [~~state-supported~~]voted [~~leeway~~]local levy program.

G. If adoption of a voted [~~leeway~~]local levy program is contingent upon an offset reduction of other local board tax levies, the local board shall allow the electors, in an election, to reconsider modifying or discontinuing the voted [~~leeway~~]local levy program prior to a subsequent increase in the certified tax rate as set by the local board.

H. The state provides state guarantee funds to support the district [~~state-supported~~]voted [~~leeway~~]local levy according to the amount specified in Section 53A-17a-133(3) and the [~~local b~~]Board[~~ approved leeway~~] local levy according to the amount specified in Section 53A-17a-[~~134(2)~~]164(3).

I. State and local funds received by a local board under the [~~state-supported~~]voted [~~leeway~~]local levy program are unrestricted revenue and may be budgeted and expended within the school district's general fund[~~ as authorized by the local board~~].

J. In order to receive state support for an initial voted [~~leeway~~]local levy tax rate, a local board shall receive voter approval no later than December 1 prior to the commencement of the fiscal year of implementation of that initial voted [~~leeway~~]local levy tax rate.

K. If a school district qualifies for state support the year prior to an increase in its existing voted [~~leeway tax~~]local levy; and:

(1) does not receive voter approval for an increase after June 30 of the previous fiscal year and before December 2 of the previous fiscal year; and

(2) intends to levy the additional rate for the fiscal year starting the following July 1; then

(3) the district shall only receive state support for the existing voted [~~leeway~~]local levy tax rate and not the additional voter-approved tax rate for the fiscal year commencing the following July 1, and

(4) shall receive state support for the existing and additional voter-approved tax rate for each year thereafter, as long as the district qualifies to receive state support.

~~[**R277-422-4. Local Board-Approved Leeway Requirements and Timelines.**~~

~~The state support does not apply to a board-approved leeway in the first fiscal year the leeway is in effect unless the leeway was approved by voters under Sections 53A-17a-134(4) through (6) or an increased rate appears in the previous fiscal year.~~

]**R277-422-[5]4. [~~Optional Reading Improvement Levy Requirements and Timelines~~]K-3 Reading Achievement Program.**

[~~A. Local funds received by a local board under the local board leeway for reading improvement tax levy shall be used for funding the school district's K-3 Reading Improvement Program.~~

~~(1) This levy is in addition to any other tax levy or maximum tax rate; and~~

~~(2) does not require voter approval; and~~

~~(3) may be modified or terminated by a majority vote of the local board.~~

~~(4) The local board leeway for reading improvement is not a state-supported levy.~~

~~B. A local board shall establish its optional board leeway for reading improvement levy by June 1 to have the levy apply to the fiscal year beginning July 1 in that same calendar year.~~

~~C. If after 36 months of K-3 Reading Improvement Program operation, a school district fails to meet the goals stated in the district's plan for student reading proficiency improvement, as measured by gain scores, the local board shall at the next possible tax rate setting opportunity terminate its board leeway for reading improvement tax levy.~~

~~D. School districts that fail to reach their reading goals shall terminate their levy under Section 53A-17a-150(15). After a period of no less than one year, school districts that terminated their levy may present a new or revised K-3 Reading Initiative plan to the Board. Following approval by the Board, the local board may reinstate the levy at the next possible tax rate setting opportunity.~~]A. The K-3 Reading Improvement Program consists of program funds and is created to achieve the state's goal of having third graders reading at or above grade level.

[~~E~~]B. Funding

(1) The calculation for the K-3 Reading Achievement funding shall be consistent with Section 53A-17a-150 which requires matching funds and Section 53A-17a-151.

(2) The following data shall be used for the reading fund calculations:

(a) The most recent numbers of adjusted assessed valuations received by the USOE from the Common Data Committee;

(b) The previous year's tax collection rate;

(c) The previous year's number of Free and Reduced Price Meal applications; and

(d) The current fiscal year total number of WPUs received by LEAs for the basic school program.

[~~**R277-422-6. Tax Rate Setting Schedule.**~~

~~Districts shall submit all approved tax levies to county auditors before the second Tuesday in August.~~

]**KEY: education, finance**
Date of Enactment or Last Substantive Amendment: [~~December 9, 2010~~]2011
Notice of Continuation: October 5, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(f); 53A-1-401(3); 53A-17a-133; 53A-17a-[~~134~~]164; 53A-17a-150; 53A-17a-151; 59-2-919

Education, Administration
R277-424
Indirect Costs for State Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35345
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated definitions and standards for claiming indirect costs for state programs and to provide that indirect costs will not be paid to higher education institutions under some programs.

SUMMARY OF THE RULE OR CHANGE: The changes include updating definitions and standards and providing more specific criteria for Utah State Office of Education/Utah State Board of Education/local education agency (LEA) payment of indirect costs.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Indirect costs payments will be managed within current appropriations from the state budget.
♦ LOCAL GOVERNMENTS: Local entities may save some local funds received within grants if they charge grant participants indirect costs. Costs are uncertain due to local decision-making.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Indirect costs are payments between government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Indirect costs are payments between government entities.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-424. Indirect Costs for State Programs.
R277-424-1. Definitions.

[~~G~~]A. "Board" means the Utah State Board of Education.

[~~C~~]B. "Direct costs" means costs which can be easily, obviously, and conveniently identified by the Utah State Office of Education with a specific program.

[~~B~~]C. "Indirect costs" means the costs of providing indirect services. Restricted and non-restricted indirect costs are defined in R277-425, "Budgeting, Accounting and Auditing Handbook for Utah School Districts."

[~~A~~]D. "Indirect Services" means services which cannot be identified with a specific program.[~~ All support services programs are indirect services of instruction programs.~~]

E. "LEA" means a local education agency which includes school districts and charter schools.

[~~E~~]F. "Non-restricted indirect cost rate" means a rate assigned to each [~~school district~~]LEA annually, based on the ratio of non-restricted indirect costs to direct costs as reported in the annual financial report for the specific [~~district~~]LEA.

[~~D~~]G. "Restricted indirect cost rate" means a rate assigned to each [~~school district~~]LEA annually based on the ratio of restricted indirect costs to direct costs as reported in the annual financial report for the specific [~~district~~]LEA.

[~~F~~]H. "Unallowable costs" means expenditures directly attributable to governance. Governance includes salaries and expenditures of the office of the superintendent, the governing board, election expenses, and expenditures for fringe benefits which are associated with unallowable salary expenditures.

R277-424-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-402(1)([~~f~~]e)[~~, U.C.A. 1953,~~] which directs the Board to adopt rules for financial, statistical, and student accounting requirements, and Section 53A-1-401(3)[~~, U.C.A. 1953,~~] which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish Board standards for claiming indirect costs for state programs.

R277-424-3. Standards.

A(1) [~~If the state funding for a program is very limited and the operation of the program in the school district does not create a significant burden of extra expenditures beyond the direct cost needs of the program, no indirect costs are charged against the program for indirect services.~~]LEAs may charge indirect costs to state funded programs.

(2) [~~If a program allocation is moderately large and its use of indirect services and the time necessary to run the program do not significantly affect the school district's financial operation of the program, a charge for indirect costs may be taken from the total state program allocation by the school district according to the school district restricted indirect cost rate.~~]The Board shall not authorize or pay indirect costs to higher education institutions for state funded contractual work.

[~~(3) If a program allocation is very large and its use of indirect services and the time necessary to run the program significantly affect the school district's financial operation of the program, a charge for indirect costs may be taken from the total state program allocation by the school district according to the school district non-restricted indirect cost rate.~~

] B. Prior to the beginning of each fiscal year, the Utah State Office of Education publishes a schedule of the indirect cost rates for state programs. The schedule is developed from data gathered from the [~~a~~]Annual [~~Form F-4~~]Financial Reports submitted by the [~~school districts~~]LEAs. [~~The~~]Each program schedule shows [~~for each program~~]whether or not the restricted or non-restricted indirect cost rate applies [~~or~~]and whether or not indirect costs are [~~un~~]allowable or [~~not~~]applicable.

C. Recovery of indirect costs is subject to availability of funds. If a combination of direct and indirect costs exceeds funds available, then the [~~school district~~]LEA may not recover the total cost of the project or program. Recovery of indirect costs for state programs is optional for [~~school districts~~]LEAs.

D. Indirect costs for state programs may be recovered only to the extent that direct costs were incurred. The indirect cost rate is applied to the amount expended, not to the total grant, in order to determine the amount for indirect costs.

KEY: education finance
Date of Enactment or Last Substantive Amendment: [~~1987~~]2011
Notice of Continuation: October 5, 2007
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(f); 53A-1-401(3)

Education, Administration
R277-477
Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35346
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to implement state law if School LAND Trust funds distributed to schools are reduced or eliminated resulting from the elections audit conducted by the Legislative Auditor General. The amendments also provide clarification regarding the distribution of funding to schools and provides further language on the activities of the School Children's Trust Section within the Utah State Office of Education (USOE).

SUMMARY OF THE RULE OR CHANGE: The amendments provide clarification on funding in Section R277-477-3, new language regarding the activities of the School Children's Trust Section in Section R277-477-4, and new language regarding compliance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-16-101.5(3)(c)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. Changes that further define the activities of the School Children's Trust Section will be managed within the existing appropriation to the Utah State Office of Education (USOE).
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The rule addresses activities and funding of the USOE.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education at the state level and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule addresses procedures and activities within the USOE not directly related to funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule provides language specific to government entities.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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SALT LAKE CITY, UT 84111-3272
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DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.
R277-477-1. Definitions.

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

C. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

D. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

E. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

F. "Most critical academic needs" for purposes of this rule means needs identified in the school improvement plan developed in accordance with Section 53A-1a-108.5.

G. "School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust Program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as

provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

M. "USOE" means the Utah State Office of Education.

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for:

(a) review and monitoring of funds and revenue generated by school trust lands;

(b) compliance by councils with requirements in statute and Board rule; and

(c) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(4) define the roles, duties, and responsibilities of the School Children's Trust Section within the USOE.

R277-477-3. Distribution of Funds - Determination of Proportionate Share.

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

(1) School Improvement Plan;

(2) School LAND Trust Program;

(3) Reading Achievement Plan (for elementary schools)

(4) Professional Development Plan;

(5) Child Access Routing Plan; and

(6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil[~~-base~~] amount, multiplied by the audited fall enrollment total, as the [~~school's base~~]USDB annual allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. As part of the school plan submission:

(1) principals shall provide a signed assurance that the membership of the school community council and the process used for election and appointment of members to the council was made consistent with 53A-1a-108 and 53A-16-101.5; and

(2) A record of the vote by the school community council when the school plan was approved including the date of the vote, voters for, against, and absent voters, consistent with 53A-16-101.5.

L. In accordance with R277-477-3D, [~~I~~]income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools [~~after the close of the state~~]beginning in July each fiscal year [~~as the USOE receives the funds in~~]based on deposits to the Interest and Dividends Account within the Uniform School Fund from the prior fiscal year.

M. If a school chooses not to apply for School LAND Trust Program funds and meet the requirements for receiving funds, the funds allocated for that school shall be retained at USOE and included with the statewide distribution for the following school year.

N. Local boards of education or the SCSB shall consider plans annually and may approve or disapprove a school plan. If a plan is not approved, the local board shall provide a written explanation of necessary amendments prior to resubmission of the plan consistent with Section 53A-16-101.5.

O. Local boards shall ensure timely distribution of the funds to schools with approved plans.

P. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

Q. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in the school plan or report.

R. School LAND Trust Program funds shall be focused on the school's most critical academic needs.

S. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified most critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

T. Examples of successful programs using School LAND Trust Program monies include activities such as:

(1) credit recovery courses and programs;

(2) study skills classes;

(3) college entrance exam preparation classes;

(4) academic field trips;

(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;

(6) teachers and teacher aides;

(7) professional development directly tied to school academic goals;

(8) student focused educational technology;

(9) books and textbooks.

U. Examples of programs not eligible for funding using School LAND Trust Program monies include plans to improve school climate, provide security, address behavioral issues, prevent bullying, install permanent auditorium audio systems, and initiate or support other non-academic school needs.

V. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

W. The School Children's Trust Section of the USOE shall create and electronically post training and support materials for school community councils, charter school trust land committees and local school boards.

X. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, or inconsistent with the school board/charter board approved plan may be reduced or eliminated by the Board in subsequent years until the misappropriated funds have been restored.

Y. The Board may recommend that School LAND Trust Program funds be reduced or eliminated if the school has failed to comply with Section 53A-1a-108 in the election or appointment of school community council members.

Z. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

AA. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-11, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

BB. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

CC. A designated amount approved by the Board of the Interest and Dividends Account may be used to fund the administration of the program by the School Children's Trust Section.

DD. Any unused balance initially allocated for School LAND Trust Program administration shall be deposited in the Interest and Dividends Account for future distribution to schools in the School LAND Trust Program.

R277-477-4. Administration of School LAND Trust Program.

A. The School Children's Trust Section of the USOE shall provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. The School Children's Trust Section shall report directly to the Superintendent or the Superintendent's designee. Staff in the School Children's Trust Section may include individuals who:

(1) possess professional qualifications and expertise pertinent to the purposes and activities of the trust;

(2) possess professional qualifications in areas specifically related to the trust such as trust law, finance, real estate, and energy development;

(3) may or may not have experience in public schools and may or may not hold an educator license.

C. The School Children's Trust Section shall advise and assist the Board and the Superintendent in:

(1) representing the current and future beneficiaries of the common school trust, Institution for the Blind trust, and School for the Deaf trust to the School and Institutional Trust Lands Administration (SITLA), the State Treasurer, and the Utah Attorney General by providing oversight as directed by the Superintendent or the Superintendent's designee.

(2) informing and providing support or support services to school community councils, schools, school districts, and other education groups to advocate on behalf of public education on federal, state, and local land decisions and policies as they affect school funding and the long term growth of the permanent State School Fund as directed by the Superintendent or the Superintendent's designee.

[~~B~~]D. Support services shall include:

(1) Regional training and, as requested and to the extent of resources available, school district or school training for school community councils;

(2) Training materials to support school community councils in creating and reviewing school improvement plans, School LAND Trust plans, reading achievement plans, professional development plans, and child access routing plans for both elementary and secondary schools.

(3) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

[~~C~~]E. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

[~~D~~]F. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

[~~E~~]G. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective compliance reviews of School LAND Trust expenditures, the execution of School LAND Trust plans, and other school community council requirements.

[~~F~~]H. The School Children's Trust Section shall report annually to the Board on compliance review findings and other compliance issues. The Board shall make determinations regarding reduction or elimination of all or a portion of a school's School LAND Trust Program funding in subsequent years, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section and results of a Legislative Auditor's school community council election review process, and make a report to the Public Education Appropriation Subcommittee.

[~~G~~]I. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

(1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;

(2) providing information to federal, state and local government agencies, the general public, Congress, and the Legislature regarding school trust lands, the trust revenues and expenditure of revenues;

(3) reviewing and providing information as representatives of the Superintendent to the Congress, Legislature, boards, state and federal agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;

(4) increase and strengthen beneficiary monitoring; and

(5) other activities or assignments as directed by the Superintendent.

[~~H~~]J. The president of each local board of education or of each local charter board shall ensure that the members of the board are provided with annual training on the requirements of the School LAND Trust Program. Notice of training shall be provided to the USOE School Children's Trust Section via email of board minutes identifying training information.

[~~I~~]K. A local school board shall comply with Section 53A-1a-108(10) and provide required copies of the Utah Code to school community council members.

R277-477-5. Information to USOE.

A. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures by category made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

KEY: schools, trust lands funds
Date of Enactment or Last Substantive Amendment: [~~July 11,~~] 2011
Notice of Continuation: November 10, 2010
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-101.5(3)(c); 53A-1-401(3)

Education, Administration
R277-600-10
Special Transportation Levy

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35347
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 301 (2011 General Session) consolidated the existing thirteen school district tax levies into six resulting levies. Section R277-600-10 is amended to make use of the levies and terminology consistent with the new state law.

SUMMARY OF THE RULE OR CHANGE: The amended section of the rule removes and adds language to make the language consistent with state law.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The 2011 legislative appropriation provided less money specifically for student transportation and this rule allows school districts to make up the difference with local funds.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government in directing funding from the levies for student transportation.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule is about the authority of the local entity to use the funds from local levies for student transportation.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule is about funds raised and spent by government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule is about funds raised and spent by government entities and does not affect individuals.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-10. [~~Special Transportation Levy~~]Board Local Levy.

A. Costs for school district transportation of students which are not reimbursable may be paid for from general funds of the school district or from the proceeds of [~~a tax rate authorized for school districts. The tax rate authorized for transportation may not exceed .0003 tax rate~~]the Board Local Levy authorized under Section 53A-17a-164.

B. The revenue from the Board Local Levy may be used for transporting students and for the replacement of school buses.

[~~B~~]C. Transportation of students in areas where walking constitutes a hazardous condition[~~, as determined by the local board,~~] may be provided from general funds from the school district or from the [~~tax specified in R277-600-10A~~]Board Local Levy.

(1) Hazardous [~~areas~~]conditions shall be determined by an analysis of the following factors:

([~~1~~]a) volume, type, and speed of vehicular traffic;

([~~2~~]b) age and condition of students traversing the area;

([~~3~~]c) condition of the roadway, sidewalks and applicable means of access in the area; and

([~~4~~]d) environmental conditions.

(2) A local board may designate hazardous conditions.

[~~C~~]D. Guarantee Transportation Levy[~~(1) The cost of school bus operation for interscholastic activities and educational field trips approved by a school board, and for the transportation of~~

~~students to alleviate hazardous walking conditions may be met with state funds appropriated under Section 53A-17a-127(6) only to the extent of funds available to individual school districts.~~]

([~~2~~]1) Appropriated funds under Section 53A-17a-127([~~6~~]7) shall be distributed according to each school district's proportional share of its qualifying state contribution.

([~~3~~]2) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by [~~a transportation levy of~~]an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

KEY: school buses, school transportation
Date of Enactment or Last Substantive Amendment: [~~August 9, 2010~~]2011
Notice of Continuation: January 8, 2008
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(d); 53A-17a-126 and 127

Education, Administration
R277-914
Applied Technology Education (ATE) Leadership

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35348
FILED: 10/13/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated definitions and terminology.

SUMMARY OF THE RULE OR CHANGE: The amendments provide new and revised definitions and changes in terminology through the rule and provide for greater coordination and accountability at the state level.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-15-202(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs to the state budget. The changes provide new and revised terminology. There may be some savings due to greater state coordination.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The changes provide new and revised terminology and improved state oversight.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes provide new and revised terminology which does not affect persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs or affected persons. The changes provide new and revised terminology which does not result in compliance costs to individuals.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

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

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R277. Education, Administration.
R277-914. [~~Applied Technology Education (ATE) Leadership~~]Career and Technical Student Organizations.
R277-914-1. Definitions.

A. "Board" means the Utah State Board of Education[~~and Utah State Board for Applied Technology Education~~].

[~~D~~]B. [~~"Applied technology education (ATE)" means organized educational programs or competencies which directly or indirectly prepare persons for employment, or for additional preparation leading to employment, in occupations where other than a baccalaureate or advanced degree is required for entry. These occupational categories include agriculture; business; family and consumer sciences; health science and technology; marketing; trade, technical and industrial education; and technology education. This definition includes integrated and applied academic programs~~

~~or competencies.~~]"Career and technical education (CTE)" means organized educational programs which prepare individuals for college and careers in occupations where entry requirements generally do not require an advanced degree. These programs provide all students access to high school college and career Pathways, driven by a student education occupation plan (SEOP), through rigorous technical, academic, and employability instruction, culminating in essential life skills, certified occupational skills, employment and continued post-secondary education. Areas of study include agriculture; business; family and consumer sciences; health science; information technology; marketing; skilled and technical sciences; and technology and engineering education.

[~~E~~]C. "[~~ATE leadership~~]Career and technical student organization (CTSO)" means a designated [~~ATE leadership~~]student organization placing emphasis on leadership and skill development; [~~that is an~~]these organizations are integral [~~part of~~]to the [~~ATE~~]career and technical programs [~~curriculum~~]at the secondary/postsecondary levels of instruction. Organizations have local, state and national affiliation[~~and are designated in state ATE and national vocational education legislation~~].

[~~C. "Applied Technology Education Advisory Board of Directors" means the designated ATE Advisory Board of Directors for the eleven leadership organizations in the state.~~

] [~~F~~]D. "[~~State~~]CTSO advisors" means [~~the executive~~]professionals in identified program areas designated by USOE [~~ATE~~]CTE staff to direct [~~an ATE~~]career and technical student leadership organizations statewide. The CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the USOE to administer and advise in a specific program area.

[~~H~~]E. "One percent (1%) fiscal accounts" means one percent (1%) of the [~~A~~]CTE add-on fund designated to be used for the management and operation of [~~ATE Leadership Organizations~~]CTSOs at the state and local level. The funds [~~used to~~]designated for management of [~~the eleven leadership~~]student organizations at the state level are dispersed by the designated state fiscal agent for [~~ATE Leadership Organizations~~]CTSOs through separate accounts for salaries, operating expenses and national conference travel.

[~~G~~]F. "Program specialist" means a[~~n~~] [~~A~~]CTE specialist, typically a licensed educator, [~~that~~]who has been assigned to work with a particular curriculum area. Examples are agriculture, business education, [~~trade, industrial and technical~~]and health science.

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

R277-914-2. Authority and Purpose.

A. This rule is authorized by Section 53A-15-202(1) which directs the Board to establish minimum standards for [~~applied technology~~]career and technical programs in the public education system; Section 53A-15-202(3) which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain [~~applied technology~~]career and technical education, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to [~~direct ATE leadership organizations to be~~]make CTSOs fiscally accountable to the Board[~~through the ATE Advisory Board of Directors~~] and to provide procedures and supervision toward that end.

R277-914-3. [~~Leadership~~]Student Organization Advisory Boards.

A. Each [~~leadership~~]student organization designated by the USOE [~~Associate Superintendent~~]State Director for [~~A~~]CTE shall establish a[~~n~~] statewide advisory board of not less than three members, one of which must be the USOE program specialist.

B. Each [~~leadership organization~~]program area CTSO shall develop and follow organization by-laws.

C. [~~Organization~~]Each CTSO advisory board[~~s~~] shall have advisory fiscal oversight for the organization.

D. Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective [~~leadership organization~~]CTSO advisor.

R277-914-4. Fiscal Oversight of [~~Leadership~~]Student Organizations.

A. The [~~state~~]CTSO advisory boards shall act consistent with fiscal procedures provided by the USOE [~~Associate Superintendent~~]State Director for [~~A~~]CTE or [~~his~~]the State Director's designee.

B. Each [~~leadership organization~~]CTSO advisory board shall submit all required financial records for auditing on a schedule established by the [~~Associate Superintendent~~]State Director for [~~A~~]CTE.

C. Individual [~~leadership organization~~]CTSO financial records shall be submitted for auditing whenever there is a change in the [~~state leadership organization~~]CTSO advisor, if requested by the [~~Associate Superintendent~~]State Director for [~~A~~]CTE.

D. The [~~Associate Superintendent~~]State Director for [~~A~~]CTE shall designate a school district or institution to act as the fiscal agent for the [~~ATE leadership organization~~]CTSO fiscal accounts.

E. The [~~Associate Superintendent~~]State Director for CTE or[~~his~~] designee shall work with the designated fiscal agent to provide oversight and accounting procedures for the [~~ATE leadership organization~~]CTSO fiscal accounts.

KEY: secondary education, [~~applied technology~~]career and technical education
Date of Enactment or Last Substantive Amendment: [~~December 5, 2001~~]2011
Notice of Continuation: November 1, 2006
Authorizing, and Implemented or Interpreted Law: 53A-15-202(1); 53A-15-202 (3); 53A-1-401(3)

Environmental Quality, Solid and Hazardous Waste
R315-1
Utah Hazardous Waste Definitions and References

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35349
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change makes a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated. The proposed changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation regulations that have changed since the publication of various rules. This proposed rule change also adds national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators; cement kilns; lightweight aggregate kilns; industrial/ commercial/institutional boilers and process heaters; and hydrochloric acid production furnaces.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCES:

- ♦ Updates 40 CFR 261.1(c), published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 279.1, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 264.18(a)(2), published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 260.10, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 260.11, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The compliance costs for state budget will not change since the rule change implements current statutory and regulatory requirements.

♦ LOCAL GOVERNMENTS: The compliance costs for local government will not change since the rule change implements current statutory and regulatory requirements.

♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:

♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10, 264.18(a)(2), and 279.1, [~~2008~~]2010 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace," [~~where~~]"Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and

Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), [~~1997~~]2010 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means "Executive Secretary;" and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Division" means the Division of Solid and Hazardous Waste.

(3) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(4) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(5) "POHC's" means principle organic hazardous constituents.

(6) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(7) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(8) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(9) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C = \exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} + \text{Standard Deviation of lognormal-transformed data} \times H/(n-1)^{1/2})$, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, [~~2001~~]2006 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

Note: The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-2

General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35350
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change makes a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated. The proposed changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation regulations that have changed since the publication of various rules. This proposed rule change also withdraws the conditional exclusion from regulations for so-called Emission Comparable Fuel. These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA withdrew this conditional exclusion because the Agency has concluded that ECF is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this rule. The rule change also removes saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCES:

- ♦ Updates 40 CFR 261.5, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 261.6, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 261.31, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
- ♦ Updates 40 CFR 261.32, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010

♦ Updates 40 CFR 261.33(f), published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
♦ Updates 40 CFR 261.38, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

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

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

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

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

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

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

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

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

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

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

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

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

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

(ii) The spent material is not accumulated speculatively;

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

buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

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

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

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

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

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

(vi) For purposes of R315-2-4([~~a~~]b)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

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

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Executive Secretary which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Executive Secretary that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Executive Secretary an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(c).

. . . . . .

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, [~~1996~~]2010 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, [~~1998~~]2010 ed., [~~as amended by 63 FR 42110, August 6, 1998, -~~]are adopted and

incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10(e) or R315-2-11(e) is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10(e) or R315-2-11(e) is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.54[~~, ed.~~], or a "[~~Class 1~~]Division 1.1, 1.2, or 1.3 explosive" as defined in 49 CFR 173.50[~~(b)(1), (2), or (3)~~] and 173.53, which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40

CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with [~~these rules~~]R315-1 through R315-13 where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, [~~2000~~]2010 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, [~~2002~~]2010 ed., [~~as amended by 70 FR 9138, February 24, 2005,~~]is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), [~~2000~~]2010 ed., is adopted and incorporated by reference.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury[~~-thermostats~~]-containing equipment as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. [~~Comparable/Syngas Fuel Exclusion~~]Exclusion of Comparable Fuel and Syngas Fuel.

The requirements of 40 CFR 261.38, [~~2009~~]2010 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous wastes, administrative procedures
Date of Enactment or Last Substantive Amendment: [~~August 29,~~]2011
Notice of Continuation: July 13, 2011
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
R315-3
Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35351
FILED: 10/13/2011

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: This proposed rule change finalizes national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators; cement kilns; lightweight aggregate kilns; industrial/commercial/ institutional boilers and process heaters; and hydrochloric acid production furnaces. EPA has identified HWCs as major sources of hazardous air pollutant (HAP) emissions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCES:

- Updates 40 CFR 270.42, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006
- Updates 40 CFR 270.25, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006
- Updates 40 CFR 270.24, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006
- Updates 40 CFR 270.22, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006
- Updates 40 CFR 270.66, published by Office of the Federal Register National Archives and Records Administration, 07/01/2006

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
- LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
- SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
- PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-3-1. General Information.

1.1 PURPOSE AND SCOPE OF THESE REGULATIONS

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Executive Secretary for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit pursuant to this section and section 19-6-108 for that facility, may continue to operate that facility without violating this section until the time as the permit is approved or disapproved pursuant to this section.

(b) The Executive Secretary shall review each proposed hazardous waste permit application to determine whether the application will be in accord with the provisions of these rules and section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in section 19-6-108. If, after the receipt of plans, specifications, or other information required under this section and section 19-6-108 and within the applicable time period of section 19-6-108, the Executive Secretary determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of this section or the applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Executive Secretary as required by these rules.

(c) Any permit application which does not meet the requirements of these rules shall be disapproved within the applicable time period specified in section 19-6-108. If within the applicable time period specified in section 19-6-108 the Executive Secretary fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Executive Secretary for a decision or seek judicial relief requiring a decision of approval or disapproval.

(d) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the Executive Secretary sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the Executive Secretary gives notice to a particular facility that it shall submit part B of the application.

(e) Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to R315-7-14, which incorporates by reference 40 CFR 265.115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under R315-3-1.1(e)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under R315-3-1.1(e)(7). If a post-closure permit is required, the permit shall address applicable R315-8 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of R315. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under R315-3-1.1.

(1) Specific inclusions. Owners or operators of certain facilities require hazardous waste permits as well as permits under other environmental programs for certain aspects of facility operation. Hazardous waste permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with a State or Federal UIC permit will be deemed to have a "permit by rule" if they comply with requirements of R315-3-6.1(a).

(ii) Treatment, storage, and disposal of hazardous waste at facilities requiring and NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a "permit by rule" if they comply with provisions of R315-3-6.1(b).

(2) Specific exclusions. The following persons are among those who are not required to obtain a permit:

(i) Generators who accumulate hazardous waste on-site for less than the time periods as provided in R315-5-3.34, which incorporates the requirements of 40 CFR 262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in R315-5-7.

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under R315-2-5, small quantity generator exemption.

(iv) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(v) Owners of operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.32(b) at a transfer facility for a period of ten days or less.

(vii) Persons adding absorbent material to waste in a container, as defined in 40 CFR 260.10, which is incorporated by reference in R315-1, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with.

(viii) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9) managing the wastes listed below. These handlers are subject to regulation under R315-16.

(A) Batteries as described in R315-16-1.2;

(B) Pesticides as described in R315-16-1.3;

(C) Thermostats as described in R315-16-1.4; and

(D) Mercury lamps as described in R315-16-1.5.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations;

(A) Discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste.

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(4) Permits for less than an entire facility. The Executive Secretary may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under R315-7 standards shall obtain a post-closure permit unless they can demonstrate to the Executive Secretary that the closure met the standards for closure by removal or decontamination in R315-8-11.5, R315-8-13.8, or R315-8-12.6, respectively. The demonstration may be made in the following ways:

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that R315-8 closure by removal standards were met. If the Executive Secretary believes that R315-8 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in R315-3-1.1(e)(6);

(ii) If the owner or operator has not submitted a part B permit application for a post-closure permit, the owner or operator may petition the Executive Secretary for a determination that a post-closure permit is not required because the closure met the applicable R315-8 closure standards;

(A) The petition shall include data demonstrating that closure by the removal or decontamination standards of R315-8 were met.

(B) The Executive Secretary shall approve or deny the petition according to the procedures outlined in R315-3-1.1(e)(6).

(6) Procedures for Closure Equivalency Determination.

(i) If a facility owner or operator seeks an equivalency demonstration under R315-3-1.1(e)(5), the Executive Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The Executive Secretary will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the equivalence of the R315-7 closure to an R315-8 closure. The Executive Secretary will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(ii) The Executive Secretary will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Executive Secretary finds that the closure did not meet the applicable R315-8 standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet R315-8 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving a written statement. The Executive Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) If the Executive Secretary determines that the facility did not close in accordance with R315-8-7, which incorporates by reference 40 CFR 264.110 through 264.116, closure by removal standards, the facility is subject to post-closure permit requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Executive Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of R315-7-14, which incorporates by reference 40 CFR 265.121. "Enforceable document" means an order, a permit, or other document issued by the Executive Secretary that meets the requirements of 19-6-104, 19-6-112, 19-6-113, and 19-6-115, including a corrective action order issued by

EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

1.4 EFFECT OF A PERMIT

(a)(1) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with these rules, except for those requirements not included in the permit which:

([~~1~~]i) Become effective by statute;

([~~2~~]ii) Are promulgated under R315-13, which incorporates by reference 40 CFR 268, restricting the placement of hazardous wastes in or on the land;

([~~3~~]iii) Are promulgated under R315-8 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action permits, and will be implemented through the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42, Class 1 permit modifications; or

([~~4~~]iv) Are promulgated under R315-7-26, which incorporates by reference 40 CFR 265.1030 through 265.1035, R315-7-27, which incorporates by reference 40 CFR 265.1050 through 265.1064 or R315-7-30, which incorporates by reference 40 CFR 265.1080 through 265.1091.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R315-3-4.2 and R315-3-4.4, or the permit may be modified upon the request of the permittee as set forth in R315-3-4.3.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

R315-3-2. Permit Application.

2.1 GENERAL APPLICATION REQUIREMENTS

(a) Permit Application. Any person who is required to have a permit, including new applicants and persons with expiring permits, shall complete, sign and submit, an application to the Executive Secretary as described in R315-3-2.1 and R315-3-7. Persons currently authorized with interim status shall apply for permits when required by the Executive Secretary. Persons covered by RCRA permits by rule, R315-3-6.1, need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in R315-3-6.2. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in R315-3-6.5.

(b) Who Applies?

When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner shall also sign the permit application.

(c) Completeness.

(1) The Executive Secretary shall not issue a permit before receiving a complete application for a permit except for permit by rule, or emergency permit. An application for a permit is complete when the Executive Secretary receives an application form and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in R315-3-2.1(i). The Executive Secretary may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(2) The Executive Secretary shall review for completeness every permit application. Each permit application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Executive Secretary in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the Executive Secretary shall list the information necessary to make the permit application complete. When the permit application is for an existing hazardous waste management facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Executive Secretary shall notify the applicant that the permit application is complete upon receiving this information. After the permit application is complete, the Executive Secretary may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

(3) If an applicant fails or refuses to correct deficiencies in the permit application, the permit application may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.

(d) Existing Hazardous Waste Management Facilities and Interim Status Qualifications.

(1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendment under Utah Solid and Hazardous Waste Act or RCRA that render the facility subject to the requirement to have a RCRA permit or State permit shall submit part A of their permit application to the Executive Secretary no later than:

(i) Six months after the date of publication of rules which first require them to comply with the standards set forth in R315-7 or R315-14, or

(ii) Thirty days after the date they first become subject to the standards set forth in R315-7 or R315-14, whichever first occurs.

(iii) For generators generating greater than 100 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987

For facilities which had to comply with R315-7 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations, 45 FR 33006 et seq., the deadline for submitting an application was November 19, 1980. Where other existing facilities shall begin complying with R315-7 or R315-14 at a later date because of revisions to R315-1, R315-2, R315-7, or R315-14, the Executive Secretary will specify when those facilities shall submit a permit application.

(2) The Executive Secretary may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities shall submit Part A of their permit application if he finds that there has been substantial

confusion as to whether the owners and operators of such facilities were required to file a permit application and such confusion is attributed to ambiguities in R315-1, R315-2, R315-7 or R315-14 of the regulations.

(3) The Executive Secretary may by compliance order issued under 19-6-112 and 19-6-113 extend the date by which the owner and operator of an existing hazardous waste management facility must submit part A of their permit application.

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of the permit application. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility shall submit a part B application in accordance with the dates specified in R315-3-7.4. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under R315 that render the facility subject to the requirement to have a permit, shall submit a part B application in accordance with the dates specified in R315-3-7.4.

(5) Failure to furnish a requested part B application on time, or to furnish in full the information required by the part B application, is grounds for termination of interim status under R315-3-4.4.

(e) New Hazardous Waste Management Facilities.

(1) Except as provided in R315-3-2.1(e)(3), no person shall begin physical construction of a new hazardous waste management facility without having submitted part A and part B of the application and having received a finally effective permit.

(2) An application for a permit for a new hazardous waste management facility, including both part A and part B, may be filed any time after promulgation of applicable regulations. The application shall be filed with the Regional Administrator if at the time of application the State has not received final authorization for permitting such facility; otherwise it shall be filed with the Executive Secretary. Except as provided in R315-3-2.1(e)(3), all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding R315-3-2.1(e)(1), a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the U.S. EPA Administrator under section (6)(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., and any person owning or operating such a facility may, at any time after construction or operation of the facility has begun, file an application for a permit to incinerate hazardous waste authorizing the facility to incinerate waste identified or listed in these rules.

(f) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Executive Secretary, within six months after the promulgation of revised regulations under 40 CFR 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Executive Secretary no later than the effective date of regulatory provisions listing or designating wastes as hazardous in the State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with changes during interim status, R315-3-7.3. Revised part A applications necessary to comply with the provisions of interim status shall be filed with the Executive Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of R315-3-2.1(f)(1) does not receive interim status as to the wastes not covered by duly filed part A applications.

(g) Reapplications. Any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(h) Recordkeeping.

Applicants shall keep records of all data used to complete permit application and any supplemental information submitted under R315-3-2.4 through R315-3-2.12, for a period of at least three years from the date the application is signed.

(i) Exposure information.

(1) Any part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, the information shall address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under R315-3-2.1(i)(1)(i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) Owners and operators of a landfill or a surface impoundment who have already submitted a part B application shall submit the exposure information required in R315-3-2.1(i)(1).

(j) The Executive Secretary may require a permittee or an applicant to submit information in order to establish permit conditions under R315-3-3.3(b)(2), and R315-3-5.1(d).

(k) If the Executive Secretary concludes, based on one or more of the factors listed in R315-3-2.1(k)1 that compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, alone may not be protective of human health or the environment, the Executive Secretary shall require the additional information or assessment(s) to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk resulting from both direct and indirect exposure pathways.

(1) The Executive Secretary shall base the evaluation on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) site-specific considerations such as proximity to receptors, such as schools, hospitals, or other potentially sensitive receptors, unique dispersion patterns, etc.;

(ii) identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk;

(iv) identities and quantities of other off-site sources of pollutants that significantly influence interpretation of a facility-specific risk assessment;

(v) ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by operation of the source;

(viii) adequacy of previously conducted risk assessment, given subsequent changes in conditions likely to affect risk; and

(ix) other factors as appropriate.

. . . . . .

2.10 SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS

For facilities that incinerate hazardous waste, except as R315-8-15.1 and R315-3-2.10(e) provides otherwise, the applicant shall fulfill the requirements of R315-3-2.10(a), (b), or (c).

(a) When seeking exemption under R315-8-15.1(b) or (c) (ignitable, corrosive or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii) and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of the trial burn, including all required determinations, in accordance with R315-3-6.3; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR part 261 Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in R315-8-15.4.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in R315-3-2.10(c)(1). This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in R315-8-15.4.

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with R315-8-15.4 and R315-8-15.6 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Any supplemental information as the Executive Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in R315-3-2.10(c)(1), sufficient to allow the Executive Secretary to specify as permit Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Executive Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under R315-8-15.6, operating conditions that will ensure that the performance standards in R315-8-15.4 will be met by the incinerator.

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements or demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under R3[~~+~~]07-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210([~~b~~]d)), documenting compliance with all applicable requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE), the requirements of R315-3-2.10 do not apply, except those provisions the Executive Secretary determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if [~~you~~]the owner or operator elects to comply with R315-3-9.1(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Executive Secretary may apply the provisions of R315-3-2.10, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j), R315-3-2.1(k), [~~and~~]R315-3-3.3(b)(2), and R315-3-3(b)(3).

2.11 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LAND TREATMENT FACILITIES

Facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in R315-8-1.1, shall provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under R315-8-13.3. The description shall include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test, e.g., column leaching, degradation;

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(b) A description of a land treatment program, as required under R315-8-13.2. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with R315-8-13.4(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content.

(3) Provisions for unsaturated zone monitoring including:

(i) Sampling equipment, procedures and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for the selection in R315-8-13.6(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to R315-8-2.4, which incorporates by reference 40 CFR 264.13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of R315-8-13.4. This submission shall address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under R315-3-2.5(b)(5).

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under R315-8-13.5(a) will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made;

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(e) If food-chain crops are to be grown, and cadmium is present in the land treated waste, a description of how the requirements of R315-8-13.5(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under R315-8-13.8(a)(8) and R315-8-13.8(c)(2). This information should be included in the closure plan, and, where applicable, the post-closure care plan submitted under R315-3-2.5(b)(13).

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of R315-8-13.9 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how R315-8-13.10 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-13.11. This submission shall address the following items as specified in R315-8-13.11:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

2.12 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LANDFILLS

Facilities that dispose of hazardous waste in landfills, except as otherwise provided in R315-8-1.1, shall provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of R315-8-2.10, R315-8-14.2., R315-8-14.3, and R315-8-14.12, addressing the following items:

(1)(i) The liner system, except for an existing portion of a landfill, if the landfill must meet the requirements of R315-8-14.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-14.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of R315-8-14.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-14.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-14.12, and response action plan, if required under R315-8-14.3;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable.

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-14.3(a), (b), and (c). This information shall be included in the inspection plan submitted under R315-3-2.5(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of R315-8-14.3(a) and (b). This information should be included in the inspection plan submitted under R315-3-2.5(b)(5).

(e) Detailed plans and engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with R315-8-14.5(a), and a description of how each landfill will be maintained and monitored after closure in accordance with R315-8-14.5(b). This information should be included in the closure and post-closure plans submitted under R315-3-2.5(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of R315-8-14.6 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how R315-8-14.7 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an

explanation of how the requirements of R315-8-14.8(a) will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of R315-8-14.9 or R315-8-14.10 as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-14.11. This submission shall address the following items as specified in R315-8-14.11:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

2.13 SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

For facilities that burn hazardous wastes in boilers and industrial furnaces which R315-14-7 applies, which incorporates by reference 40 CFR subpart H, 266.100 through 266.112, the requirements of 40 CFR 270.22, 200[~~3~~]6 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

2.14 SPECIFIC PART B INFORMATION REQUIREMENTS FOR MISCELLANEOUS UNITS

Facilities that treat, store or dispose of hazardous waste in miscellaneous units except as otherwise provided in R315-8-16, which incorporates by reference 40 CFR 264.600, shall provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of R315-8-16, which incorporates by reference 40 CFR 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601 and the Executive Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of these exposures;

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data;

(e) Any additional information determined by the Executive Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601.

2.15 SPECIFIC PART B INFORMATION REQUIREMENTS FOR PROCESS VENTS

For facilities that have process vents to which R315-8-17 applies, which incorporates by reference 40 CFR subpart AA of 264, the requirements of 40 CFR 270.24, [~~1991~~]2006 ed., regarding information requirements for process vents are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

2.16 SPECIFIC PART B INFORMATION REQUIREMENTS FOR EQUIPMENT

For facilities that have equipment to which R315-8-18 applies, which incorporates by reference 40 CFR subpart BB of 264, the requirements of 40 CFR 270.25, [~~1991~~]2006 ed., regarding information requirements for equipment are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

2.17 SPECIFIC PART B INFORMATION REQUIREMENTS FOR DRIP PADS

For facilities that have drip pads to which R315-8-19 applies, which incorporates by reference 40 CFR subpart W, 264.570 through 264.575, the requirements of 40 CFR 270.26, 1991 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

2.18 SPECIFIC PART B INFORMATION REQUIREMENTS FOR AIR EMISSION CONTROLS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

The requirements as found in 40 CFR 270.27 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference.

2.19 PART B INFORMATION REQUIREMENTS FOR POST-CLOSURE PERMITS

For post-closure permits, the owner or operator is required to submit only the information specified in R315-3-2.5(b)(1), (4), (5), (6), (11), (13), (14), (16), (18), (19), and R315-3-2.5(c) and (d), unless the Executive Secretary determines that additional information from R315-3-2.5, R315-3-2.7, which incorporates by reference 40 CFR 270.16, R315-3-2.8, R315-3-2.9, R315-3-2.11, or R315-3-2.12 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in R315-3-1.3(e)(7).

2.20 PERMIT DENIAL

The Executive Secretary may, pursuant to the procedures in R315-4, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

R315-3-3. Permit Conditions.

3.1 CONDITIONS APPLICABLE TO PERMITS

The following conditions apply to all permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation of these rules shall be given in the permit.

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3.3 ESTABLISHING PERMIT CONDITIONS

In addition to the conditions established, each permit shall include:

(a) A list of the wastes or classes of wastes which will be treated, stored, or disposed of at the facility, and a description of the processes to be used for treating, storing, and disposing of these hazardous wastes at the facility including the design capacities of each storage, treatment, and disposal unit. Except in the case of containers, the description shall identify the particular wastes or classes of wastes which will be treated, stored, or disposed of in particular equipment or locations, e.g., "Halogenated organics may be stored in Tank A", and "Metal hydroxide sludges may be disposed of in landfill cells B, C, and D", and

(b)(1) Each permit shall include conditions necessary to achieve compliance with the Utah Solid and Hazardous Waste Act and these rules, including each of the applicable requirements specified in R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266. In satisfying this provision, the Executive Secretary may incorporate applicable requirements of R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266, directly into the permit or establish other permit conditions that are based on these rules.

(2) Each permit issued under the Utah Solid and Hazardous Waste Act shall contain terms and conditions as the Executive Secretary determines necessary to protect human health and the environment.

(3) If the Executive Secretary determines that conditions in addition to those required under R307-214-2 which incorporates by reference, 40 CFR parts 63, subpart EEE, R315-8 or R315-14 are necessary, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

(c) New or reissued permits, and to the extent allowed under R315-3-4.2, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in R315-3-3.2 and R315-3-3.3.

(d) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable requirements shall be given in the permit.

3.4 SCHEDULES OF COMPLIANCE

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with these rules.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in R315-3-3.4(b)(1)(ii), if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary or Board or both in writing, of its compliance or noncompliance with the interim or final requirement, or submit progress reports if R315-3-3.4(a)(2)(ii) is applicable.

(b) Alternative schedules of permit compliance. An applicant or permittee may cease conducting regulated activities, by receiving a terminal volume of hazardous waste, and for treatment and storage facilities, closing pursuant to applicable requirements; and for disposal facilities, closing and conducting post-closure care pursuant to applicable requirement, rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to permit termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements.

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under R315-3-3.4(b)(3)(i) it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as resolution of the board of directors of a corporation.

R315-3-4. Changes to Permit.

4.1 TRANSFER OF PERMITS

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R315-3-4.1(b) or R315-3-4.2(b)(2) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Executive Secretary in accordance with R315-3-4.3, which incorporates by reference 40 CFR 270.42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the Executive Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of R315-8-8, which incorporates by reference 40 CFR 264, subpart H, until the new owner or operator has demonstrated that he is complying with the requirements of that subpart. The new owner or operator shall demonstrate compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H, the Executive Secretary shall notify the old owner or operator that he no longer needs to comply with R315-8-8, which incorporates by reference 40 CFR 264, subpart H as of the date of demonstration.

4.2 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS

When the Executive Secretary receives any information, for example, inspects the facility, receives information submitted by the permittee as required in the permit see R315-3-3.1, receives a request for modification or revocation and reissuance under R315-4-1.5 or conducts review of the permit file, he may determine whether one or more of the causes listed in R315-3-4.2(a) and (b) for modification or revocation and reissuance or both exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, subject to the limitations of R315-3-4.2(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See R315-4-1.5(c)(2). If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Executive Secretary shall approve or deny the request according to the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42. Otherwise, a draft permit shall be prepared and other procedures in R315-4 followed.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits, and the following may be causes for revocation and reissuance as well as modification under any program when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the approved facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Executive Secretary has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised rules, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or rules. The standards or rules on which the permit was based have been changed by statute, through promulgation of new or amended standards or rules or by judicial decision after the permit was issued.

(4) Compliance schedules. The Executive Secretary determined good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Executive Secretary under R315-3-5.1(d), the Executive Secretary shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in these rules.

(b) Causes for modification or revocation and reissuance. The following are causes to modify, or, alternatively, revoke and reissue a permit;

(1) Cause exists for termination under R315-3-4.4 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Executive Secretary has received notification as required in the permit, see R315-3-3.1(l)(3) of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location may not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

4.3 PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE

The requirements of 40 CFR 270.42, including Appendix I, [~~2002~~]2006 ed., are adopted and incorporated by reference with the following exception;

substitute "Executive Secretary" for all Federal regulation references made to "Director" or "Administrator";

4.4 TERMINATION OF PERMITS

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Executive Secretary shall follow the applicable procedures in R315-4 in terminating any permit under R315-3-4.4.

R315-3-6. Special Forms of Permits.

6.1 PERMITS BY RULE

Notwithstanding any other provision of R315-3 and R315-4, the following shall be deemed to have an approved hazardous waste permit if the conditions listed are met:

(a) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under State or Federal law.

(2) Complies with the conditions of that permit and the requirements in R317-7, Underground Injection Control Program, for managing hazardous waste in a well.

(3) For UIC permits issued after November 8, 1984:

(i) Complies with R315-8-6.12; and

(ii) Where the UIC well is the only unit at a facility which requires a permit, complies with R315-3-2.5(d).

(b) Publicly owned treatment works. The owner or operator of a POTW which accepts hazardous waste, for treatment if the owner or operator:

(1) Has an NPDES permit;

(2) Complied with the conditions of that permit;

(3) Complies with the following rules;

(i) R315-8-2.2, Identification number;

(ii) R315-8-5.2, Use of manifest system;

(iii) R315-8-5.4, Manifest discrepancies;

(iv) R315-8-5.3, which incorporates by reference 40 CFR 264.73(a) and (b)(1), Operating record;

(v) R315-8-5.6, Biennial report;

(vi) R315-8-5.7, Unmanifested waste report; and

(vii) R315-8-6.12, For NPDES permits issued after November 8, 1984.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

6.2 EMERGENCY PERMITS

(a) Notwithstanding any other provision of R315-3 or R315-4, in the event the Executive Secretary finds an imminent and substantial endangerment to human health or the environment the Executive Secretary may issue a temporary emergency permit: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous waste to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Executive Secretary at any time without process if he determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under R315-4-1.10(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted hazardous waste management facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of R315-3,R315-8, and R315-14.

6.3 HAZARDOUS WASTE INCINERATOR PERMITS

When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements or demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under R[~~317~~]307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210([~~b~~]d) documenting compliance with all applicable requirements of R[~~317~~]307-214-2, which incorporates by reference 40 CFR 63, subpart EEE), the requirements of R315-3-6.3 do not apply, except those provisions the Executive Secretary determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if [~~you~~]the owner or operator elects to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Executive Secretary may apply the provisions of R315-3-6.3, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j), R315-3-2.1(k), [~~and~~]R315-3-3.3(b)(2), and R315-3-3.3(b)(3).

(a) For the purposes of determining operational readiness following completion of physical construction, the Executive Secretary shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Executive Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(1) Applicants shall submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit and specify requirements for this period sufficient to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(b) For the purpose of determining feasibility of compliance with the performance standards of R315-8-15.4, and of determining adequate operating conditions under R315-8-15.6, the

Executive Secretary shall establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under R315-3-6.3(b)(2) with part B of the permit application.

(2) The trial burn plan shall include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity, if applicable, or description of physical form of the waste.

(C) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or, their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system type and feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations of the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Executive Secretary's decision under R315-3-6.3(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) All other information as the Executive Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purpose of this paragraph and the criteria in R315-3-6.3(b)(5).

(3) The Executive Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Executive Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Executive Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in R315-2-10, the hazardous waste organic constituent or constituents identified in R315-50-9 as the basis for listing.

(5) The Executive Secretary shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by R315-8-15.4 can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Executive Secretary to determine operating requirements to be specified under R315-8-15.6; and

(iv) The information sought in R315-3-6.3(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Executive Secretary shall send a notice to all persons on the facility mailing list as set forth in R315-4-1.10(c)(1)(iv) and to the appropriate units of State and local government as set forth in R315-4-1.10(c)(1)(v) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Executive Secretary has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Division.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in R315-8-15.4(a).

(v) If the HC1 emission rate exceeds 1.8 kilograms of HC1 per hour (4 pounds per hour), a computation of HC1 removal efficiency in accordance with R315-8-15.4(b).

(vi) A computation of particulate emissions in accordance with R315-8-15.4(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) All other information as the Executive Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in R315-8-15.4 and to establish the operating conditions required by R315-8-15.6 as necessary to meet that performance standard.

(8) The applicant shall submit to the Executive Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in R315-3-6.3(b)(7). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Executive Secretary.

(9) All data collected during any trial burn shall be submitted to the Executive Secretary following the completion of the trial burn.

(10) All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under R315-3-2.2.

(11) Based on the results of the trial burn, the Executive Secretary shall set the operating requirements in the final permit according to R315-8-15.6. The permit modification shall proceed according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(c) For the purpose of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Executive Secretary may establish permit conditions, including but no limited to allowable waste feeds and operating conditions sufficient to meet the requirements of R315-8-15.6, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Executive Secretary.

(1) Applicants shall submit a statement, with part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(d) For the purposes of determining feasibility of compliance with the performance standards of R315-8-15.4 and of determining adequate operating conditions under R315-8-15.6, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with R315-3-2.10(b) and R315-3-6.3(b)(2) through (b)(5) and (b)(7) through (b)(10) or, instead, submit other information as specified in R315-3-2.10(c). The Executive Secretary shall announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of R315-3-6.3(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under R315-3-2.10(a) are exempt from compliance with R315-8-15.4 and R315-8-15.6 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in R315-3-6.3(b)(7), with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Executive Secretary to establish a later date for submission of the part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Executive Secretary will specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

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6.6 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

The requirements of 40 CFR 270.66, [~~2003~~]2006 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director."

6.7 REMEDIAL ACTION PLANS

Remedial Action Plans (RAPs) are special forms of permits that are regulated under R315-3-8, which incorporates by reference 40 CFR 270, subpart H.

R315-3-9. Integration with Maximum Achievable Control Technology (MACT) Standards.

9.1 OPTIONS FOR INCINERATORS AND CEMENT AND LIGHTWEIGHT AGGREGATE KILNS TO MINIMIZE EMISSIONS FROM STARTUP, SHUTDOWN, AND MALFUNTION EVENTS

(a) Facilities with existing permits. (1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a hazardous waste-permitted incinerator, cement kiln, [~~or~~]lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Executive Secretary address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b):

(i) Retain relevant permit conditions. Under this option, the Executive Secretary will:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) Revise relevant permit conditions.

(A) Under this option, the Executive Secretary will:

(1) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(2) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Executive Secretary in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Executive Secretary of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Executive Secretary may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under R315-3-4.2(a) or R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(iii) Remove permit conditions. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Executive Secretary will remove permit conditions that are no longer applicable according to R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b).

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, [~~or~~] lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Board a Notification of Compliance documenting compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, may request in the application to reissue the permit for the combustion unit that the Executive Secretary control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Executive Secretary will:

(1) Include, in the permit, conditions that ensure compliance with R315-8-15.6(a) and (c) or R315-14-7, which incorporates by reference 40 CFR 266.102(e)(1) and (e)(2)(iii), to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(2) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.; or

(ii) RCRA option B.

(A) Under this option, the Executive Secretary will:

(1) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(2) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Executive Secretary in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Executive Secretary of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Executive Secretary may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under R315-3-4.2(a) or R315-3-4.3, which incorporates by reference 40 CFR 270.42; or

(iii) CAA option. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Executive Secretary will omit from the permit conditions that are not applicable under R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b).

(b) Interim status facilities.

(1) Interim status operations. In compliance with R315-7-22 and R315-14-7, which incorporates by reference 40 CFR 266.100(b), the owner or operator of an incinerator, cement kiln, [~~or~~]lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of R315-7 or R315-14 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Board a Notification of Compliance documenting compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE:

(i) RCRA option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of R315-7 or R315-14 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) CAA option. Under this option, the owner or operator is exempt from the interim status standards of R315-7 or R315-14 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Executive Secretary that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B).

(2) Operations under a subsequent hazardous waste permit. When an owner or operator of an incinerator, cement kiln, [~~or~~]lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of R315-7 or R315-14 submits a hazardous waste permit application, the owner or operator may request that the Executive Secretary control emissions from startup, shutdown, and malfunction events under any of the options provided by R315-3-9(a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

(c) new units that become subject to RCRA permit requirements shall control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) comply with the requirements specified in R315-307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2); or

(2) request to include in the RCRA Permit, conditions that ensure emissions are minimized from startup, shutdown, and malfunction events based on review of information including the source's startup, shutdown, and malfunction plan and design. The Executive Secretary will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~December 1, 2006~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-5
Hazardous Waste Generator Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35352
FILED: 10/13/2011

RULE ANALYSIS

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

SUMMARY OF THE RULE OR CHANGE: This proposed rule change makes a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated. The proposed changes clarify existing parts of the hazardous waste regulatory program and update references to Department of Transportation regulations that have changed since the publication of various rules. This proposed rule change also makes technical corrections to regulations which established an alternative set of generator requirements applicable to laboratories owned by eligible academic entities that are flexible and protective, and addresses the specific nature of hazardous waste generation and accumulation in these laboratories.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCES:

- Updates 40 CFR 262, Appendix, published by Office of the Federal Register National Archives and Records Administration, 07/01/2009

♦ Updates 40 CFR 262.34, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
♦ Updates 40 CFR 262.60, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010
♦ Updates 40 CFR 262.200 - 216 , published by Office of the Federal Register National Archives and Records Administration, 07/01/2011

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-5. Hazardous Waste Generator Requirements.
R315-5-2. The Manifest.

A sample hazardous waste manifest form containing information required pursuant to these rules is found in the Appendix to 40 CFR 262. All applicable sections of each manifest shall be completely and legibly filled out.

2.20 GENERAL REQUIREMENTS

(a) A generator who transports, or offers for transportation, a hazardous waste for off-site treatment, storage, or disposal or a treatment, storage, or disposal facility who offers for transport a rejected hazardous waste load shall prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions included in 40 CFR 262, Appendix, 2009 ed. The requirements of 40 CFR 262, Appendix, 2009 ed., are adopted and incorporated by reference with the following exception: substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) These manifest requirements do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of R315-5-2 and R315-5-3.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding R315-6-1.10(a), the generator or transporter shall comply with the requirements for transporters set forth in R315-9-1 and R315-9-3 in the event of a discharge of hazardous waste on a public or private right-of-way.

2.21 MANIFEST TRACKING NUMBERS, MANIFEST PRINTING, AND OBTAINING MANIFESTS

The requirements of 40 CFR 262.21, 2005 ed., are adopted and incorporated by reference.

2.22 NUMBER OF COPIES

The manifest shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or

operator of the designated facility with one copy each for their records and another copy to be returned to the generator.

2.23 USE OF THE MANIFEST

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with R315-5-4.40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) Hazardous wastes to be shipped within Utah solely by water (bulk shipments only) require that the generator send three copies of the manifest dated and signed in accordance with this section to the owner and operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of the hazardous wastes within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) The generator shall include on the manifest a description of the hazardous waste(s) as set forth in the regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203.

(f) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(g) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of R315-7-12.3(f) or R315-8-5. 4(f), the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

2.27 WASTE MINIMIZATION CERTIFICATION

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

R315-5-3. Pre-Transport Requirements.

3.30 PACKAGING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the Department of Transportation regulations on packaging under 49 CFR 173, 178, and 179.

3.31 LABELING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall label each hazardous waste package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR 172.

3.32 MARKING

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the Department of Transportation regulations on hazardous materials under 49 CFR 172.

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address

Generator's EPA Identification Number

Manifest Tracking Number

3.33 PLACARDING

Prior to transporting hazardous waste or offering hazardous waste for transporting off-site, a generator shall placard or offer the initial transporter the appropriate placards according to the Department of Transportation regulations for the movement of hazardous materials under 49 CFR 172, subpart F.[~~If placards are not required, a generator shall mark each motor vehicle according to 49 CFR 171.3(b)(1).~~]

3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, [~~2005~~]2010 ed., are adopted and incorporated by reference with the following addition.

(b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

R315-5-4. Recordkeeping and Reporting.

4.40 RECORDKEEPING

(a) A generator shall keep a copy of each manifest signed in accordance with R315-5-2.23(a) for three years or until a signed copy is received from the designated facility which received the waste. The signed copy shall be retained as a record for at least

three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) Records maintained in accordance with this section and any other records which the Board or Executive Secretary deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-5-1.11, which incorporates by reference 40 CFR 262.11, shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Board as provided in R315-2-12 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

(d) The periods of retention referred to in this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Board or its duly appointed representative.

4.41 BIENNIAL REPORTING

(a) A generator who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of a biennial report to the Executive Secretary by March 1 of each even numbered year. The biennial report shall be submitted on EPA Form 8700-13A and must cover generator activities during the previous calendar year, and must include the following information:

(1) The EPA identification number, name, and address of the generator;

(2) The calendar year covered by the report;

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

(5) A description, EPA hazardous waste number, from R315-2-9, R315-2-10, or R315-2-11, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by EPA Identification number of each off-site facility to which waste was shipped;

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for years prior to 1984;

(8) The certification signed by the generator or authorized representative.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of R315-3, R315-7, and R315-8. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth in R315-5-5, which incorporates by reference 40 CFR 262.56.

4.42 EXCEPTION REPORTING

(a)(1) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated treatment, storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of greater than 1000 kilograms of hazardous waste in a calendar month shall submit an Exception Report to the Executive Secretary if he has not received a signed copy of the manifest from the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall consist of a legible copy of the manifest for which the generator does not have confirmation of delivery and a cover letter signed by the generator or his authorized representative explaining the efforts taken by the generator to locate the hazardous waste, and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Executive Secretary. The submission to the Executive Secretary need only be a hand written or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of R315-8-5.4(e)(1) through (6) or R315-7-12.3(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the hand written signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

Note to paragraph (c): The submission to the Executive Secretary need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

4.43 ADDITIONAL REPORTING

The Board or Executive Secretary, as is deemed necessary pursuant to these rules, may require generators to furnish additional reports concerning the quantities and disposition of hazardous

wastes identified or listed in Section R315-2-9, R315-2-10, or R315-2-11.

4.44 SPECIAL REQUIREMENTS FOR GENERATORS OF BETWEEN 100 AND 1000 KG/MO

A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements in R315-5-4:

(a) R315-5-4.40(a), (c), and (d);

(b) R315-5-4.42(b); and

(c) R315-5-4.43.

R315-5-5. Exports of Hazardous Waste.

The provisions of 40 CFR 262 subpart E, 262.50 - 262.58, 2005 ed., are adopted and incorporated by reference within this rule, except for the following changes:

(a) Other than in [~~Section~~]40 CFR 262.53 and 262.54(e), substitute "Executive Secretary" for all references to "EPA" or "Regional Administrator".

(b) Paragraph 40 CFR 262.58(a) shall be as follows:

Any person who exports or imports hazardous waste as identified in 40 CFR 262.80(a) and is subject to the manifesting requirements of R315-5-2, or subject to the universal waste management standards as found in R315-16, to or from the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for recovery shall comply with R315-5-8, which incorporates by reference 40 CFR 262 subpart H. The requirements of subparts E and F do not apply.

R315-5-6. Imports of Hazardous Waste.

The requirements of 40 CFR 262.60, [~~2005~~]2010 ed., are adopted and incorporated by reference.

R315-5-9. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.

The requirements of 40 CFR 262 subpart K, 262.200 - 262.216, [~~2009~~]2011 ed., are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all references made to "Regional Administrator."

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-6
Hazardous Waste Transporter Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35353
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This rule change eliminates compliance deadlines that have expired and are no longer relevant to enforcement of the regulation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-6. Hazardous Waste Transporter Requirements.
R315-6-2. Compliance With the Manifest System and Recordkeeping.

2.20 THE MANIFEST SYSTEM

(a)(1) Manifest Requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a mainfest signed in accordance with the requirements of R315-5-2.23.

(2) Exports. In the case of exports other than those subject to R315-5-8, which incorporates by reference 40 CFR 262 subpart H, a transporter may not accept hazardous waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in R315-6-2.20, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest, or shipping paper for exports by water (bulk shipment). For exports of hazardous waste subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84, which R315-5-8 incorporates by reference.

[~~(3) Compliance Date for Form Revisions. The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-6-2.20, and R315-6-2.21, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.~~]

(b) Before transporting the hazardous waste, the transporter shall hand sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with R315-6-5; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of R315-6-2.10(c), (d), and (f) do not apply to water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generators certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the manifested facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with R315-6-2.22.

(f) For shipments involving rail transportation, the requirements of R315-6-2.20(c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States.

(iv) Retain one copy of the manifest and rail shipping paper in accordance with R315-6-2.22.

(2) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper, if the manifest has not been received by the facility; and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with R315-6-2.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with R315-6-2.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States shall:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy as specified in R315-6-2.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms of hazardous waste in a calendar month need not comply with the requirements of R315-6-2.20 or those of R315-6-2.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in R315-5-2.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(i) A transporter shall not transport hazardous waste not properly labeled or hazardous waste containers which are leaking or appear to be damaged, since those packages become the transporter's responsibility during transport.

2.21 COMPLIANCE WITH THE MANIFEST

(a) The transporter shall deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b)(1) If the hazardous waste cannot be delivered in accordance with R315-6-2.21(a) because of an emergency condition other than rejection of the waste by the designated facility, then the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter shall obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter shall retain a copy of this manifest in accordance with R315-6-2.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter shall obtain a new manifest to accompany the shipment, and the new manifest shall include all of the information required in R315-8-5.4(e)(1) through (6) or (f)(1) through (6) or R315-7-12.3(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment shall be delivered. The transporter shall retain a copy of the manifest in accordance with R315-6-2.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter shall obtain a new manifest for the shipment and comply with R315-8-5.4(e)(1) through (6) or R315-7-12.3(e)(1) through (6).

2.22 RECORDKEEPING

(a) A transporter of hazardous waste shall keep a copy of the manifest signed by the generator, himself, and the next designated transporter of the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in R315-6-2.20(e)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

(1) The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in R315-6-2.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(2) The final rail transporter shall keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(d) A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Executive Secretary.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~December 1, 2006~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-7
Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35354
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change finalizes national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators; cement kilns; lightweight aggregate kilns; industrial/commercial/ institutional boilers and process heaters; and hydrochloric acid production furnaces. The proposed changes also makes a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 through 264.554, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2.

(c) The requirements of R315-7 do not apply to the following:

(1) The owner or operator of a POTW with respect to the treatment or storage of hazardous wastes which are delivered to the POTW;

(2) The owner or operator of a facility approved by the State of Utah to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-7 by R315-2-5;

(3) The owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2), (3), and (4), which is incorporated by reference in R315-2-6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR subpart D, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G;

(4) A generator accumulating hazardous waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34, except to the extent the requirements are included in R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(6) The owner or operator of a totally enclosed treatment facility, as defined in R315-1;

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in the Table of Treatment Standards for Hazardous Wastes in 40 CFR 268.40 as incorporated by reference at R315-13, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in R315-7-9.8(b);

(8) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(9)(i) Except as provided in R315-7-8(c)(9)(i), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this section shall comply with all applicable requirements of R315-7-10 and R315-7-11.

(iii) Any person who is covered by R315-7-8(c)(9)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-7 and of R315-3 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a State or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(10) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and R315-7-9.8(b), R315-7-16.2 and R315-7-16.3 are complied with;

(11) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9) handling the wastes listed below. These handlers are subject to regulation under section R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury[~~-thermostats~~]-containing equipment as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5.

(d) Notwithstanding any other provisions of these rules enforcement actions may be brought pursuant to R315-2-14 or Section 19-6-115 Utah Solid and Hazardous Waste Act.

(e) The following hazardous wastes shall not be managed at facilities subject to regulation under R315-7.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of R315-8-12.1(c) as well as all other applicable requirements of R315-8-12;

(iv) The waste is burned in incinerators that are certified pursuant to the standard and procedures in R315-7-22.6; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in R315-7-23.7.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268, and the R315-13 standards are considered material conditions or requirements of the R315-7 interim status standards.

R315-7-11. Contingency Plan and Emergency Procedures.

11.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

11.2 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) Each owner or operator shall have a contingency plan for his facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten the environment or human health.

11.3 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to comply with R315-7-11.2 and R315-7-11.7 in response to fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If a facility owner or operator already has prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions sufficient to comply with the requirements of R315-7.

(c) The plan shall describe arrangements agreed to by local law enforcement agencies, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, in accordance with R315-7-10.7.

(d) The plan shall list names, addresses, phone numbers, office and home, of all persons qualified to act as facility emergency coordinator, see R315-7-11.6, and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, discharge control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up-to-date. In addition, the plan shall include the location and physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by discharges of hazardous waste or fires.

11.4 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Made available to the Board or its duly appointed representative upon request; and

(c) Submitted to all local law enforcement agencies, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

11.5 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed, and immediately amended, if necessary, under any of the following circumstances:

(a) Revisions to applicable regulations;

(b) Failure of the plan in an emergency;

(c) Changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for discharges of hazardous waste or hazardous waste constituents, or change the response necessary in an emergency;

(d) Changes in the list of emergency coordinators; or

(e) Changes in the list of emergency equipment.

11.6 EMERGENCY COORDINATOR

At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This facility emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in R315-7-11.7. Applicable responsibilities for the emergency coordinator vary depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

11.7 EMERGENCY PROCEDURES

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) Notify appropriate state or local agencies with designated response roles whenever their assistance is needed.

(b) In the event of a discharge, fire, or explosion, the facility's emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any discharged materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the facility's emergency coordinator shall immediately assess possible hazards to the environment or human health that may result from the discharge, fire, or explosion. This assessment shall consider both direct and indirect effects of the discharge, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(d) If the emergency coordinator determines that the facility has had a discharge, fire, or explosion which could threaten human health or the environment, outside the facility, he shall report his findings as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to assist appropriate officials in making the decision whether local areas should be evacuated; and

(2) He shall immediately notify both the Utah State Department of Environmental Quality as specified in R315-9 and the government officials designated as the on-scene coordinator for that geographical area, [~~in the applicable regional contingency plan under 40 CFR 1510, ~~]or the National Response Center, 800/424-8802. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, e.g., discharge, fire;

(iv) Name and quantity of material(s) involved, to the extent available;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

(e) During an emergency, the facility's emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures shall

include, where applicable, stopping processes and operations, collecting and containing discharged waste, and removing or isolating containers.

(f) If the facility stops operations in response to a discharge, fire, or explosion, the facility's emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the facility's emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility.

Unless the owner or operator can demonstrate, in accordance with R315-2-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements in R315-4, R315-5, R315-7, and R315-8.

(h) The facility's emergency coordinator shall ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the discharged material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The facility owner or operator shall notify the Board and other appropriate state and local authorities, that the facility is in compliance with R315-7-11.7(h) before operations are resumed in the affected area(s) of the facility.

(j) The facility owner or operator shall record in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Board. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident, e.g., fire, discharge;

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment or human health, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-7-12. Manifest System, Recordkeeping, and Reporting.

12.1 APPLICABILITY

[~~(a)~~]The rules in R315-7-12 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-7-8.1. R315-7-12.2, R315-7-12.3, and R315-7-12.7 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a).

~~[(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-7-12.1, R315-7-12.2, R315-7-12.3, and R315-7-12.7, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.~~

] 12.2 USE OF MANIFEST SYSTEM

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or his agent, shall sign and date the manifest as indicated in R315-7-12.[~~1~~]2(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any significant discrepancies in the manifest, as defined in R315-7-12.3, on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures) the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-7-12.3(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper;

(3) Immediately give the rail or water, bulk shipment, transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator[~~ or a signed and dated copy of the shipping paper, to the generator~~]; and

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

The provisions of R315-5-9.1 are applicable to the on-site accumulation of hazardous wastes by generators and only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315-5-15, which incorporates by reference 40 CFR 262 subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

12.3 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are:

(1) Significant [~~differences~~]discrepancies as defined by R315-7-12.3(b) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: For bulk waste, variations greater than ten percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant [~~difference~~]discrepancies in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days of receipt of the waste, the owner or operator shall immediately submit to the Executive Secretary a letter describing the discrepancy, and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-7-12.3, it must ensure that either the delivering transporter retains custody of the waste, or, the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-7-12.3(e) or (f).

(e) Except as provided in R315-7-12.3(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a)[~~ of R315~~].

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-7-12.3(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the [~~generator's~~]facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the [~~generator's~~]facility's site address, then write the [~~generator's~~]facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information

Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(f)(1), (2), (3), (4), (5), [~~and~~](6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in R315-5-4.42(a)(1).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set for in R315-2-7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

12.4 OPERATING RECORD

The requirements as found in 40 CFR 265.73, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

12.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) All records, including plans, required under R315-7 shall be furnished upon written request, and made available at all reasonable times for inspection.

(b) The retention period for all records required under R315-7 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Board.

(c) A copy of records of waste disposal locations required to be maintained under R315-7-12.4, which incorporates by reference 40 CFR 265.73, shall be turned over to the Board and the local land authority upon closure of the facility, see R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120.

12.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of a biennial report to the Board by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data, where required under R315-7-13.5(a)(2)(ii) and (iii) and (b)(2) where required;

(g) The most recent closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150, and for disposal facilities, the most recent post-closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.144;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984; and

(j) The certification signed by the owner or operator of the facility or his authorized representative.

12.7 UNMAINFESTED WASTE REPORT

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e), and if the waste is not excluded from the manifest requirements of R315, then the owner or operator shall prepare and submit a single copy of a report to the Board within 15 days after receiving the waste. These reports shall be designated "Unmanifested Waste Report" and include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name, and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

12.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-7-12.6, and R315-7-12.7, a facility owner or operator shall also report to the Board:

(a) Discharges, fires, and explosions as specified in R315-7-11.7(j);

(b) Groundwater contamination and monitoring data as specified in R315-7-13.4 and R315-7-13.5;

(c) Facility closure as specified in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120;

(d) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-7;

(e) As otherwise required by R315-7-26, which incorporates by reference 40 CFR 265.1030 - 265.1035, R315-7-27, which incorporate by reference 40 CFR 265 265.1050 - 265.1064 and R315-7-30, which incorporates by reference 40 CFR 265.1080 - 265.1091.

R315-7-22. Incinerators.

22.1 INCINERATORS APPLICABILITY

(a) R315-7-22 applies to owners or operators of facilities that incinerate hazardous waste, except as R315-7-8.1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-7-22.1(b)(2) and (3), the standards of R315-7 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210([~~b~~]d), documenting compliance with the requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE: R315-7-22.5 (closure) and the applicable requirements of R315-7-8 through R315-7-15 , R315-7-27, and R315-7-30.

(3) R315-7-22.2 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with R315-3-9(b)(1)(i) to minimize emissions of toxic compounds from startup and shutdown.

(c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of R315-7-22, except R315-7-22.5, Closure, provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, and the documentation is retained at the facility, if the waste to be burned is:

(1) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(b), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9, or

(4) A hazardous waste solely because it possesses the reactivity characteristics described by R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii), and will not be burned when other hazardous wastes are present in the combustion zone.

22.2 GENERAL OPERATING REQUIREMENTS

During start-up and shut-down of an incinerator, the owner or operator shall not feed hazardous waste unless the incinerator is at steady state, normal, conditions of operation, including steady state operating temperature and air flow.

22.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state, normal, operating conditions, including waste and auxiliary fuel feed and air flow, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

22.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The complete incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

22.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including but not limited to ash, scrubber waters, and scrubber sludges from the incinerator. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

22.6 INTERIM STATUS INCINERATORS BURNING PARTICULAR HAZARDOUS WASTES

(a) Owners or operators of incinerators subject to R315-7-22 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner of operator will submit an application to the Board containing applicable information in R315-3 demonstrating that the incinerator can meet the performance standards in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the incinerator can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the incinerator.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-8
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35355
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change finalizes national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators; cement kilns; lightweight aggregate kilns; industrial/commercial/institutional boilers and process heaters; and hydrochloric acid production furnaces. The proposed changes also make a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCE:

♦ Updates 40 CFR 264.550 - 555, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.

♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.

♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:

♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-8-1. Purpose, Scope and Applicability.

(a) The purpose of R315-8 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in R315-8 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in R315-8 or R315-2.

(c) The requirements of R315-8 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under the Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by R315-3. R315-8 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(d) The requirements of R315-8 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under R315-3.

(e) The requirements of R315-8 do not apply to:

(1) The owner or operator of a state approved facility managing municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-2-5, conditionally exempt small quantity generator exemption;

(2) A generator accumulating waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(3) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(4) The owner or operator of a totally enclosed treatment facility. A totally enclosed treatment facility is a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment;

(5) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(6)(i) Except as provided in R315-8-1(e)(6)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste; and

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by R315-8 shall comply with all applicable requirements of R315-8-3 and R315-8-4.

(iii) Any person who is covered by R315-8-1(e)(6)(i), and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-8 and R315-3 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a State or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in R315-13, which incorporates by reference 40 CFR 268.40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in R315-8-2.8(b);

(8) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with;

(9) The owner or operator of a facility managing recyclable materials described in R315-2-6, which incorporates by reference 40 CFR 261.6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR 266 subpart C, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, R315-14-6, which incorporates by reference 40 CFR 266 subpart G, and R315-14-7, which incorporates by reference 40 CFR 266 subpart H; and

(10) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9), handling the wastes listed below. These handlers are subject to regulation under R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury[~~—thermostats~~]-containing equipment as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268.

(g) The requirements of R315-8-2 through 8-4 and R315-8-6.12 do not apply to remediation waste management sites.

(However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, R315-8-2 through 8-4 and R315-8-6.12 do apply to the facility subject to the traditional hazardous waste permit). Instead of the requirements of R315-8-2 through 8-4, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Division of Solid and Hazardous Waste using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation waste to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to R315-13, which incorporates by reference 40 CFR 268, and R315-8, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Executive Secretary that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of R315-8;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of R315-8, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under R315-8-9 through 8-15, and R315-8-16, which incorporates by reference 40 CFR 264.600 - 603, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of R315-8-2.9(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d) at the remediation waste management site, according to the requirements of R315-8-2.10;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in R315-8-1(g)(2) through (g)(6) and R315-8-1(g)(9) through (g)(10); and

(13) Maintain records documenting compliance with R315-8-1(g)(1) through (g)(12).

1.1 RELATIONSHIP TO INTERIM STATUS STANDARDS

A facility owner or operator who has fully complied with the requirements for interim status--as defined in section 3005(e) of the Federal RCRA Act and regulations under R315-3-7.1 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his permit application is made, except as provided under R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553.

R315-8-5. Manifest System, Recordkeeping, and Reporting.

5.1 APPLICABILITY

[~~(a)~~]The rules in R315-8-5 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-8-1. R315-8-5.2, R315-8-5.4, and R315-8-5.7 do not apply to owners and operators of on-site facilities that do not receive hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). R315-8-5.3, which incorporates by reference 40 CFR 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

[~~(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-8-5.1, R315-8-5.2, R315-8-5.4, and R315-8-5.7, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.~~

] 5.2 USE OF MANIFEST SYSTEM

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall sign and date the manifest as indicated in R315-8-5.2(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies in the manifest, as defined in R315-8-5.4(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the signed manifest;

(iv) Within 30 days of the delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-8-5.4(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping pap[~~a~~]er (if the manifest has not been received within 30 days after delivery) to the generator; and

Comment: R315-5-2.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

Comment: The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315 -5-8, which incorporates by reference 40 CFR 262, subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

5.3 OPERATING RECORD

The requirements as found in 40 CFR 264.73, 2000 ed., are adopted and incorporated by reference.

5.4 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are:

(1) Significant [~~differences~~]discrepancies (as defined by R315-8-5.4(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload; for bulk waste, variations greater than 10 percent in weight. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Executive

Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-8-5.4, it must ensure that either the delivering transporter retains custody of the waste, or, the facility shall provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-8-5.4(e) or (f).

(e) Except as provided in R315-8-5.4(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a)[~~of R315~~].

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-8-5.4(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the [~~generator's~~]facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the [~~generator's~~]facility's site address, then write the [~~generator's~~]facility's site address in the designated space for Item 5 of the new manifest.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(f)(1), (2), (3), (4), (5), [~~and~~] (6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in R315-5-4.42(a)(1).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

5.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) Records of waste disposal locations and quantities required to be maintained under R315-8-5.3, which incorporates by reference 40 CFR 264.73(b)(2) shall be submitted to the Board and local land authority upon closure of the facility.

(b) The retention period for all records required under this section is extended automatically during the course of any

unresolved enforcement action regarding the facility or as requested by the Executive Secretary.

(c) All records, including plans, required under R315-8 shall be furnished upon request, and made available at all reasonable times for inspection.

5.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of an biennial report to the Board by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given in the report;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste; and

(f) The most recent closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264. 140 - 264.151, and for disposal facilities, the most recent post-closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151; and

(g) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984;

(i) The certification signed by the owner or operator of the facility or his authorized representative.

5.7 UNMANIFESTED WASTE REPORT

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e)(2), and if the waste is not excluded from the manifest requirement of R315, then the owner or operator shall prepare and submit a letter to the Executive Secretary within 15 days of the receipt of the waste. The unmanifested waste report shall include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date of receipt of the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

5.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-8-5.6 and R315-8, a facility owner operator shall also report the following to the Board:

(a) Discharges, fires, and explosions as specified in R315-8-4.7(j);

(b) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-8;

(c) Facility closure as specified in R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120; and

(d) As otherwise required in R315-8-6, R315-8-11, R315-8-12, R315-8-13, R315-8-14, R315-8-17, which incorporates by reference 40 CFR 264-1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1080 - 264.1090.

R315-8-15. Incinerators.

15.1 APPLICABILITY

(a) The rules in this section apply to owners or operators of facilities that incinerate hazardous waste, as defined in 40 CFR 260.10, except as R315-8-1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-8-15.1(b)(2), [~~(3), and (4)~~]through R315-8-15.1(b)(5) the standards of R315-8 do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d), documenting compliance with the requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, hazardous waste permit conditions that were based on the standards of R315-8 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of R315-8-15.8 or the applicable requirements of R315-8-1 through R315-8-8, R315-8-18, which incorporates by reference 40 CFR 264 subpart BB, and R315-8-22, which incorporates by reference 40 CFR 264 subpart CC.

(3) The particulate matter standard of R315-8-15.4(b) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of R307-214-2, which incorporates by reference 40 CFR 63.1206(b)(14) and 63.1219(e).

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply

with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) R315-8-15.6(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) R315-8-15.6(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(5) The particulate matter standard of R315-8-15.4(b) remains in effect for incinerators that elect to comply with the alternative to the articulate matter standard of R307-214-2(39), which incorporates by reference 40 CFR 63.1206(b)(14) and 63.1219(e).

(c) After consideration of the waste analysis included with part B of the permit application, the Executive Secretary, in establishing the permit conditions, shall exempt the applicant from all requirements of this section except R315-8-15.2, Waste Analysis and R315-8-15.8, Closure,

(1) If the Executive Secretary finds that the waste to be burned is:

(i) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is ignitable, Hazard Code I, corrosive Hazard Code C, or both; or

(ii) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristics of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under R315-2-9, or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by R315-2-9(f)(1)(i), (ii), (iii), (vi), (vii), and (viii) and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which could reasonably be expected to be in the waste.

(d) If the waste to be burned is one which is described by R315-8-15.1(c)(1)(i), (ii), (iii), or (iv) and contains insignificant concentrations of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, then the Executive Secretary may, in establishing permit conditions, exempt the applicant from all requirements of this section except R315-8-15.2, Waste analysis and R315-8-15.8, Closure, after consideration of the waste analysis included with part B of the permit application, unless the Executive Secretary finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-6.3.

15.2 WASTE ANALYSIS

(a) As a portion of the trial burn plan required by R315-3-6.3 or with part B of the permit the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by R315-3-6.3(b) or R315-3-2.10. Owners or operators of new hazardous waste incinerators shall provide the information required by R315-3-6.3(c) or R315-3-2.10 to the greatest extent possible.

(b) Throughout normal operation the owner or operator shall conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit, R315-8-15.6.

15.3 PRINCIPAL ORGANIC HAZARDOUS CONSTITUENTS (POHCS)

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed shall be treated to the extent required by the performance standard of R315-8-15.4.

(b)(1) One or more POHCs will be specified in the facility's permit, from among these constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with part B of the permit. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified R315-3-6.3 for obtaining trial burn permits.

15.4 PERFORMANCE STANDARDS

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under R315-8-15.6, it will meet the following performance standards:

(a)(1) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated, R315-8-15.3, in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$DRE = (W_{in} - W_{out}) / W_{in} \times 100\%$

Where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour, 4 pounds per hour, of hydrogen chloride (HC1) shall control HC1 emissions so that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one percent of the HC1 in the stack gas prior to entering any pollution control equipment.

(b) An incinerator burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter, 0.08 grains per dry standard cubic foot, when corrected for the amount of oxygen in the stack gas according to the formula:

$P_c = P_m \times 14 / (21-Y)$

When P_c is correct concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, as presented in 40 CFR

60 Appendix A Method 3. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Executive Secretary will select an appropriate correction procedure, to be specified in the facility permit.

(c) For purposes of permit enforcement, compliance with the operating requirements specified in the permit under R315-8-15.6 will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under R315-3-4.2.

(d) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated, under R315-8-15.3, in its permit. This performance shall be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in R315-8-15.4(a)(1). In addition, the owner or operator of the incinerator shall notify the Executive Secretary of his intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

15.5 HAZARDOUS WASTE INCINERATOR PERMITS

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under 8.15.6., except:

(1) In approved trial burns, R315-3-6.3, or

(2) Under exemptions created by R315-8-15.1.

(b) Other hazardous wastes may be burned after operating conditions have been specified in a new permit or a permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with part B of a permit under R315-3-2.10.

(c) The permit for a new hazardous waste incinerator shall establish appropriate conditions for each of the applicable requirements of this section including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of R315-8-15.6, sufficient to comply with the following standards:

(1) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in R315-8-15.5(c)(2), not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall be those most likely to ensure compliance with the performance standards in R315-8-15.4 based on the Executive Secretary's engineering judgement. The Executive Secretary may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant;

(2) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the performance standards of R315-8-15.4 and shall be in accordance with the approved trial burn plan;

(3) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Executive Secretary, the operating requirements shall be those most likely to ensure compliance with the performance standards of R315-8-15.4 based on the Executive Secretary's engineering judgement.

(4) For the remaining duration of the permit, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in R315-3-2.10(c), as sufficient to ensure compliance with the performance standards of R315-8-15.4.

15.6 OPERATING REQUIREMENTS

(a) An incinerator shall be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated, in a trial burn or in alternative data as specified in R315-8-15.5(b), and included with part B of a facility's permit to be sufficient to comply with the performance standards of R315-8-15.4.

(b) Each set of operating requirements will specify the composition of the waste feed, including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirements of R315-8-15.4, to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(1) Carbon monoxide (CO) level in the stack exhaust gas;

(2) Waste feed rate;

(3) Combustion temperature;

(4) An appropriate indicator of combustion gas velocity;

(5) Allowable variations in incinerator system design or operating procedures; and

(6) Any other operating requirements as are necessary to ensure that the performance standards of R315-8-15.4 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste, except wastes exempted in accordance with R315-8-15.1, shall not be fed into the incinerator unless the incinerator is operating within the conditions of operation, temperature, air feed rate, etc., specified in the permit.

(d) Fugitive emissions from the combustion zone shall be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(3) An alternative means of control demonstrated, with part B of the permit to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator shall be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under R315-8-15.6(a).

(f) An incinerator shall cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

15.7 MONITORING AND INSPECTIONS

(a) The owner or operator shall conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(1) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit shall be monitored on a continuous basis.

(2) Carbon monoxide (CO) shall be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Board, sampling and analysis of the waste and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the performance standards of R315-8-15.4.

(b) The incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be subjected to thorough visual inspection, at least daily, for leaks, spills, fugitive emissions, and signs of tampering.

(c) The emergency waste feed cutoff system and associated alarms shall be tested at least weekly to verify operability, unless the applicant demonstrates to the Board that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing shall be conducted at least monthly.

(d) This monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by R315-8-5.3, which incorporates by reference 264.73.

15.8 CLOSURE

At closure the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash, scrubber waters, and scrubber sludges, from the incinerator site.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-3(d), that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements. R315-4 - R315-9.

R315-8-21. Corrective Action for Solid Waste Management Units.

The requirements of 40 CFR 264, subpart S, which includes sections 264.550 through 264.555, [~~2000~~]2010 ed., [~~as amended by 67 FR 2962, January 22, 2002, ~~]are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-13
Land Disposal Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35356
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: The proposed changes make a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated. This proposed rule change also removes saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

MATERIALS INCORPORATED BY REFERENCE:

- Adds 75 FR 78918, published by Office of the Federal Register National Archives and Records Administration, 12/17/2010
- Adds 75 FR 31716, published by Office of the Federal Register National Archives and Records Administration, 06/04/2010
- Adds 75 FR 12989, published by Office of the Federal Register National Archives and Records Administration, 03/18/2010
- Adds 70 FR 45508, published by Office of the Federal Register National Archives and Records Administration, 08/05/2005

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
- LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
- SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
- PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-13. Land Disposal Restrictions.
R315-13-1. Land Disposal Restrictions.

requirements as found in 40 CFR 268, 2001 ed., as amended by 65 FR 67068, November 8, 2000; 65 FR 81373, December 26, 2000; 66 FR 27266, May 16, 2001; 66 FR 58258, November 20, 2001; 67 FR 17119, April 9, 2002; 67 FR 62618, October 7, 2002; 67 FR 48393, July 24, 2002; [~~and~~]70 FR 9138, February 24, 2005; 70 FR 45508, August 5, 2005; 75 FR 12989, March 18, 2010; 75 FR 31716, June 4, 2010; and 75 FR 78918, December 17, 2010, are adopted and incorporated by reference including Appendices III, IV, VI, VII, VIII, IX, and XI, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(c) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-106; 19-6-105

Environmental Quality, Solid and Hazardous Waste
R315-14-8
Military Munitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35357
FILED: 10/13/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change finalizes national emission standards (NESHAP) for hazardous air pollutants for hazardous waste combustors (HWCs): hazardous waste burning incinerators; cement kilns; lightweight aggregate kilns; industrial/commercial/ institutional boilers and process heaters; and hydrochloric acid production furnaces. The EPA has identified HWCs as major sources of hazardous air pollutant (HAP) emissions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
R315-14-8. Military Munitions.

For purposes of 19-6-102(1[~~7~~]8)(a), a used or fired military munition is a solid waste, and, therefore, is potentially subject to corrective action authorities under -6-105(1)(d) ,[~~and~~] 19-6-112, and RCRA 3008(h),or imminent and substantial endangerment authorities under 19-6-115 if the munition lands off-range and is not promptly rendered safe or retrieved or both. Any imminent and substantial threats associated with any remaining material shall be addressed. If remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record shall include the type of munition and its location, to the extent the location is known.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Solid and Hazardous Waste
R315-50-9
Basis for Listing Hazardous Wastes

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35358
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

SUMMARY OF THE RULE OR CHANGE: The proposed change makes a number of technical changes that correct existing errors in the hazardous waste regulation, such as typographical errors, incorrect or outdated citations, and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the hazardous waste regulations for new rules that have since been promulgated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106 and Section 19-6-108

MATERIALS INCORPORATED BY REFERENCES:
♦ Updates 40 CFR 261, Appendix VII, published by Office of the Federal Register National Archives and Records Administration, 07/01/2010

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.
♦ LOCAL GOVERNMENTS: The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.
♦ SMALL BUSINESSES: The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

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:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/15/2011

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-50. Appendices.
R315-50-9. Basis for Listing Hazardous Wastes.

The requirements of 40 CFR 261, Appendix VII, [~~2002~~]2010ed., [~~as amended by FR 70-9138, February 24, 2005,~~] are adopted and incorporated by reference, with the following addition[~~s, excluding the constituents for which K064, K065, K066, K090, and K091 are listed~~]:

1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: [~~January 15, 2010~~]2011
Notice of Continuation: July 13, 2011
Authorizing, and Implemented or Interpreted Law: 19-6-106; 19-6-108; 19-6-105

Environmental Quality, Water Quality
R317-2
Standards of Quality for Waters of the State

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35359
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with Subsection R317-1-2.2(C), the three-year review of Rule R317-2 was conducted. These changes are the result of that review that included input from the public. The proposed changes are to resolve USEPA disapprovals, adopt updated water quality criteria, provide greater flexibility for developing site-specific standards, and make editorial corrections.

SUMMARY OF THE RULE OR CHANGE: In Subsections R317-2-3(3.2) and (3.3), Federal rules allow degradation in Tier 3 waters for discharges that are temporary and limited. Utah included this exemption for existing Category 1 waters with roads being listed as a specific example. The road example was deleted and a reference to the criteria to be considered for making a temporary and limited determination was added. Road construction and other activities that meets the criteria for temporary and limited will continue to be allowed. In addition, this same exemption was added to the less stringent, existing Category 2 waters (proposed Category 3). In Subsection R317-2-3(3.5)(b)(1)(d), this example for when an antidegradation review is not required was deleted to resolve a USEPA disapproval in 2010. In Section R317-2-4, the 2011 review is complete and the agreement is updated in Utah's Standards as shown below. In Subsection R317-2-7(7.1), Tables 2.14.1 and 2.14.2 - this section regarding numeric standards was revised to acknowledge that numeric standards can be modified based on certain site-specific conditions. The previous version of the standards listed changes based on bioassays or other methods, and site-specific temperature and total dissolved solids standards based on natural conditions. This change consolidates and broadens the reasons for allowing site-specific standards consistent with USEPA policies and the Clean Water Act. Footnote (4) from Table 2.14.1 was moved to Subsection R317-2-7(7.1) and Footnote (3) from Table 2.14.2 was deleted but site-specific temperature can be developed per the revised Subsection R317-2-7(7.1). The Water Quality Board must approve any change to the Standards thereby preserving their approval role. In Subsections R317-2-12(12.1)(a) and R317-2-12(12.2)(a), this reach of the Weber River was mistakenly moved to Subsection R317-2-12(12.2) during the Standards changes in 2010 (see the proposed amendment to Rule R317-2 under DAR No. 33233 in the December 15, 2009, issue of the Bulletin, p. 45 and the corresponding change in proposed rule to Rule R317-2 under DAR No. 33233 in the February 15, 2010, issue of the Bulletin, p. 68. Both were made effective on 04/01/2010). This change inadvertently changed the Category of this reach from existing Category 3 to existing Category 2 and this correction restores the original classifications. In Subsection R317-2-12(12.1)(b)(6), US 189 was the previous boundary for existing Category 1 waters Chalk Creek and the Weber River. With the construction of Jordanelle Reservoir, US 189 was rerouted and is no longer a valid boundary. The boundary for the existing Category 1 waters was updated to reflect the previous geographic boundary with existing roads. The protection status of Chalk Creek and the Weber river are unchanged. In Subsection R317-2-13(13.1), the Fremont River and tributaries, through Capitol Reef National Park to headwaters were changed from Class 2B (infrequent primary and secondary contact recreation) to Class 2A (frequent primary and secondary contact recreation) based on

information and the pictures below provided by the U.S. Park Service. Frequent primary recreation has more stringent numeric standards than infrequent primary recreation. In Subsection R317-2-13(13.4)(a), the Ogden River and tributaries, from confluence with Weber River to Pineview Dam, except as listed below to Class 2A (frequent primary and secondary contact recreation) from Class 2B (infrequent primary and secondary contact recreation). Frequent primary recreation has more stringent numeric standards than infrequent primary recreation and one of the goals of the Ogden River restoration is to encourage recreation. Ms. Kari Lundeen, DWQ Watershed Coordinator, reported that people regularly swim in this reach of the Ogden River. In Subsection R317-2-13(13.5)(a), assign beneficial uses of 2B, 3A, and 4 to Red Butte Creek and tributaries from Liberty Park pond inlet to Red Butte Reservoir. In Subsection R317-2-13(13.5)(a), assign beneficial uses of 2B, 3A, to Emigration Creek Emigration Creek and tributaries, from 1100 East in Salt Lake City to headwaters. This changes the boundary from Foothill Boulevard to 1100 East. In addition, add the beneficial use of Class 4 (agriculture) to protect the water rights for irrigation. In Subsections R317-2-13(13.2)(a) and R317-2-13(13.2)(bb), delete "**" that referred to a site-specific temperature standard. No site-specific temperature standard has been was promulgated for Hyrum or Pineview Reservoirs in Subsection R317-2-13(13.2)(x), add beneficial uses of 2B (infrequent primary and secondary contact recreation, 3A (cold water aquatic life), and 4 (agriculture) to Big East Lake. In Subsection R317-2-13(13.2), assign beneficial uses of 1C (drinking water), 2A (frequent primary and secondary recreation contact), 3B (warm water aquatic life), and 4 (agriculture). In Subsection R317-2-13(13.2), delete Class 2B (infrequent primary recreation) where water is also Class 2A (frequent primary recreation because the numeric standards for 2A are more stringent than 2B. Class 2B was deleted from: Bear Lake, Deer Creek, East Canyon, Echo, Flaming Gorge, Gunlock, Huntington Lake North, Hyrum, Lyman, Joe's Valley, Millsite, Moon, Palisades, Pineview, Powell, Pyramid, Quail Creek, Redfleet, Rockport, Scout, Starvation, Steinaker, and Yuba. This change does not affect the level of protection for these waters. In Table 2.14.1, Site-Specific TDS Standards, Price River - change the boundary of the 3,000/1,700 mg/l site-specific TDS standard from Coal Creek to Soldier Creek. In Table 2.14.2, delete acute criteria for mercury. In Table 2.14.2, add numeric criteria for tributyl tin. In Tables 2.14.2 and 2.14.7, add numeric criteria for acrolein. In Table 2.14.2, add numeric criteria for chlorpyrifos. In Table 2.14.6, revise numeric criteria for phenol.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No additional costs or savings to state budget are anticipated. The proposed amendments will be addressed using existing resources.
♦ LOCAL GOVERNMENTS: No additional costs are anticipated because the more stringent numeric criteria will not affect existing UDPES permits. The provisions for site-specific standards will potentially reduce costs.
♦ SMALL BUSINESSES: No additional costs or savings to small businesses are anticipated because the more stringent numeric criteria will not affect existing UDPES permits.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs to other persons are anticipated because the more stringent numeric criteria will not affect existing UDPES permits. The provisions for site-specific standards will potentially reduce costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are anticipated to remain the same because the more stringent numeric criteria will not affect existing UDPES permits.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Compliance costs are anticipated to remain the same for the USEPA mandated adoption of more stringent water quality criteria because current permitted facilities will meet the new standards. Compliance costs will be less when the site-specific option allowed by the proposed changes is used.

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:
♦ Dave Wham by phone at 801-536-4337, by FAX at 801-536-4301, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 12/05/2011 06:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/28/2011

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.

. . . . . .

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

[~~Projects such as, but not limited to, construction of dams or roads will be considered~~]Discharges may be allowed where pollution will [~~result only during the actual construction activity~~]be temporary and limited after consideration of the factors in R317-2-3.5.b.4., and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Discharges may be allowed where pollution will be temporary and limited after consideration of the factors in R317-2-.3.5.b.4., and where best management practices will be employed to minimize pollution effects. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on any projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity or for existing permitted facilities, water quality will not be further lowered by the proposed activity, examples include situations where:

(a) the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions; or

(b) a UPDES permit is being renewed and the proposed effluent concentration and loading limits are equal to or less than the concentration and loading limits in the previous permit; or

(c) a UPDES permit is being renewed and new effluent limits are to be added to the permit, but the new effluent limits are based on maintaining or improving upon effluent concentrations and loads that have been observed, including variability; or

[~~(d) a new or renewed UPDES permit is being issued, and water quality-based effluent limits are not required for a specific pollutant because it has been determined that the discharge will not cause, have reasonable potential to cause, or contribute to an exceedance of a State water quality standard for the pollutant.~~

] 2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse affects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Executive Secretary shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, [~~and~~]2008, and 2011 [~~R~~]reviews of the above documents.

. . . . . .

R317-2-7. Water Quality Standards.

7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these regulations for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis. [~~The Board may allow site specific modifications based upon bioassay or other tests performed in accordance with standard procedures determined by the Board.~~]Site-specific criterion may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or un-alterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criterion.

7.2 Narrative Standards

It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

. . . . . .

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category [~~2~~]3Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from [~~U.S. Highway 189~~]Main Street in Coalvilleto headwaters.

Weber River and tributaries, from [~~U.S. Highway 189~~]Utah State Route 32near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from [~~Height~~]HaightBench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from [~~Height~~]HaightBench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

[~~b. Weber River Drainage~~

~~Weber River from Uintah to Mountain Green.~~

]

R317-2-13. Classification of Waters of the State (see R317-2-6).

a. Colorado River Drainage

13.1 Upper Colorado River Basin

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell, except as listed below		2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol				
Reef National Park, except as listed below	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	

Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2A [~~2B~~]	3A		4
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C		4
Quitchupah Creek and Tributaries, from Highway U-10 crossing to headwaters		2B	3A		4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A		4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
San Juan River and Tributaries, from Lake Powell to state line except As listed below:	1C	2A	3B		4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A		4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A		4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A		4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A		4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A		4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A		4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A	3B		4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A		4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C		4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C		4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A		4
LaSal Creek and tributaries, from state line to headwaters		2B	3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C		4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C		4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A	3B		4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B	3C		4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B	3C		4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir		2B	3C		4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B	3C		4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing		2B	3C		4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course		2B	3C		4

Except as listed below						
Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A			4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water [~~Water~~]Treatment Plant intake.		2B	3A			4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A			4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A			4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A			4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A			4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A			4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D		4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A			4
White River and tributaries, from confluence with Green River to state line, except as listed below		2B	3B			4
Bitter Creek and Tributaries from White River to Headwaters		2B	3A			4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B			4
Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing		2B	3B			4
Uinta River and tributaries, From Highway US-4- crossing to headwaters		2B	3A			4
Power House Canal from Confluence with Uinta River to headwaters		2B	3A			4
Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A			4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A			4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A			4
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B			3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B			3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B			4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A			4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B			4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A			4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A			
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A			4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A			4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:	2A		3A			4
Sears Creek and tributaries, Daggett County		2B	3A			
Tolivers Creek and tributaries, Daggett County		2B	3A			
Red Creek and tributaries, from confluence with Green River to state line		2B		3C		4
Jackson Creek and tributaries, Daggett County		2B	3A			
Davenport Creek and tributaries, Daggett County		2B	3A			
Goslin Creek and tributaries, Daggett County		2B	3A			

Gorge Creek and tributaries, Daggett County		2B	3A	
Beaver Creek and tributaries, Daggett County		2B	3A	
O-Wi-Yu-Kuts Creek and tributaries, Daggett County		2B	3A	
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A	4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A	
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A	4

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13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A	4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B	3C 3D	4
Four Mile Creek from I-15 To headwaters		2B	3A	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A	4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below		2A [~~2B~~]	3A	4
Wheeler Creek from Confluence with Ogden River to headwaters	1C	2B	3A	4
All tributaries to Pineview Reservoir	1C	2B	3A	4
Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A	
Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C	2B	3A	4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A	4

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B * 3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B * 3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *	4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B * 3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A	4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B	4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A	
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A	
Red Butte Creek and tributaries from Liberty Park pond inlet to Red Butte Reservoir		2B	3A	4
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A	
Emigration Creek and tributaries, from [~~Foothill Boulevard~~]1100 East in Salt Lake City to headwaters		2B	3A	4
Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir [~~to headwaters~~]	1C	2B	3A	
Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A	
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B	3C	4
Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters		2B	3A	4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A	4

Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A	
Deaf Smith Canyon Creek and tributaries	1C	2B	3A	4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A	4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A	
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B	3A	
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B	3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B	3D	

* Site specific criteria for dissolved oxygen. See Table 2.14.5.

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13.6 Sevier River Basin

a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below		2B	3C	4
Beaver River and tributaries from Minersville City to headwaters		2B	3A	4
Little Creek and tributaries, From irrigation diversion to Headwaters		2B	3A	4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:		2B	3A	4
Pioneer Creek and tributaries, Millard County		2B	3A	4
Chalk Creek and tributaries, Millard County		2B	3A	4
Meadow Creek and tributaries, Millard County		2B	3A	4
Corn Creek and tributaries, Millard County		2B	3A	4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except [~~except~~] as listed below		2B	3B	4
Oak Creek and tributaries, Millard County		2B	3A	4
Round Valley Creek and tributaries, Millard County		2B	3A	4
Judd Creek and tributaries, Juab County		2B	3A	4
Meadow Creek and tributaries, Juab County		2B	3A	4
Cherry Creek and tributaries Juab County		2B	3A	4
Tanner Creek and tributaries, Juab County		2B	3E	4
Baker Hot Springs, Juab County		2B	3D	4
Chicken Creek and tributaries, Juab County		2B	3A	4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:		2B	3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A	4
Six Mile Creek and tributaries, Sanpete County		2B	3A	4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A	4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters		2B	3A	4

Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters		2B	3A	4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters		2B	3A	4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters		2B	3A	4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters		2B	3A	4
Sevier River and tributaries, from Annabella diversion to headwaters		2B	3A	4
Monroe Creek and tributaries, from diversion to headwaters		2B	3A	4
Little Creek and tributaries, from irrigation diversion to headwaters		2B	3A	4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Duck Creek and tributaries	1C	2B	3A	4

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13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir		2B	3A	4
Manderfield Reservoir		2B	3A	4
LaBaron Reservoir		2B	3A	4
Kent's Lake		2B	3A	4
Minersville Reservoir		2B	3A 3D	4
Puffer Lake		2B	3A	
Three Creeks Reservoir		2B	3A	4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)		2B	3B	3D	4
Etna Reservoir		2B	3A		4
Lynn Reservoir		2B	3A		4
Mantua Reservoir		2B	3A		4
Willard Bay Reservoir	1C	2A	[~~2B~~] 3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir		2A	[~~2B~~] 3A[**]	4
Newton Reservoir		2B	3A	4
Porcupine Reservoir		2B	3A	4
Pelican Pond		2B	3B	4
Tony Grove Lake		2B	3A	4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A	4
Olsen Pond		2B	3B	4
Scofield Reservoir	1C	2B	3A	4

e. Daggett County

TABLE

Browne Reservoir		2B	3A	4
Daggett Lake		2B	3A	4
Flaming Gorge Reservoir (Utah portion)	1C	2A	[~~2B~~] 3A	4
Long Park Reservoir	1C	2B	3A	4
Sheep Creek Reservoir		2B	3A	4
Spirit Lake		2B	3A	4
Upper Potter Lake		2B	3A	4

f. Davis County

TABLE

Farmington Ponds		2B	3A	4
Kaysville Highway Ponds		2B	3A	4
Holmes Creek Reservoir		2B	3B	4

g. Duchesne County

TABLE

Allred Lake		2B 3A	4
Atwine Lake		2B 3A	4
Atwood Lake		2B 3A	4
Betsy Lake		2B 3A	4
Big Sandwash Reservoir	1C	2B 3A	4
Bluebell Lake		2B 3A	4
Brown Duck Reservoir		2B 3A	4
Butterfly Lake		2B 3A	4
Cedarview Reservoir		2B 3A	4
Chain Lake #1		2B 3A	4
Chepeta Lake		2B 3A	4
Clements Reservoir		2B 3A	4
Cleveland Lake		2B 3A	4
Cliff Lake		2B 3A	4
Continent Lake		2B 3A	4
Crater Lake		2B 3A	4
Crescent Lake		2B 3A	4
Daynes Lake		2B 3A	4
Dean Lake		2B 3A	4
Doll Lake		2B 3A	4
Drift Lake		2B 3A	4
Elbow Lake		2B 3A	4
Farmer's Lake		2B 3A	4
Fern Lake		2B 3A	4
Fish Hatchery Lake		2B 3A	4
Five Point Reservoir		2B 3A	4
Fox Lake Reservoir		2B 3A	4
Governor's Lake		2B 3A	4
Granddaddy Lake		2B 3A	4
Hoover Lake		2B 3A	4
Island Lake		2B 3A	4
Jean Lake		2B 3A	4
Jordan Lake		2B 3A	4
Kidney Lake		2B 3A	4
Kidney Lake West		2B 3A	4
Lily Lake		2B 3A	4
Midview Reservoir (Lake Boreham)		2B 3B	4
Milk Reservoir		2B 3A	4
Mirror Lake		2B 3A	4
Mohawk Lake		2B 3A	4
Moon Lake	1C	2A [~~2B~~] 3A	4
North Star Lake		2B 3A	4
Palisade Lake		2B 3A	4
Pine Island Lake		2B 3A	4
Pinto Lake		2B 3A	4
Pole Creek Lake		2B 3A	4
Potter's Lake		2B 3A	4
Powell Lake		2B 3A	4
Pyramid Lake		2A [~~2B~~] 3A	4
Queant Lake		2B 3A	4
Rainbow Lake		2B 3A	4
Red Creek Reservoir		2B 3A	4
Rudolph Lake		2B 3A	4
Scout Lake		2A [~~2B~~] 3A	4
Spider Lake		2B 3A	4
Spirit Lake		2B 3A	4
Starvation Reservoir	1C	2A [~~2B~~] 3A	4
Superior Lake		2B 3A	4
Swasey Hole Reservoir		2B 3A	4
Taylor Lake		2B 3A	4
Thompson Lake		2B 3A	4
Timothy Reservoir #1		2B 3A	4
Timothy Reservoir #6		2B 3A	4
Timothy Reservoir #7		2B 3A	4
Twin Pots Reservoir	1C	2B 3A	4
Upper Stillwater Reservoir	1C	2B 3A	4
X - 24 Lake		2B 3A	4

h. Emery County

TABLE

Cleveland Reservoir		2B 3A	4
Electric Lake		2B 3A	4
Huntington Reservoir		2B 3A	4

Huntington North Reservoir	2A [~~2B~~]	3B		4
Joe's Valley Reservoir	2A [~~2B~~]	3A		4
Millsite Reservoir	1C 2A [~~2B~~]	3A		4

i. Garfield County

TABLE

Barney Lake	2B	3A		4
Cyclone Lake	2B	3A		4
Deer Lake	2B	3A		4
Jacob's Valley Reservoir	2B		3C 3D	4
Lower Bowns Reservoir	2B	3A		4
North Creek Reservoir	2B	3A		4
Panguitch Lake	2B	3A		4
Pine Lake	2B	3A		4
Oak Creek Reservoir (Upper Bowns)	2B	3A		4
Pleasant Lake	2B	3A		4
Posey Lake	2B	3A		4
Purple Lake	2B	3A		4
Raft Lake	2B	3A		4
Row Lake #3	2B	3A		4
Row Lake #7	2B	3A		4
Spectacle Reservoir	2B	3A		4
Tropic Reservoir	2B	3A		4
West Deer Lake	2B	3A		4
Wide Hollow Reservoir	2B	3A		4

j. Iron County

TABLE

Newcastle Reservoir	2B	3A		4
Red Creek Reservoir	2B	3A		4
Yankee Meadow Reservoir	2B	3A		4

k. Juab County

TABLE

Chicken Creek Reservoir	2B		3C 3D	4
Mona Reservoir	2B	3B		4
Sevier Bridge (Yuba) Reservoir	2A [~~2B~~]	3B		4

l. Kane County

TABLE

Navajo Lake	2B	3A		4

m. Millard County

TABLE

DMAD Reservoir	2B	3B		4
Fools Creek Reservoir	2B		3C 3D	4
Garrison Reservoir (Pruess Lake)	2B	3B		4
Gunnison Bend Reservoir	2B	3B		4

n. Morgan County

TABLE

East Canyon Reservoir	1C 2A [~~2B~~]	3A		4
Lost Creek Reservoir	1C	2B 3A		4

o. Piute County

TABLE

Barney Reservoir	2B	3A		4
Lower Boxcreek Reservoir	2B	3A		4
Manning Meadow Reservoir	2B	3A		4
Otter Creek Reservoir	2B	3A		4
Piute Reservoir	2B	3A		4
Upper Boxcreek Reservoir	2B	3A		4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A [~~2B~~]	3A		4
Birch Creek Reservoir	2B	3A		4
Little Creek Reservoir	2B	3A		4
Woodruff Creek Reservoir	2B	3A		4

q. Salt Lake County

TABLE

Decker Lake	2B	3B	3D	4
Lake Mary	1C	2B 3A		
Little Dell Reservoir	1C	2B 3A		
Mountain Dell Reservoir	1C	2B 3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B	3A	4
Dark Canyon Lake	1C	2B	3A	4
Ken's Lake		2B	3A**	4
Lake Powell (Utah portion)	1C	2A [~~2B~~]	3B	4
Lloyd's Lake	1C	2B	3A	4
Monticello Lake		2B	3A	4
Recapture Reservoir		2B	3A	4

s. Sanpete County

TABLE

Duck Fork Reservoir		2B	3A	4
Fairview Lakes	1C	2B	3A	4
Ferron Reservoir		2B	3A	4
Lower Gooseberry Reservoir	1C	2B	3A	4
Gunnison Reservoir		2B	3C	4
Island Lake		2B	3A	4
Miller Flat Reservoir		2B	3A	4
Ninemile Reservoir		2B	3A	4
Palisade Reservoir		2A [~~2B~~]	3A	4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B	3A	4
Willow Lake		2B	3A	4

t. Sevier County

TABLE

Annabella Reservoir		2B	3A	4
Big Lake		2B	3A	4
Farnsworth Lake		2B	3A	4
Fish Lake		2B	3A	4
Forsythe Reservoir		2B	3A	4
Johnson Valley Reservoir		2B	3A	4
Koosharem Reservoir		2B	3A	4
Lost Creek Reservoir		2B	3A	4
Redmond Lake		2B	3B	4
Rex Reservoir		2B	3A	4
Salina Reservoir		2B	3A	4
Sheep Valley Reservoir		2B	3A	4

u. Summit County

TABLE

Abes Lake		2B	3A	4
Alexander Lake		2B	3A	4
Amethyst Lake		2B	3A	4
Beaver Lake		2B	3A	4
Beaver Meadow Reservoir		2B	3A	4
Big Elk Reservoir		2B	3A	4
Blanchard Lake		2B	3A	4
Bridger Lake		2B	3A	4
China Lake		2B	3A	4
Cliff Lake		2B	3A	4
Clyde Lake		2B	3A	4
Coffin Lake		2B	3A	4
Cuberant Lake		2B	3A	4
East Red Castle Lake		2B	3A	4
Echo Reservoir	1C	2A [~~2B~~]	3A	4
Fish Lake		2B	3A	4
Fish Reservoir		2B	3A	4
Haystack Reservoir #1		2B	3A	4
Henry's Fork Reservoir		2B	3A	4
Hoop Lake		2B	3A	4
Island Lake		2B	3A	4
Island Reservoir		2B	3A	4
Jesson Lake		2B	3A	4
Kamas Lake		2B	3A	4
Lily Lake		2B	3A	4
Lost Reservoir		2B	3A	4
Lower Red Castle Lake		2B	3A	4
Lyman Lake		2A [~~2B~~]	3A	4
Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4

Rockport Reservoir	1C	2A	[~~2B~~] 3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4
Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A	4
Bottle Hollow Reservoir		2B	3A	4
Brough Reservoir		2B	3A	4
Calder Reservoir		2B	3A	4
Crouse Reservoir		2B	3A	4
East Park Reservoir		2B	3A	4
Fish Lake		2B	3A	4
Goose Lake #2		2B	3A	4
Matt Warner Reservoir		2B	3A	4
Oaks Park Reservoir		2B	3A	4
Paradise Park Reservoir		2B	3A	4
Pelican Lake		2B	3B	4
Red Fleet Reservoir	1C	2A	[~~2B~~] 3A	4
Steinaker Reservoir	1C	2A	[~~2B~~] 3A	4
Towave Reservoir		2B	3A	4
Weaver Reservoir		2B	3A	4
Whiterocks Lake		2B	3A	4
Workman Lake		2B	3A	4

x. Utah County

TABLE

Big East Lake		2B	3A	4
Salem Pond		2A	3A	4
Silver Flat Lake Reservoir		2B	3A	4
Tibble Fork Resevoir		2B	3A	4
Utah Lake		2B	3B 3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A	4
Deer Creek Reservoir	1C	2A	[~~2B~~] 3A	4
Jordanelle Reservoir	1C	2A	3A	4
Mill Hollow Reservoir		2B	3A	4
Strawberry Reservoir	1C	2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A	4
Gunlock Reservoir	1C	2A	[~~2B~~] 3B	4
Ivins Reservoir		2B	3B	4
Kolob Reservoir		2B	3A	4
Lower Enterprise Reservoir		2B	3A	4
Quail Creek Reservoir	1C	2A	[~~2B~~] 3B	4
Sand Hollow Reservoir	1C	2A	3B	4
Upper Enterprise Reservoir		2B	3A	4

aa. Wayne County

TABLE

Blind Lake		2B	3A	4
Cook Lake		2B	3A	4

Donkey Reservoir	2B 3A	4
Fish Creek Reservoir	2B 3A	4
Mill Meadow Reservoir	2B 3A	4
Raft Lake	2B 3A	4

bb. Weber County

TABLE

Causey Reservoir	2B 3A	4
Pineview Reservoir	1C 2A [~~2B~~] 3A[~~**~~]	4

~~** Denotes site-specific temperature, see Table 2.14.2 Notes~~

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified: 2B, 3D

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source	Recreation and Aesthetics		Agri-culture
	1C	2A	2B	4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
	RADIOLOGICAL			
(MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta	4 mrem/yr	Radium 226, 228 (Combined)		5
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	

FOOTNOTES:

(1) Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) [~~Site-specific criteria for total dissolved solids may be adopted by rulemaking where it is demonstrated that: (a) a less stringent criterion is appropriate because of natural or un-alterable conditions; or (b) a less stringent, site-specific criterion and/or date-specified criterion is protective of existing and attainable agricultural uses; or (c) a more stringent criterion is attainable and necessary for the protection of sensitive crops.~~
~~For water quality assessment purposes, up to 10% of representative samples may exceed the standard.~~]

SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek:
3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek toU-10:
2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with [~~Coal~~]Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with [~~Coal Creek~~]Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use ;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife 3A	3B	3C	3D	5
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2)(2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L)(5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
Cyanide (Free)					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
Lead (7)					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
Mercury					
4 Day Average	0.012	0.012	0.012	0.012	
[~~1 Hour Average~~	~~2.4~~	~~2.4~~	~~2.4~~	~~2.4~~]	
Nickel (7)					
4 Day Average	52	52	52	52	
1 Hour Average	468	468	468	468	
Selenium					
4 Day Average	4.6	4.6	4.6	4.6	
1 Hour Average	18.4	18.4	18.4	18.4	

Selenium (14)				
Gilbert Bay (Class 5A)				
Great Salt Lake				
Geometric Mean over				
Nesting Season (mg/kg dry wt)				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Tributyl Tin				
4 Day Average	0.072	0.072	0.072	0.072
1 Hour Average	0.46	0.46	0.46	0.46
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS				
(MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13)				
(Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol(Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL	(MAXIMUM pCi/L)			
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Acrolein				
4 Day Average	3.0	3.0	3.0	3.0
1 Hour Average	3.0	3.0	3.0	3.0
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
Chlorpyrifos				
4 Day Average	0.041	0.041	0.041	0.041
1 Hour Average	0.083	0.083	0.083	0.083
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor				
(Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION				
INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)		0.05	0.05	

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Executive Secretary shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

(3) [~~The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.~~]

Site Specific Standards for Temperature

Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by

EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:
Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * MIN (2.85, 1.45*10^{0.028*(25-T)})$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-pH})) + (2.487/(1+10^{pH-7.688}))) * 1.45*10^{0.028*(25-MAX(T,7))}$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$$\text{mg/l as N (Acute)} = (0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH-7.204}))$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = 0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: H_2S = Dissolved Sulfide * $e^{((-1.92 + pH) + 12.05)}$

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

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TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism (ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	100 MCL	4,600
Selenium	A	4,200
Silver		
Thallium	0.24	0.47
Zinc	7,400	26,000
Cyanide	140	140
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	[~~190~~]6.0	[~~290~~]9.0
Acrylonitrile	0.051 B	0.25 B
Alachlor	2.0	
Atrazine	3.0	
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbofuran	40	
Carbon Tetrachloride	0.23 B	1.6 B
Chlorobenzene	100 MCL	1,600
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dalapon	200	
Di(2ethylhexl)adipate	400	
Dibromochloropropane	0.2	
Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	7 MCL	7,100
Dichloroethylene (cis-1,2)	70	
Dinoseb	7.0	

Diquat	20	
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	0.34	21
Endothall	100	
Ethylbenzene	530	2,100
Ethylene Dibromide	0.05	
Glyphosate	700	
Haloacetic acids	60 E	
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
Ocamyl (vidate)	200	
Picloram	500	
Simazine	4	
Styrene	100	
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	290
2,4-Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	[~~21,000~~]10,000	[~~1,700,000~~]860,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
BenzoaAnthracene	0.0038 B	0.018 B
BenzoaPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-Chloroisopropy1Ether	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa,hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
Phenanthrene		
Pyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls	0.000064 B,D	0.000064 B,D
PCB's		
Toxaphene	0.00028 B	0.00028 B

Footnotes:

A. See Table 2.14.2

B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: [~~April 1, 2010~~]2011
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-310

Medicaid Primary Care Network Demonstration Waiver

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35334
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the recertification period for re-enrollment in the Primary Care Network (PCN) program.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies the process for re-enrolling in the PCN program after each 12-month certification period. It also changes the benefit effective date to the first day of the application month

and clarifies how changes during the certification period may affect eligibility. It further removes provisions that no longer apply and clarifies change reporting and proper notice requirements to comply with federal requirements on due process. It also updates and corrects certain references and citations in the rule text.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

♦ Updates 42 CFR 433.138(b) and 435.610, published by Government Printing Office, 10/01/2010

♦ Updates Section 1915(b) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2011

♦ Updates 20 CFR 416 Subpart K, Appendix, published by Government Printing Office, 10/01/2010

♦ Updates 42 CFR 435.907 and 435.908, published by Government Printing Office, 10/01/2010

♦ Updates 42 CFR 435.911 and 435.912, published by Government Printing Office, 10/01/2010

♦ Updates 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because Medicaid recipients whose enrollment ends for failure to complete a timely recertification usually complete the recertification within the following month and their medical assistance is restored without any break in coverage. Changing the effective date to the first day of the month could result in minor costs if the Department holds another open enrollment period. Nevertheless, the Department has no claims data to quantify these insignificant costs because most recipients do not access services until they are approved for medical assistance. There is no cost or savings to local governments because they do not fund PCN services or determine PCN eligibility.

♦ LOCAL GOVERNMENTS: There is no cost or savings to local governments because they do not fund PCN services or determine PCN eligibility.

♦ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because Medicaid recipients whose enrollment ends for failure to complete a timely recertification usually complete the recertification within the following month and their medical assistance is restored without any break in coverage. Changing the effective date to the first day of the month could result in a minor increase in revenue to small businesses if the Department holds another open enrollment period. Nevertheless, the Department has no claims data to quantify these insignificant gains because most recipients do not access services until they are approved for medical assistance. Moreover, this change does not impose any new requirements that result in costs to businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any impact to PCN providers and to PCN recipients because recipients whose enrollment ends for failure to complete a timely recertification usually complete the recertification within the following month and their medical assistance is restored without any break in coverage. Changing the effective date to the first day of the month could result in a minor increase in revenue to providers if the Department holds another open enrollment period. Nevertheless, the Department has no claims data to quantify these insignificant gains because most recipients do not access services until they are approved for medical assistance. Moreover, this change does not impose any new requirements that result in costs to PCN providers and does not reduce any coverage or create out-of-pocket expenses for PCN recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single PCN provider or to a PCN recipient because recipients whose enrollment ends for failure to complete a timely recertification usually complete the recertification within the following month and their medical assistance is restored without any break in coverage. Changing the effective date to the first day of the month could result in a minor increase in revenue to a provider if the Department holds another open enrollment period. Nevertheless, the Department has no claims data to quantify this insignificant gain because most recipients do not access services until they are approved for medical assistance. Moreover, this change does not impose any new requirements that result in costs to a single PCN provider and does not reduce any coverage or create out-of-pocket expenses for a single PCN recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment strengthens due process protections consistent with federal law that will avoid Medicaid providers extending services and inappropriately being denied reimbursement. Requirements for periodic reviews of an individual's continued eligibility for medical assistance are strengthened and requirements for a recipient to make timely reports of changes and to provide verification of changes are mandated. It further clarifies that the agency cannot end eligibility while it gives recipients time to respond to a request for verification and while it makes a redetermination decision. In addition, this amendment clarifies the requirement to provide appropriate advance notice of an adverse action in accordance with due process requirements.

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 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-1. Authority and Purpose.

(1) This rule is authorized by [~~Utah Code~~]Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the [~~federal~~]Centers for Medicare and Medicaid Services and allowed under Section 1115(a) of the Social Security Act.

(2) The purpose of this[~~. This~~] rule is to establish[~~es the~~] eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

[~~(1) "Applicant" means an individual who applies for benefits under the Primary Care Network program, but who is not an enrollee.~~

] (2) "Best estimate" means the [~~Department's~~]eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Co[~~-~~]payment and co[~~-~~]insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

([~~4~~]5) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

([~~5~~]6) "Department" means the Utah Department of Health.

(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for the Primary Care Network program under contract with the Department.

(9) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(19)(a), (b), (c), (d) and (e).

([~~6~~]10) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program and has paid the enrollment fee.

([~~7~~]11) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the [~~Department~~]eligibility agency to enroll in and receive coverage under the Primary Care Network program.

[~~(8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).~~

] (12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

[~~(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.~~

] (1[~~0~~]3) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

[~~(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.~~

] (14) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time to represent future income.

[~~(12) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.~~

] (1[~~3~~]5) "Open enrollment" means a [~~time~~]period during which the [~~Department~~]eligibility agency accepts applications for the Primary Care Network program.

(1[~~4~~]6) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(1[~~5~~]7) "[~~Recertification~~]Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(1[~~6~~]8) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

[~~(17) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.~~

] (1[~~8~~]9) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

([~~19~~]20) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

(21) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the UPP program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

(a) an individual[~~s~~] with children under the age of 19 in the home;

(b) an individual[~~s~~] without children under the age of 19 in the home;

(c) [~~those~~]an individual who is enrolled in the PCN program;

(d) [~~those~~]an individual who is enrolled in the UPP program;

(e) [~~those~~]an individual who is enrolled in the General Assistance program;

(f) [~~those that were~~]an individual who is enrolled in the Medicaid program within [~~the last thirty~~]30 days [~~prior to~~]before the [~~beginning of the~~]open enrollment period begins; or

(g) [~~such~~]any [~~other~~]group [~~designated in advance by~~]that the Department designates in advance to be consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the [~~local office~~]eligibility agency or outreach staff.

(3) An [~~A~~]applicant[~~s and~~] or enrollee[~~s~~] must provide requested information and verification[~~s~~] within the time limits given. The [~~Department will~~]eligibility agency shall allow the client at least [~~10~~]ten calendar days from the date of a request to provide information and may grant [~~additional~~]more time to provide information and verification[~~s~~] upon request of the applicant or enrollee.

(4) An [~~A~~]applicant[~~s and~~] or enrollee[~~s have~~] has a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) An [~~A~~]applicant[~~s and~~] or enrollee[~~s~~] may look at information in [~~their~~]his case file that [~~was~~]the eligibility agency use[~~d~~]s to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any [~~Department local~~]eligibility agency office.

(7) An individual must repay any benefits that the individual receive[~~d~~]s under [~~the Primary Care Network program~~]PCN if the [~~Department~~]eligibility agency determines that the individual [~~was~~]is not eligible to receive [~~such~~]the benefits.

(8) An [~~A~~]applicant[~~s and~~] or enrollee[~~s~~] must report certain changes to the [~~local office~~]eligibility agency within ten calendar days of the day the change becomes known. The [~~local office shall notify~~]eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in [~~the Primary Care Network program~~]PCN begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage[~~.~~];

[~~(b) An enrollee in the Primary Care Network program begins to have access to coverage under a group health plan or other health insurance coverage.~~

] ([e]b) An enrollee in [~~the Primary Care Network program~~]PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System[~~.~~];

([~~d~~]c) An enrollee leaves the household or dies[~~.~~];

([e]d) An enrollee or the household moves out of state[~~.~~];

([~~f~~]e) Change of address of an enrollee or the household[~~.~~]; or

([~~g~~]f) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

(10) An enrollee in [~~the Primary Care Network program~~]PCN is responsible for paying any required co[~~-~~]payments or co[~~-~~]insurance amounts to providers for medical services that the enrollee receives that are covered under [~~the Primary Care Network program~~]PCN.

R414-310-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-1, R414-302-2, [~~R414-302-3, ~~]R414-302-5, and R414-302-6 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of [~~the Primary Care Network program~~]PCN.

(2) An individual who is not a U.S. citizen or national, [~~and~~]or who does not meet the alien status requirements of Section R414-302-1 is not eligible for any services or benefits under [~~the Primary Care Network program~~]PCN.

(3) An [~~A~~]applicant[~~s and~~] or enrollee[~~s are~~] is not required to provide Duty of Support information to enroll in [~~the Primary Care Network program~~]PCN. An individual who would be eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, cannot enroll in [~~the Primary Care Network program~~]PCN.

(4) An [~~I~~]individual[~~s~~] who must pay a spenddown or premium to receive Medicaid can enroll in [~~the Primary Care Network program~~]PCN if:

(a) [~~they~~]the individual meets [~~the~~]PCN program eligibility criteria in any month [~~they~~]that the individual does not receive Medicaid; and[~~ as long as~~]

(b) the Department [~~has not stopped~~]does not stop enrollment under the provisions of Subsection R414-310-16(2). If the Department [~~has~~]stop[~~ped~~]s enrollment, the individual must

wait for an [~~applicable~~]open enrollment period to enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of [~~the Primary Care Network program~~]PCN.

(2) The Department shall safeguard[~~s~~] information about applicants and enrollees [~~according to~~]to comply with the provisions [~~found in~~]of Section R414-301-4.

R414-310-6. Residents of Institutions.

The provisions of Subsection R414-302-4(1)[~~, (3)~~] and (4) apply to applicants and enrollees of [~~the Primary Care Network program~~]PCN.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, [~~2004~~]2010 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 20[~~04~~]11, which are incorporated by reference.

(2) [~~An~~]Subject to Subsection R414-310-7(10), an individual who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed.[~~by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)~~], at the time of application is not eligible for enrollment in [~~the Primary Care Network program~~]PCN. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. [~~However~~]Nevertheless, an individual who is enrolled in the Utah Health Insurance Pool may enroll in [~~the Primary Care Network program~~]PCN.

(3) The [~~E~~]eligibility agency determines PCN eligibility[~~for the Primary Care Network program~~] for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer [~~will be determined~~]as follows:

(a) If the cost of the least expensive health insurance plan offered by the employer does not exceed 15% of the household's countable gross income as defined in this rule, the individual is not eligible for [~~the Primary Care Network program~~]PCN.

(b) If the cost of the least expensive health insurance plan is 5% or more of the household's countable gross income, the individual may enroll in the employer's health insurance plan and the UPP program during an open enrollment period. The employer's health plan must meet the requirements of Subsection R414-320-2(19).

([~~b~~]c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's countable gross income, [~~and the employer offers a health plan that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e), ~~] the individual may choose to enroll in either [~~the Primary Care Network program~~]PCN or the UPP program. The following conditions apply:

(i) to enroll in UPP, the employer's health insurance plan must meet the requirements of Subsection R414-320-2(19); and

(ii) [~~unless~~]enrollment for [~~one of these programs~~]the program that the individual chooses to enroll in has not been stopped under the provisions of Subsections R414-310-16(2) or R414-320-16(2).

([~~e~~]d) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in Subsection R414-320-2[~~(8)(a) (b) (c) (d) and (e)~~](19), the individual may only enroll in the PCN program.

([~~d~~]4) The eligibility agency considers the individual [~~is considered~~]to have access to coverage even [~~if~~]when the employer only offers coverage [~~only~~]during an open enrollment period.

(5) The cost of coverage includes a deductible if the employer plan has a deductible that must be met before it will pay any claims. If the employee must be enrolled to enroll the spouse, the cost of coverage for the spouse includes the cost to enroll the employee and the spouse.

([~~4~~]6) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in [~~the Primary Care Network program~~]PCN, even [~~if~~]when the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

([~~5~~]7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in [~~the Primary Care Network program~~]PCN. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for [~~the Primary Care Network program~~]PCN while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for [~~the Primary Care Network program~~]PCN ends once the individual becomes enrolled in the VA Health Care System.

([~~6~~]8) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in [~~the Primary Care Network program~~]PCN.

(9) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for six months after the date that the earlier health insurance ends.

(a) To be eligible to enroll in PCN, the six-month ineligibility period must end by the earlier of the following dates:

(i) the last day of the open enrollment period during which the individual applies for PCN; or

(ii) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(b) If the six-month ineligibility period does not end by the earlier of the dates mentioned in Subsection R414-310-7(9)(a)(i) (ii), the eligibility agency shall deny the application.

(c) The effective date of enrollment in PCN must be after the six-month ineligibility period ends.

[~~(7) The Department shall deny eligibility if the applicant or spouse has voluntarily terminated health insurance coverage within the six months immediately prior to the application date for enrollment under the Primary Care Network program. An applicant or an applicant's spouse can be eligible for the Primary Care Network if their prior insurance ended more than six months before the application date.~~]

(10) An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the

[~~s~~]State Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for [~~the Primary Care Network program~~]PCN without a six[-]-month [~~waiting~~]ineligibility period.

(a) An individual is eligible to enroll in PCN if the individual's health insurance coverage expires before the end of the calendar month that follows the month in which he applies for PCN.

(b) The PCN enrollment date must be after health insurance coverage ends.

([~~8~~]11) Notwithstanding the limitations in [~~this s~~]Section R414-310-7, an individual with creditable health coverage operated or financed by [~~the~~]Indian Health Services may enroll in [~~the Primary Care Network program~~]PCN.

([~~9~~]12) An [~~I~~]individual[~~s~~] must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

([~~10~~]13) The [~~Department shall deny~~]eligibility agency shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify in the program.

R414-310-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for [~~the Primary Care Network Program~~]PCN:

(a) the individual;

(b) the individual's spouse living with the individual;

(c) any children of the individual or the individual's spouse who are under the age of 19 and living with the individual; and

(d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

(3) Any household member defined in Subsection R414-310-8(1) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency counts that individual's income the same way that it counts the income of a U.S. citizen, national, or qualified resident alien.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in [~~the Primary Care Network program~~]PCN.

(2) The month in which an individual[~~'s~~] turns 19[~~th~~] years of age[~~birthday occurs~~] is the first month that the person [~~can~~]may enroll in [~~be eligible for enrollment in the Primary Care Network program~~]PCN. The effective date of enrollment for an applicant who meets the eligibility criteria for PCN and who turn 19 or 65 years of age is defined in Section R414-310-15.

[~~(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network program until the following month.~~

~~(b) If the individual could enroll in the Children's Health Insurance Program, the individual cannot enroll in the Primary Care Network program until the following month.~~

~~(3) The benefit effective date for the Primary Care Network program cannot be earlier than the date of the 19th birthday.~~

~~(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program.~~

]

R414-310-10. Income Provisions.

(1) To be eligible to enroll in [~~the Primary Care Network program~~]PCN, a household's countable gross income must be equal to or less than 150% of the federal, non-farm, poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under [~~the Primary Care Network program~~]PCN. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. Income that is excluded under this section is not countable income.

[~~(2) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the Primary Care Network.~~

] ([~~3~~]2) Any income in a trust that is available to, or is received by a household member, is income of the person for whom it is received. It is countable income if the eligibility agency counts that person's income to determine eligibility.

([~~4~~]3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

([~~5~~]4) Rental income is countable income. The following expenses [~~can~~]may 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.

([~~6~~]5) 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~~]6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that the household member continues to receive these payments[~~that these payments will continue to be received~~] during the certification period.

([~~8~~]7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income. Any

portion of the payment that is for other family members counts as that family member's income.

([9]8) Child support payments that a household member receive[d]s for a dependent child living in the home are counted as that child's income, and do not count as income of the parent.

([10]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 which 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.

([11]10) Supplemental Security Income and State Supplemental payments are countable income.

([12]11) Income, unearned and earned, [shall be]is 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. Sponsor deeming will 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 assistance.

([13]12) Income that is [defined]excluded [in]under 20 CFR 416 Subpart K, Appendix, [2004]2010 edition, which is incorporated by reference, is not countable.

([14]13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

([15]14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

([16]15) 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.

([17]16) Child Care Assistance under Title XX is not countable income.

([18]17) Reimbursements of Medicare premiums [received by]that an individual receives from the Social Security Administration [or the State Department of Health]are not countable income.

([19]18) [Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.]If the spouse of an applicant or enrollee is under the age of 19, the eligibility agency counts that spouses earned and unearned income only if the spouse is the head of the household.

([20]19) 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.

(2[1]0) Reimbursements for employee work expenses incurred by an individual are not countable income.

(2[2]1) The value of food stamp assistance is not countable income.

(2[3]2) 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) 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, which an individual may receive from March 2009 through June 2010 is not countable income.

] (2[5]3) 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) 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) 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.

]

R414-310-11. Budgeting.

[This section describes methods that the Department uses to determine the household's countable monthly or annual income.

] (1) Subject to the limitation in Subsection R414-310-10(18), [T]the eligibility agency counts the gross income of all household members [is counted in]to determin[ing]e the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The agency only deducts [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]eligibility agency determines 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]eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount[. The Department] and multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The [Department shall]eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The [Department]eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that [is]the agency expect[ed]s the household to [be]receive[d] or [made]to become available to the household during the upcoming certification period. The [Department]eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The [Department]eligibility agency may request [prior]earlier years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The [~~Department~~]eligibility agency may use a combination of methods to obtain the [~~most accurate~~]best estimate. The best estimate may be a monthly amount that the agency [~~is~~]expect[~~ed~~]s the household to [~~be~~]receive[~~d~~] each month of the certification period, or an annual amount that is prorated over the certification period. The [~~Department~~]eligibility agency may use different methods for different types of income [~~received in~~]that the same household receives.

(5) The [~~Department~~]eligibility agency determines farm and self-employment income by using the individual's most 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~~]eligibility agency may request income information from the most recent time period during which the individual had farm or self-employment income. The [~~Department~~]eligibility agency deducts 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~~]eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The [~~Department~~]eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The [~~Department~~]eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The [~~Department~~]eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12. Assets.

There is no asset test for eligibility in [~~the Primary Care Network program~~]PCN.

R414-310-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, [~~2004~~]2010 ed., which are incorporated by reference.

(2) To enroll in PCN, [~~T~~]the applicant must complete and sign a written application or complete an online application [~~on-line via the Internet~~]during an open enrollment period[~~ to enroll in the Primary Care Network program~~]. The provisions of Section R414-308-3 apply to PCN applicants[~~ of the Primary Care Network~~].

(a) The eligibility agency shall review an application to determine eligibility for the PCN program if the application is pending approval when the open enrollment period begins.

(b) An applicant must follow the provisions of Section R414-310-14 to reapply for each recertification.

(3) The [~~Department~~]eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case [~~was closed~~]in error.

[~~(4) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:~~

~~(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and~~

~~(b) the individual continues to meet all eligibility requirements.~~

] ([~~5~~]4) An applicant may withdraw an application for [~~the Primary Care Network program~~]PCN any time before the [~~Department~~]eligibility agency completes an eligibility decision on the application.

([~~6~~]5) [~~The~~]An applicant or enrollee [~~shall~~]must pay an annual enrollment fee for each 12-month recertification period to enroll in [~~the Primary Care Network Program~~]PCN. Upon the eligibility agency determining that the individual meets the eligibility criteria for enrollment, the individual must pay the enrollment fee when he applies and recertifies for PCN.[~~ once the local office has determined that the individual meets the eligibility criteria for enrollment.~~]

(a) An applicant must pay the enrollment fee within 30 days of the date on the notice that approves enrollment.

(b) To reenroll after the individual recertifies, the individual must pay the enrollment fee within 30 days of the date on the notice that approves enrollment, or by the end of the month that follows the review month, whichever is longer.

([~~a~~]c) The [~~Department~~]eligibility agency does not require an American Indian[~~s~~] or Alaska Native to pay an enrollment fee. This enrollment fee waiver applies to both the individual and the spouse if both are enrolled and at least one of them is an American Indian or Alaska Native. If only one spouse is enrolled in PCN and is not an American Indian or Alaska Native, that spouse must pay the enrollment fee to enroll in PCN.

([~~b~~]d) Coverage [~~does not begin until~~]may only become effective when the [~~Department~~]eligibility agency receives the enrollment fee. The provisions of Section R414-310-15 determine the effective date of enrollment. The eligibility agency shall deny enrollment if the individual does not pay the enrollment fee timely.

([e]e) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in [~~the Primary Care Network Program~~]PCN.

[~~(d) The enrollment fee is required at application and at each recertification.~~

] ([e]f) The applicant or enrollee must pay the enrollment fee to DWS[~~must be paid to the local office~~] in cash, by debit or credit card, or by check or money order made out to [~~the Department of Health or to the Department of Workforce Services~~]DWS.

([~~f~~]g) The enrollment fee for an individual or married couple receiving General Assistance from [~~the Department of Workforce Services~~]DWS is $15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less [~~that~~]than 50[~~ percent~~]% of the federal poverty guideline applicable to their household size is $25. The enrollment fee for any other individual or married couple is $50.

([~~g~~]h) [~~The Department~~]DWS may refund the enrollment fee if it decides that the person [~~was~~]is ineligible for the program; however, [~~the Department~~]DWS may retain the enrollment fee to the extent that the individual owes any overpayment of benefits [~~that were~~]that DWS pa[~~id~~]ys in error on behalf of the individual[~~ by the Department~~].

([~~7~~]6) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. The eligibility agency may not require a[~~A~~] new application form[~~ is not required~~]; however, the household [~~shall~~]must provide [~~the~~]requested information [~~neeessary~~]to determine eligibility for the spouse[~~,~~]. The household must provide [~~including~~]information about access to creditable health insurance[~~,~~] that includ[~~ing~~]es Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) [~~Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received~~]The effective date of enrollment to add a spouse to an open PCN case is defined in Section R414-310-15. Coverage continues through the end of the [~~current~~]certification period.

(b) The eligibility agency may not require [~~A~~]a new enrollment fee [~~is not required~~]to add a spouse during the [~~current~~] certification period.

(c) The eligibility agency may not require [~~A~~]a new income test [~~is not required~~]to add [~~the~~]a spouse for the months remaining in the [~~current~~]certification period.

(d) An eligible household may only add a [~~A~~]spouse [~~may be added only~~]if [~~the Department~~]DWS [~~has~~]does not stop[~~ped~~] enrollment under Subsection R414-310-16(2).

(e) The eligibility agency shall count [~~I~~]income of the spouse [~~will be considered~~]and require payment of the enrollment fee [~~will be required~~]at the next scheduled recertification.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, [~~2004~~]2010 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the [~~local office~~]eligibility agency shall determine [~~if~~]whether the individual is eligible for Medicaid or CHIP.

(a) An individual who qualifies for Medicaid without paying a spenddown, a poverty level pregnant woman asset copayment or an MWI premium cannot enroll in [~~the Primary Care Network program~~]PCN. An applicant who turns 19 years of age during the application month and qualifies for Medicaid or CHIP during that month may enroll in PCN the following month in accordance with Section R414-310-15.

(b) If the individual appears to qualify for Medicaid, or CHIP, but additional information is required to [~~determine eligibility for Medicaid~~]make that determination, the applicant must provide additional information requested by the eligibility worker. [~~Failure to provide the requested information shall result in the application being denied.~~]The eligibility agency shall deny the application if the individual fails to provide the requested information.

([~~a~~]3) If the individual qualifies for Medicaid and PCN, but must pay a spenddown, poverty level, pregnant woman asset copayment or MWI premium to qualify for Medicaid, the individual may choose to enroll in the PCN program.[~~ if it is an open enrollment period, and the individual meets all the applicable criteria for eligibility.~~] If the PCN program is not in an enrollment period, the applicant may choose to enroll in Medicaid[~~ the individual must~~] and wait for an open enrollment period to reapply for PCN.

(a) PCN does not cover prenatal or delivery services for a pregnant woman.

(b) PCN does not provide long-term care services in a medical institution or under a home and community-based waiver.

[~~(b) At recertification for PCN, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.~~

] ([~~3~~]4) To enroll, the individual must meet the eligibility criteria for enrollment in [~~the Primary Care Network program~~]PCN, pay the enrollment fee, and [~~it must be a time when the Department has not stopped~~]enroll during an open enrollment period under [~~s~~]Section R414-310-16.

([~~4~~]5) The [~~local office shall~~]eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the [~~local office~~]eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant die[~~d~~]s; [~~or~~]

(c) the applicant cannot be located; or

(d) the applicant [~~has~~]does not respond[~~ed~~] to requests for information within the 30-day application period or by the verification due date[~~ the eligibility worker asked the information or verifications to be returned~~], if [~~that~~]the verification date is later.

(6) Upon determining that the applicant is eligible for PCN and upon receiving payment of the enrollment fee, the eligibility agency shall enroll the individual in PCN for a 12-month certification period. The eligibility agency shall end enrollment after the 12-month certification period.

[~~(5) The enrollee must recertify eligibility at least every 12 months.~~

](7) The eligibility agency shall provide an enrollee the opportunity to reenroll for a 12-month certification period when the certification period is near completion.

(a) The recertification is a reapplication to determine whether the enrollee is eligible to enroll in a new 12-month certification period.

(b) The eligibility agency shall notify the enrollee that PCN benefits end after the 12-month certification period.

(c) The eligibility agency shall inform the enrollee of the necessary steps to complete the recertification.

(8) At each recertification, the eligibility agency shall determine whether the enrollee is eligible for Medicaid. The individual may not reenroll in PCN if the individual qualifies for Medicaid without a cost. If the individual appears to qualify for Medicaid, the individual must provide additional information requested by the agency. The eligibility agency shall deny recertification if the individual fails to provide the requested information.

(9) The eligibility agency may request verification from the enrollee if the enrollee responds to the recertification request during the review month.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification.

(c) The eligibility agency shall determine eligibility if the enrollee provides all verification by the verification due date or by the end of the application processing period. The agency shall either approve a new 12-month certification period pending payment of the enrollment fee or deny eligibility for a new certification period. The eligibility agency shall notify the enrollee of its decision.

(10) If the enrollee fails to respond to the request for recertification or does not provide all verification with the application processing period, the enrollee may reapply in the calendar month that follows the effective closure date.

(a) The enrollee must reapply by responding to the recertification request and providing all requested verification; or

(b) file a new application before the end of the due process month that follows the review month.

(c) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification, provides all requested verification, or reapplies.

(d) The benefits become effective upon the enrollee paying the required enrollment fee if the eligibility agency approves an enrollee for a new 12-month certification period.

(e) The eligibility agency shall notify the enrollee if the agency does not approve an enrollee for the new certification period.

(11) The enrollee must wait for the next open enrollment period to reapply for PCN if the enrollee fails to respond to a request for recertification or does not file a new application before the end of the month that follows the review month.

[~~(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.~~

~~(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.~~

~~(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.~~

~~(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.~~

~~(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.~~

~~(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.~~

]

R414-310-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

[~~(1) The effective date of enrollment in the Primary Care Network program is the day that a completed and signed application is received by the medical eligibility agency as defined in Subsection R414-308-3(2)(a) and (b) and the applicant meets all eligibility criteria, including payment of the enrollment fee. The Department shall not provide any benefits or pay for any services received before the effective enrollment date.~~

](1) Subject to the limitations in Sections R414-306-6 and R414-310-7, the effective date of PCN enrollment is the first day of the month in which the eligibility agency receives an application with the following exceptions:

(a) An applicant who turns 19 years of age during the application month and before the end of the open enrollment period in the application month is enrolled in PCN as follows:

(i) The eligibility agency shall enroll the applicant in Medicaid if the applicant qualifies for Medicaid during the application month without cost. In this instance, enrollment in PCN becomes effective for the month that follows the application month if the applicant neither qualifies for Medicaid nor qualifies without cost and chooses not to pay for Medicaid during that following month;

(ii) The eligibility agency shall enroll the applicant in CHIP if the applicant qualifies for enrollment in CHIP during the application month. Enrollment in PCN then becomes effective for the following month;

(iii) If the applicant is not eligible for Medicaid without cost and is not eligible for CHIP in the application month, enrollment in PCN becomes effective in the application month, but no earlier than when the applicant turns 19 years of age;

(iv) The applicant is not eligible for PCN if the applicant turns 19 years of age after the open enrollment period.

(b) An applicant who turns 65 years of age during the application month and applies before age 65 may enroll in PCN, which coverage becomes effective on the first day of the application month subject to the limitations in Section R414-310-15. The applicant is not eligible for PCN if the applicant is not eligible for Medicaid without cost in the application month. The eligibility agency shall end enrollment after the month in which the applicant turns 65 years of age.

(c) The eligibility agency shall deny enrollment to an individual if the individual applies for PCN upon turning 65 years of age.

(d) Subject to the limitations in Section R414-310-15 and the open enrollment requirement, the effective date of enrollment for the spouse of an enrollee is the first day of the month in which the enrollee requests to add the spouse.

(2) The eligibility agency shall enroll an applicant who meets all eligibility criteria and pays the enrollment fee for a 12-month certification period that begins with the first month of enrollment. The applicant must pay the enrollment fee before any benefits for a 12-month certification period become effective. The Department may not provide any benefits or pay for any services that an applicant receives before the effective date of enrollment.

([~~2~~]3) The effective date of re[~~-~~]enrollment for [~~a~~]PCN recertification [~~in the Primary Care Network program~~]is the first

day [~~of the month~~]after the [~~recertification~~]review month, if the recertification is completed as described in either Subsection R414-310-14([~~7~~]9) or (10). The enrollee must continue to meet all eligibility criteria and pay the enrollment fee timely before benefits become effective for the new 12-month certification period.

[~~(3) If the enrollee does not complete the recertification as described in R414-310-14(7), and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.~~

~~(4) An individual found eligible for the Primary Care Network program shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the recertification process in accordance with R414-310-14(7) and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month.~~]

(4) The [~~E~~]eligibility agency [~~could~~]shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns 65 years of age[~~-65~~];

(b) the individual becomes a full-time student who is entitled to receive student health insurance[~~,~~] and Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located; or

(e) the individual enters a public institution or an Institut[e]ion for Mental Disease.

(5) [~~An individual enrolled in the Primary Care Network program~~]The eligibility agency shall end PCN enrollment [~~loses eligibility~~]when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan, except under the following circumstances:

(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program. The[~~if the~~] individual [~~notifies~~]must notify the [~~local office~~]eligibility agency within ten calendar days of enrolling in the plan or within ten days after coverage begins, whichever is longer, to switch to UPP.[~~before the coverage in the employer-sponsored health plan begins, and if the~~] The individual must meet the requirements defined in Subsection R414-310-7(3)(b) and (c) [~~are met~~]except that the individual does not have to enroll in UPP during an open enrollment period[~~-~~];

(b) The eligibility agency shall continue PCN eligibility through the end of the certification period if the individual gains access to an employer-sponsored health plan but does not enroll in the plan. The eligibility agency shall end eligibility after the due process month if the enrollee does not return requested verification upon receiving proper notice;

(i) The individual is not eligible to reenroll for a new 12-month certification period if the enrollee has access to an employer-sponsored health plan that costs less than 15% of the enrollee's countable gross income at the next recertification;

(ii) The enrollee may choose to switch to UPP if the enrollee can enroll in the employer's health plan upon recertifying, and the plan meets the requirements of Subsection R414-310-7(3)(b) and (c) and costs 5% or more of the enrollee's countable gross income. The enrollee may reenroll in PCN if the cost exceeds 15% of the enrollee's countable gross income.

([~~b~~]6) An individual who enrolls in the Utah Health Insurance Pool [~~(H.I.P.) ~~]does not lose PCN eligibility[~~ in the Primary Care Network~~].

(7) An enrollee who fails to report changes or return verifications timely must repay any overpayment of benefits for which the individual is not eligible to receive.

(8) The individual may file a new application or make a request to the eligibility agency to reenroll if a PCN case closes for any reason.

(a) The individual must file a new application or make a request to reenroll within the calendar month that follows the effective closure date;

(b) The eligibility agency shall process the request as a new application. The agency shall waive the open enrollment period and determine whether the individual is still eligible for PCN;

(c) The eligibility agency shall continue eligibility through the end of the certification period if the agency determines that the individual is eligible for PCN;

(d) The eligibility agency shall approve the individual for a new certification period if the certification period ends when the agency determines that the individual is eligible. The individual must pay the enrollment fee for the new 12-month certification period;

(e) The eligibility agency shall deny the request to reenroll and send a notice to the individual if the agency determines that the individual is not eligible for PCN.

(9) The eligibility agency shall determine eligibility for PCN if a Medicaid-eligible recipient reports a change during a PCN enrollment month that makes the recipient ineligible for Medicaid or causes a spenddown. The effective date of enrollment for PCN is the day after the Medicaid case closes if the agency determines that the recipient is eligible for PCN and the recipient pays the enrollment fee timely.

([~~6~~]10) If a [~~Primary Care Network~~]PCN case closes for any reason, other than to become covered by another Medicaid or UPP program, and remains closed for one or more calendar months, the individual must submit a new application to the [~~local office~~]eligibility agency during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

([~~7~~]11) If a [~~Primary Care Network~~]PCN case closes because the enrollee is eligible for another Medicaid program or UPP, the individual may request to reenroll in [~~the Primary Care Network program~~]PCN if there is no break in coverage between the programs, even if the [~~State~~]eligibility agency [~~has stopped enrollment~~]ends open enrollment under Subsection R414-310-16(2).

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the [~~remainder~~]rest of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in Section R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the [~~current~~]certification period.

(b) If the 12-month certification period from the [~~prior~~]earlier enrollment [~~has ended~~]ends, the individual may still

reenroll in [~~the Primary Care Network program~~]PCN. [~~However, the~~]The individual must [~~complete a new application, ~~]meet eligibility and income guidelines, and pay a new enrollment fee for the new 12-month certification period.

[~~(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period for the Primary Care Network program.~~]

(12) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification, the eligibility agency shall end eligibility after the month in which the agency sends proper notice. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period and continue eligibility for the rest of the certification period if the agency determines that the enrollee is eligible for PCN. The eligibility agency shall send a denial notice to the enrollee if the agency determines that the enrollee is not eligible for PCN.

(13) A change in income does not make the enrollee ineligible for PCN; however, the individual may request the eligibility agency to make a Medicaid determination of eligibility.

(a) The eligibility agency shall change coverage to Medicaid and end PCN enrollment if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid without cost.

(b) The enrollee may choose to remain on PCN through the end of the certification period if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium.

R414-310-16. Enrollment Limitation.

(1) [~~The Department~~]The eligibility agency shall limit enrollment in [~~the Primary Care Network program~~]PCN.

(2) [~~The Department~~]The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) [~~The Department~~]The eligibility agency [~~and local offices shall~~]may not accept applications [~~n~~]or maintain waiting lists during a [~~time~~]period that enrollment of new individuals is stopped.

(4) If enrollment [~~has not been~~]is not stopped, an individual[~~s~~] may apply for [~~the Primary Care Network program~~]PCN.

(5) An individual who becomes ineligible for Medicaid or CHIP, or who must pay a spenddown, poverty level, pregnant woman asset copayment or MWI premium for Medicaid, but who was not previously enrolled in [~~the Primary Care Network program~~]PCN, may apply to enroll in [~~the Primary Care Network program~~]PCN if the [~~State~~]eligibility agency [~~has~~]does not stop[~~ped~~] enrollment under Subsection R414-310-16(2). If the agency stops enrollment[~~has been stopped~~], the individual must wait for an open enrollment period to apply.

R414-310-17. Notice and Termination.

(1) The [~~d~~]Department adopts 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, [~~2004~~]2010 ed., which are incorporated by reference.

(2) The [~~local office shall notify~~]eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(3) The [~~local office shall~~]eligibility agency shall [~~terminate~~]end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

[~~(4) The local office shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.~~]The eligibility agency shall end enrollment after the 12-month certification period. An enrollee may reenroll for a new 12-month certification period without waiting for an open enrollment period by completing the recertification process, or by reapplying before the last day of the month that follows the effective closure date.

R414-310-18. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

([~~1~~]2) An individual who receives benefits under [~~the Primary Care Network program~~]PCN for which [~~he~~]the individual is not eligible [~~is responsible to~~]must repay the Department for the cost of the benefits that the individual receives[~~received~~].

([~~2~~]3) An alien and the alien's sponsor are jointly liable for benefits that an individual receive[~~d~~]s for which the individual [~~was~~]is not eligible.

([~~3~~]4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a[~~ time~~] period [~~that~~]in which the enrollee [~~was~~]is not [~~actually ~~] eligible to receive [~~such~~]the benefits.

KEY: Medicaid, primary care, covered-at-work, demonstration
Date of Enactment or Last Substantive Amendment: [~~September 1, 2009~~]2011
Notice of Continuation: June 13, 2007
Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-320
Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35335
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the review process for re-enrollment in Utah's Premium Partnership for Health Insurance (UPP) program.

SUMMARY OF THE RULE OR CHANGE: This amendment updates due process requirements for completing a periodic review of eligibility for medical assistance, clarifies requirements for an UPP recipient to make timely reports of changes and to provide verification, clarifies that the agency cannot end eligibility during the verification process, and clarifies the requirement for the agency to provide advance notice of an adverse action. This amendment also changes the benefit effective date to the first day of the application month and clarifies how changes during the certification period may affect eligibility. It also updates citations in the rule text and removes provisions that no longer apply.

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

MATERIALS INCORPORATED BY REFERENCES:

- ♦ Updates 42 CFR 435.911 and 435.912, published by Government Printing Office, 10/01/2010
- ♦ Adds 42 CFR 435.907 and 435.908, published by Government Printing Office, 10/01/2010
- ♦ Updates 20 CFR 416 Subpart K, Appendix, published by Government Printing Office, 10/01/2010
- ♦ Updates 42 CFR 433.138(b), published by Government Printing Office, 10/01/2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because most UPP recipients whose eligibility ends when they fail to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the change to the effective date of eligibility does not increase costs to the Department because UPP recipients only receive payment after they pay for health insurance premiums upon receiving UPP approval.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or determine eligibility for the UPP program.

♦ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because most UPP recipients whose eligibility ends when they fail to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, this change does not impose any new costs on businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any impact to UPP recipients because most UPP recipients whose eligibility ends when they fail to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the change to the effective date of eligibility does not increase savings to UPP recipients because they only receive payment after they pay for health insurance premiums upon receiving UPP approval. This change does not reduce UPP coverage and it does not impose new costs on UPP providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any compliance costs to a single UPP recipient because most UPP recipients whose eligibility ends when they fail to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, this change does not reduce UPP coverage and it does not impose new costs on a single UPP provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment strengthens due process protections consistent with federal law that will avoid Medicaid providers extending services and inappropriately being denied reimbursement. Requirements for periodic reviews of an individual's continued eligibility for medical assistance are strengthened and requirements for a recipient to make timely reports of changes and to provide verification of changes are mandated. It further clarifies that the agency cannot end eligibility while it gives recipients time to respond to a request for verification and while it makes a redetermination decision. In addition, this amendment clarifies the requirement to provide appropriate advance notice of an adverse action in accordance with due process requirements.

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 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-1. Authority.

(1) This rule is authorized by [~~Title 26, Chapter 18~~]Sections 26-1-5 and 26-18-3 and allowed under Section 1115(a) of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The definitions in Sections 26-40-102 and Rule R414-1 apply to this rule. In addition, [~~T~~]the following definitions apply throughout this rule:

(1) "Adult" means an individual who is [~~at least~~]19 [~~and not yet~~]through 6[~~5~~]4 years of age.

[~~(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.~~

] ([~~3~~]2) "Best estimate" means the [~~Department's~~]eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

[~~(4) "Child" means an individual who is younger than 19 years of age.~~

] ([~~5~~]3) "Children's Health Insurance Program" or "CHIP" means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40[~~provides medical services for children under age 19 who do not otherwise qualify for Medicaid~~].

([~~6~~]4) "Consolidated Omnibus Budget Reconciliation Act" or "COBRA" continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. To receive UPP reimbursement, the COBRA health plan must be an UPP Qualified Health Plan.

([~~7~~]5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

([~~8~~]6) "Department" means the Utah Department of Health.

(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for Utah's Premium Partnership for Health Insurance (UPP) program under contract with the Department.

[~~(9) "Enrollee" means an individual who applies for and is found eligible for the UPP program.~~

] ([~~10~~]9) "Employer-sponsored health plan" means a health insurance plan offered through an employer. To receive UPP reimbursement, the employer must contribute at least 50 % of the cost of the health insurance premium of the employee and offer a UPP Qualified Health Plan.

(10) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

[~~(11) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.~~

] (12) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

[~~(13) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.~~

] (13) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(14) "Open enrollment" means a time period during which the [~~Department~~]eligibility agency accepts applications for the UPP program.

[~~(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.~~

] ([~~16~~]15) "Primary Care Network" or "PCN" [~~program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid~~]means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(16) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(17) "[~~Recertification month~~]Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "UPP Qualified Health Plan" means a health plan[~~, which~~]that meets all of the following requirements:

(a) Health plan coverage includes:

(i) physician visits;

(ii) hospital inpatient services;

(iii) pharmacy services;

(iv) well child visits; and

(v) children's immunizations.

(b) Lifetime maximum benefits must be at least $1,000,000.

(c) The deductible may not exceed $2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(20) "Utah's Premium Partnership for Health Insurance" or "UPP" means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an

employee for health insurance coverage through an employer-sponsored health insurance plan or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(21) "Verification" means the proof needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verification[s] may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) [A]adults with children living in the home;

(b) [A]adults without children living in the home;

(c) [A]adults enrolled in the PCN program;

(d) [C]children enrolled in the CHIP program;

(e) [A]adults or children who were enrolled in the Medicaid program within the last thirty days [prior to]before the beginning of the open enrollment period; or

(f) [O]other groups designated in advance by the [Department]eligibility agency consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the [local office]eligibility agency or outreach staff.

(3) An [A]applicant[s and] or enrollee[s] must provide requested information and verification[s] within the time limits given. The [Department will]eligibility agency shall allow the [client]applicant or enrollee at least [10]ten calendar days from the date of a request to provide information and may grant [additional]more time to provide information and verification[s] upon request of the applicant or enrollee.

(4) The eligibility agency shall notify an [A]applicant[s and]or enrollee[s have a right to be notified] about [the decision made on an application,]an eligibility determination or other action [taken]that affects [their]eligibility[for benefits].

(5) An [A]applicant[s and] or enrollee[s] may [look at]review information that the eligibility agency uses [in their case file that was used]to make an eligibility determination.

(6) [Anyone may look at the c]Eligibility policy manuals [located at]are available for review at any [Department local]eligibility agency office and on the Internet. These manuals are not available for review at call centers and outreach locations.

(7) An individual must repay any benefits that the individual receive[d]s under the UPP program if the [Department]eligibility agency determines that the individual [was]is not eligible to receive [such]the benefits.

(8) An [A]applicant[s and] or enrollee[s] must report certain changes to the [local office]eligibility agency within ten calendar days of [the day]learning of the change[becomes known]. The [local office shall notify]eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. [Some c]Examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage[-];

(b) An enrollee changes health insurance plans[-];

(c) An enrollee has a change in the amount of the premium [they are paying]that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage[-];

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System[-];

(e) An enrollee leaves the household or dies[-];

(f) An enrollee or the household moves out of state[-];

(g) Change of address of an enrollee or the household[-]; or

(h) An enrollee enters a public institution or an institution for mental diseases.

[(i) An enrollee's subsidy for COBRA continuation coverage provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Stat. 123-115 ends.]

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

(11) An [E]eligible child[ren] may choose to enroll in [their]his parent's or guardian's employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or [they]may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's employer or COBRA continuation coverage, or may choose direct coverage through CHIP.

R414-320-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-1, R414-302-2, [R414-302-3,]R414-302-5, and R414-302-6 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to adult applicants and enrollees of UPP.

(2) The provisions of Sections R382-10-6, R382-10-7, and R382-10-9 concerning U.S. citizenship, alien status, state residency and social security numbers apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen or national, [and]or who does not meet the alien status requirements of Sections R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) The eligibility agency may not require an [A]applicant[s and] or enrollee[s] for the UPP program [are not required]to provide Duty of Support information. An adult who [would be]is eligible for Medicaid, but fails to cooperate with Duty of Support requirements required by the Medicaid program, [can]may not enroll in the UPP program.

(5) An [I]individual[s] who must pay a spenddown, poverty level, pregnant woman asset copayment, or MWI premium to receive Medicaid [can]may enroll in UPP if:

(a) [~~they~~]the individual meets [~~the~~]UPP program eligibility criteria;[~~ in any month they do~~]

(b) the individual elects not to receive Medicaid in the month that the individual wishes to enroll in UPP; and

(c) [~~as long as~~] the [~~Department has not stopped~~]eligibility agency continues open enrollment under the provisions of Section R414-320-16. If the [~~Department has~~]agency stop[~~ped~~]s enrollment, the individual must wait for an [~~applicable~~] open enrollment period to enroll in UPP.

R414-320-5. Verification and Information Exchange.

(1) [~~The~~]An applicant and enrollee must provide verification of eligibility factors as requested by the [~~Department~~]eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) The Department and the eligibility agency may release information concerning an applicant[~~s and~~] or enrollee[~~s~~] and their household[~~s~~] to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The [~~Department~~]eligibility agency shall safeguard[~~s~~] information about applicants and enrollees to comply with the provisions of Section R414-301-4.

[~~(4) There are no provisions for taxpayers to see any information from client records.~~

~~(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The Department may only release information to an agency with comparable rules for safeguarding records. The information that the Department releases cannot include information obtained through an income match system.~~

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R414-320-6. Residents of Institutions.

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 20[~~09~~]10 ed., which is incorporated by reference.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed.[~~by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)~~], is not eligible for enrollment.

([~~a~~]3) An applicant who is covered by COBRA continuation coverage may be eligible for UPP enrollment.

([~~3~~]4) The eligibility agency determines [~~E~~]eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage [~~will be determined~~]as follows:

(a) If the individual's cost of the employer-sponsored coverage is less than 5% of the household's countable gross income, the individual is not eligible for the UPP program.

(b) If the cost of the employer-sponsored coverage equals or exceeds 5% of the household's gross income, the individual may enroll in UPP.

([~~b~~]c) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in UPP or may choose direct coverage through PCN if PCN enrollment [~~has not been stopped~~]continues under the provisions of Section R414-310-16.

([e]d) If the cost of the employer-sponsored coverage is greater than or equal to 5% of the household's countable gross income, a child may choose enrollment in UPP or direct coverage through CHIP.

(e) The cost of coverage includes a deductible if the employer plan has one that must be met before it will pay any claims. For a spouse or dependent child, if the employee must be enrolled to enroll the spouse or dependent child, the cost of coverage includes the cost to enroll the employee and the spouse or dependent child.

([~~4~~]5) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

([~~5~~]6) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

([6]7) [~~The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.~~]An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days after the earlier insurance ends.

(a) For an individual to enroll in UPP, the 90-day ineligibility period must expire:

(i) by the end of the open enrollment period during which the individual applies for UPP; or

(ii) by the end of the month which follows the month that the individual applies for UPP if the open enrollment period continues.

(b) If the 90-day ineligibility period does not end by the earlier of those two dates, the eligibility agency shall deny the application.

(c) An effective date of enrollment can only occur after the 90-day ineligibility period.

([~~b~~]8) An applicant, applicant's spouse, or dependent child may be eligible for enrollment in UPP without a 90-day ineligibility period if that person discontinues coverage under a COBRA plan, the Utah Comprehensive Health Insurance Pool, [~~who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90-day waiting period~~]or who involuntarily discontinues coverage under an employer's plan.

([~~a~~]9) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their [~~prior~~]earlier insurance ended more than 90 days before the application date.

([~~7~~]10) An eligible individual with access to an employer's sponsored health plan who also has[~~with~~] creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program to receive reimbursement for their employer-sponsored health plan.

([~~8~~]11) The individual must enroll in an UPP Qualified Health Plan either with an employer-sponsored health plan or a COBRA continuation health plan within 30 days of the date of the approval notice to enroll in UPP.

([9]12) Individuals must report at application and [~~recertification~~]review whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's or parent's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

([~~10~~]13) The [~~Department shall deny~~]eligibility agency shall deny an application or [~~recertification~~]review if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify.

R414-320-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:

(a) The individual;

(b) The individual's spouse living with the individual;

(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) The eligibility agency shall determine household composition for an eligible child in accordance with Subsection R382-10-11(1).

([~~2~~]3) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

(4) Any household member who is defined in Subsection R414-320-8(1) or Subsection R414-320-8(2) who is not a U.S. citizen or national, or who is not a qualified resident alien is included in the household size. The eligibility agency shall count that individual's income the same way that it counts the income of a U.S. citizen, national, or a qualified resident alien.

R414-320-9. Age Requirement.

[~~(1) An individual must be younger than 65 years of age to enroll in the UPP program.~~

] ([~~2~~]1) [~~The individual's 65th birthday month~~]An individual must enroll in the UPP program before the end of the month in which he turns 65 years of age.[~~is the last month the person can be eligible for enrollment in the UPP program.~~]

(a) An individual must apply for UPP before he turns 65 years of age.

(b) The eligibility agency shall deny eligibility if it does not receive an application before an individual turns 65 years of age.

R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency shall use the countable gross income of parents who live with a child to determine the child's eligibility. The agency may not count any income that it excludes under Section R414-320-10.

[~~(4) The Department does not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for the UPP program.~~

] ([~~5~~]4) Any income in a trust that [~~is available to, or is received by~~]a household member[~~,~~] receives becomes the income of the individual for whom it is received. The income is countable [~~income~~]if the eligibility agency uses it to determine eligibility.

([~~6~~]5) Payments that a household member receive[~~d~~]s from the Family Employment [~~P~~]program, Working Toward Employment program, or from refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, are countable income.

([~~7~~]6) Rental income is countable income. The eligibility agency may deduct 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.

([~~8~~]7) The eligibility agency shall count as income [~~C~~]cash contributions [~~made by~~]from non-household members [~~are counted as income~~]unless the parties [~~have a~~]sign[~~ed~~] a written agreement [~~for~~]to repay[~~ment of~~] the funds.

([~~9~~]8) The eligibility agency shall count as income [~~T~~]the interest earned from payments [~~made~~]under a sales contract or a loan agreement [~~is countable income~~]to the extent that the agency continues to receive these payments [~~will continue to be received~~] during the certification period.

([~~10~~]9) The eligibility agency shall count as income [~~N~~]needs-based [~~V~~]veteran's pensions[~~ are counted as income~~]. Nevertheless, [~~O~~]the agency counts only the portion of a Veteran's Administration check to which the individual is legally entitled[~~ is countable income~~]. Any portion of the payment for another family member counts solely as that family member's income.

([~~11~~]10) The eligibility agency shall count solely as the child's income the [~~C~~]child support payments that a parent receive[~~d~~]s for a dependent child [~~living~~]when that child lives in the home[~~ are counted as that child's income~~].

([~~12~~]11) The eligibility agency may only count [~~I~~]in-kind income when a non-household member provides goods or services to an individual in exchange for services that the individual performs.[~~,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 which 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.~~]

([~~13~~]12) The eligibility agency shall count as income [~~S~~]supplemental [~~S~~]security [~~I~~]income and [~~S~~]state [~~S~~]supplemental payments[~~are countable income~~].

([~~14~~]13) The eligibility agency may not count [~~I~~]income that is [~~defined in~~]excluded under 20 CFR 416 Subpart K, Appendix, [~~2004~~]2010 edition, which is incorporated by reference[~~, is not countable~~].

([~~15~~]14) The eligibility agency may not count as income [~~P~~]payments that are prohibited under other federal laws from being counted [~~as income~~]to determine eligibility for federally-funded medical assistance programs[~~are not countable~~].

([~~16~~]15) The eligibility agency may not count as income [~~D~~]death benefits [~~are not countable income~~]to the extent that the funds are spent on the deceased person's burial or last illness.

([~~17~~]16) The eligibility agency may not count as income [~~A~~]a bona fide loan that an individual [~~must repay and that the individual has contracted~~]contracts in good faith [~~without fraud or deceit,~~]and [~~genuinely~~]endorse[~~d~~]s in writing [~~for repayment~~]to repay[~~is not countable income~~].

([~~18~~]17) The eligibility agency may not count as income [~~C~~]child [~~C~~]care [~~A~~]assistance under Title XX[~~is not countable income~~].

([~~19~~]18) The eligibility agency may not count as income [~~R~~]reimbursements of Medicare premiums [~~received by~~]that an individual receives from the Social Security Administration or the Department[~~are not countable income~~].

([~~20~~]19) [~~Earned and unearned income of a child is not countable income if the child is not the head of a household.~~]The eligibility agency may only count earned and unearned income of an eligible child who is under 19 years of age when the child is the head of the household. When the applicant or enrollee's spouse is under the age of 19, the agency may only count the spouse's earned and unearned income when the spouse is under the age of 19 and is the head of the household.

(2[~~1~~]0) The eligibility agency may not count as income [~~E~~]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.

(2[~~2~~]1) The eligibility agency may not count [~~R~~]reimbursements for employee work expenses incurred by an individual[~~are not countable income~~].

(2[~~3~~]2) The eligibility agency may not count [~~T~~]the value of food stamp assistance[~~is not countable income~~].

(2[~~4~~]3) The eligibility agency may not count [~~I~~]income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census[~~is not countable income~~].

(2[~~5~~]4) The eligibility agency may not count [~~T~~]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, which an individual may receive from March 2009 through June 2010[~~is not countable income~~].

(2[~~6~~]5) The eligibility agency may not count [~~T~~]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~~].

(2[~~7~~]6) The eligibility agency may not count a 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~~].

[~~(28) 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.~~]

R414-320-11. Budgeting.

[~~This section describes methods that the Department uses to determine the household's countable monthly or annual income.~~]

(1) Subject to the limitations in Subsection R414-320-10(19), [~~The gross income of~~]the eligibility agency shall count the gross income of [~~all household members~~]the individual and the individual's spouse, or of an eligible child's parents [~~is counted in determining~~]to determine the eligibility of the applicant or enrollee, unless the income is excluded under this rule. The eligibility agency shall deduct from the gross income only those[~~Only~~] expenses 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~~]eligibility agency determines 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~~]eligibility agency multiplies the weekly amount by 4.3 to obtain a monthly amount. The [~~Department~~]eligibility agency multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The [~~Department shall~~]eligibility agency determines an individual's eligibility prospectively for the upcoming certification period at the time of application and at each [~~recertification~~]review for continuing eligibility. The [~~Department~~]eligibility agency determines 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 certification period. The [~~Department~~]eligibility agency prorates income that is received less often than monthly over the certification period to determine an average monthly income. The [~~Department~~]eligibility agency may request [~~prior~~]earlier years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The [~~Department~~]eligibility agency 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~~]the household expects to receive each month of the certification period, or an annual amount that is prorated over the certification period. The

[~~Department~~]eligibility agency may use different methods for different types of income [~~received in the same household~~]that a household receives.

(5) The [~~Department~~]eligibility agency determines farm and self-employment income by using the individual's most 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~~]eligibility agency may request income information from the most recent [~~time~~]period [~~during which~~]that the individual had farm or self-employment income. The [~~Department~~]eligibility agency deducts 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~~]eligibility agency may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The [~~Department~~]eligibility agency deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The [~~Department~~]eligibility agency may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The [~~Department~~]eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-320-12. Assets.

There is no asset test for eligibility in the UPP program.

R414-320-13. Application Procedure.

(1) [~~The application is the initial request from an applicant for UPP enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.~~]The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program. The provisions of Section R414-308-3 apply to applicants of the UPP program.

(3) The [~~Department~~]eligibility agency shall reinstate an UPP case without requiring a new application if the case [~~was closed~~]closes in error.

[~~(4) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:~~

~~(a) If the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and~~

~~(b) The individual continues to meet all eligibility requirements.~~

] ([~~5~~]4) An applicant may withdraw an application any time before the [~~Department~~]eligibility agency completes an eligibility decision on the application.

([~~6~~]5) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) [~~Benefits for the new household member will be allowed from the date of request or the date an application is received~~]The effective date of enrollment in UPP for the new household is defined in Section R414-320-15. Coverage continues through the end of the [~~current~~]certification period.

(b) The eligibility agency may not require [~~A~~]a new income test [~~is not required~~]to add the new household member for the months remaining in the [~~current~~]certification period.

(c) A household may add a [~~A new household~~]new member [~~may be added~~]only [~~if the Department has not stopped enrollment~~]during an open enrollment period under Section R414-320-[~~15~~]16.

(d) The eligibility agency shall consider [~~I~~]income of the new member[~~will be considered~~] at the next scheduled [~~recertification~~]review.

([~~7~~]6) A child who loses Medicaid coverage [~~because he or she~~]when the child [~~has~~]reache[~~d~~]s the maximum age limit [~~and does not qualify for any other Medicaid program without paying a spenddown,~~]may enroll in UPP without waiting for the next open enrollment period.

([~~8~~]7) A child who loses Medicaid coverage because [~~he or she~~]the child is no longer deprived of parental support and either does not qualify for any other Medicaid program, or only qualifies for a Medicaid program that requires [~~without~~]paying a spenddown, may enroll in UPP without waiting for the next open enrollment period, unless the child qualifies for a different Medicaid program without cost.

([~~9~~]8) A [~~new~~]child who is born to or [~~adopted by~~]placed for adoption with an enrollee may [~~be~~]enroll[~~ed~~] in UPP without waiting for the next open enrollment period if the child does not qualify for a Medicaid program without cost.

R414-320-14. Eligibility Decisions and [~~Recertification~~]Eligibility Reviews.

(1) The Department adopts 42 CFR 435.911 and 435.912, 20[~~09~~]10 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the [~~local office shall~~]eligibility agency shall determine [~~if~~]whether the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown, a poverty level, pregnant woman asset copayment, or an MWI premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. [~~Failure to provide the requested information shall result in the application being denied~~]The eligibility agency shall deny the application if the individual does not provide the requested information.

(a) If the individual must pay a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium to qualify for Medicaid, the individual may choose to enroll in the UPP program [~~if it is~~]only during an open enrollment period and when the individual meets all the [~~applicable criteria for~~]eligibility criteria.[~~If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.~~]

(b) At [~~recertification, the local office shall first review eligibility~~]each review for UPP reenrollment, the eligibility agency shall decide whether the enrollee is eligible for Medicaid. If the individual qualifies for Medicaid without a spenddown, a poverty level, pregnant woman asset copayment or an MWI premium, the individual cannot [~~be~~]reenroll[~~ed~~] in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. [~~Failure to provide the requested information shall result in the application being denied~~]The eligibility agency shall deny the application if the individual does not provide the requested information.

(3) To enroll, the individual must meet enrollment [~~eligibility~~]criteria [~~at a time when the Department has not already stopped enrollment~~]during an open enrollment period under the provisions of Section R414-320-16.

(4) The [~~local office shall~~]eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) [~~T~~]the applicant voluntarily withdraws the application and the [~~local office~~]eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) [~~T~~]the applicant die[~~d~~]s; [~~or~~]

(c) [~~T~~]the applicant cannot be located; or

(d) [~~T~~]the applicant [~~has~~]does not respond[~~ed~~] to requests for information within the 30-day application period or by the verification due date[~~ the eligibility worker asked the information or verifications to be returned~~], if that date is later.

[~~(5) The enrollee must recertify eligibility at least every 12 months.~~

](5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency uses available, reliable sources to gather necessary information to complete the review.

(6) The eligibility agency may ask the enrollee to respond to a request to complete the review process. The eligibility agency shall end the enrollee's eligibility after the review month if the enrollee fails to respond to the request. The eligibility agency shall treat any response as a new application if the enrollee responds to the request or reapplies after the review month. The application processing period applies for this new request for coverage.

(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee. The agency shall send a denial notice to the enrollee if the enrollee fails to return verification within the application processing period or if the agency determines that the enrollee is ineligible.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) The enrollee must reapply if the case closes for one or more calendar months.

(e) The new certification period begins the day after the closure date if the enrollee becomes eligible.

(7) The eligibility agency may request verification from the enrollee if the enrollee responds to the request during the review month.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The enrollee has at least ten calendar days from the notice date to provide the requested verification to the eligibility agency.

(8) The eligibility agency shall determine eligibility and notify the enrollee of its decision if the enrollee responds to the request and provides all verification by the verification due date.

(a) The eligibility agency shall send proper notice of an adverse decision when the decision affects eligibility for the due process month.

(b) The eligibility agency shall extend eligibility to the due process month when the agency sends proper notice of an adverse change. The eligibility agency shall send proper notice of the adverse decision that becomes effective after the due process month.

(9) The eligibility agency shall extend eligibility to the due process month if the enrollee responds to the request during the review month and the verification due date is during the due process month. The enrollee must provide all verification by the verification due date. If the enrollee responds to the request during the review month and the

(a) The eligibility agency shall determine eligibility and send proper notice of its decision when the enrollee provides all requested verification by the verification due date.

(b) The eligibility agency shall end eligibility after the month in which it sends proper notice of the closure date if the enrollee does not provide all requested verification by the verification due date.

(c) The eligibility agency shall treat the date that it receives all verification as a new application date if the enrollee returns all verification after the verification due date and before the effective closure date. The agency shall determine the enrollee's eligibility and send proper notice to the enrollee.

(d) The eligibility agency shall waive the open enrollment period during the due process month.

(e) The eligibility agency may not continue eligibility while it makes an eligibility determination. If the agency determines that an enrollee is eligible, the new certification date for the application is the day after the effective closure date.

(10) The eligibility agency shall provide ten-day notice of a case closure if the agency determines that the enrollee is ineligible or if the enrollee fails to provide verification by the verification due date.

[~~(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.~~

~~(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.~~

~~(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.~~

~~(b) If the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month, the Department will close the case at the end of the recertification month.~~

~~(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.~~

~~(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.~~

]

R414-320-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

[~~(1) The effective date of enrollment is the day that a completed and signed application is received at a local office as defined in Subsection R414-308-3(2)(a) and (b), and the applicant meets all eligibility criteria and enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.~~

](1) Subject to Sections R414-320-7, R414-320-9 and R414-320-16 and the limitations in Section R414-306-6, the effective date of enrollment in the UPP program is the first day of the application month. An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA continuation coverage within 30 days of receiving an approval notice from the eligibility agency. Eligibility for UPP is a qualifying event and employers must allow the individual to enroll in the health insurance plan upon approval.

(2) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium that the enrollee verifies to the eligibility agency. individual pays a premium for coverage for the spouse or dependent child.

[~~(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance or COBRA continuation coverage and is determined as follows:~~

~~(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month.~~

~~(b) If the applicant will not pay a premium for the employer-sponsored health insurance or COBRA continuation coverage in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium. The applicant must enroll in the employer-sponsored health insurance or COBRA continuation coverage no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.~~

]([~~e~~]3) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage within 30 days [~~from the day on which the Department of Workforce Services sends the applicant~~]of the date that the eligibility agency sends the UPP approval [~~written~~]notice, [~~that he meets the qualifications for UPP,~~]DWS shall deny the application. [~~shall be denied and the~~] The individual [~~will have to~~]may reapply during another open enrollment period.

([~~3~~]4) The effective date of enrollment for a newborn or newly adopted child is the date of birth or the date that the child is placed for adoption if the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage [~~if~~]and the family requests [~~the~~]UPP coverage within 30 days of the birth or placement for adoption. If the family makes the request [~~is more than~~]after 30 days [~~after~~]of the birth or placement for adoption, enrollment [~~is~~]becomes effective on the first day of the month in which the date of report occurs.

(5) An enrollee may request to add a spouse to UPP coverage during the certification period.

(a) If the spouse had previous UPP coverage, but became eligible for Medicaid or PCN, the enrollee may add the spouse to UPP whose eligibility becomes effective the month after coverage for Medicaid or PCN ends if there is no break in coverage.

(b) If the spouse did not have previous UPP coverage, but is moving directly from PCN to UPP coverage, the effective date of enrollment is the first day of the month after PCN ends.

(c) If the spouse is not moving directly from PCN to UPP coverage, the spouse may enroll in UPP during an open enrollment period. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(6) An enrollee may request to add a dependent child to UPP coverage during the certification period.

(a) If the child had previous UPP coverage, but became eligible for Medicaid or CHIP, the effective date of enrollment is first day of the month after Medicaid or CHIP ends if there is no break in coverage.

(b) If the child did not have previous UPP or CHIP coverage, the enrollee may add the child to UPP during an open enrollment period unless the child is a newborn or is a child who has been placed for adoption with the enrollee. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

([~~4~~]7) The effective date of re[~~-~~]enrollment [~~for a recertification~~]in UPP after the eligibility agency completes the periodic eligibility review, is the first day [~~of the month~~]after the [~~recertification~~]due process month[~~, if the recertification is completed~~]. The eligibility agency shall complete the review as described in Subsection R414-320-[~~13~~]14(7) or (8),[~~-~~] and the enrollee must continue to meet eligibility criteria.

[~~(5) If the enrollee does not complete the recertification as described in Section R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.~~

](~~6~~]8) An individual [~~found~~]who becomes eligible [~~shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months~~]for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility. If the enrollee completes the [~~redetermination~~]review process [~~in accordance with Section R414-320-13~~]and continues to be eligible, the recertification period [~~will be~~]continues for an additional 12 months, except that the eligibility agency may not count a due process month associated with a review in the new 12-month recertification period.[~~- beginning the month following the recertification month.~~]

(9) The eligibility agency shall end eligibility[~~Eligibility could end~~] before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns 65 years of age[~~-65~~];

(b) The individual becomes entitled to receive Medicare; [~~, or~~]

(c) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;

([e]d) The individual dies;

([~~d~~]e) The individual moves out of state or cannot be located; or

([e]f) The individual enters a public institution or an Institut[e]ion for Mental Disease.

([~~7~~]10) The eligibility agency shall end eligibility [~~I~~]if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage[~~, eligibility ends~~]. The enrollee may switch to the PCN program for the rest of the certification period[~~I~~]if the enrollee discontinues enrollment in employer-sponsored insurance[~~- is discontinued~~] involuntarily[,] and[~~the individual~~] does not enroll in COBRA continuation coverage, or if the individual discontinues COBRA coverage voluntarily or involuntarily.

(a) The[~~- and the individual~~] enrollee must notif[~~ies~~]y the [~~local office~~]eligibility agency within ten calendar days [~~of when the insurance~~]after the enrollee's insurance coverage ends[~~, the individual may switch to the PCN program for the remainder of the certification period~~].

(b) The eligibility agency shall complete a new eligibility determination and the individual must pay a PCN enrollment fee for the new 12-month certification period if the change occurs in the last month of the UPP certification period.

(11) When the enrollee reports other changes, the eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility. The eligibility agency shall send proper notice of changes in eligibility. The agency may end eligibility if the enrollee fails to report changes within ten calendar days. Other changes that may affect eligibility or benefits occur when:

(a) an enrollee changes health insurance plans or has a COBRA qualifying event; or

(b) the amount of the premium changes that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage.

(12) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

([~~8~~]13) A child enrollee may discontinue employer-sponsored health insurance or COBRA continuation coverage and move to direct coverage under CHIP at any time during the certification period without any waiting period.

([9]14) An individual who is enrolled in PCN or CHIP and who enrolls in an employer-sponsored health plan or COBRA continuation coverage may switch to the UPP program. The [~~if the~~]individual must report[~~s~~] to the [~~local office~~]eligibility agency within ten calendar days of [~~enrolling in~~]signing up for an employer-sponsored plan or COBRA continuation coverage, [~~and before coverage begins~~]or within ten days after coverage begins, whichever is later.

(a) The eligibility agency shall add the individual for the rest of the certification period if the household has an open UPP case.

(b) The eligibility agency shall approve a new 12-month certification period if the household does not have an open UPP case.

([~~10~~]15) If an UPP case closes for any reason, other than to become covered by another Medicaid program, PCN or CHIP, and remains closed for one or more calendar months, the individual must submit a new application to the [~~local office~~]eligibility agency during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

([~~11~~]16) If an UPP case closes because the enrollee is eligible for another Medicaid program, PCN or [~~for -~~]CHIP, the individual may reenroll in UPP if there is no break in coverage between the programs, even [~~if the~~]when [~~State has stopped~~]the eligibility agency stops enrollment under Subsection R414-320-[~~15~~]16(2).

(a) [~~If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. -~~]The individual may reenroll during the12-month certification period. The eligibility agency may not require the individual [~~is not required -~~]to complete a new application or have a new income eligibility determination.

(b) [~~If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll.~~] The individual may still reenroll during the12-month certification period. [~~However, the individual must complete a new application and~~]The individual must meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

(17) The eligibility agency shall end eligibility after the month in which the agency sends proper notice if the agency requests verification of a reported change and the enrollee fails to return the verification. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period, and if the enrollee is eligible, continue eligibility for the rest of the certification period. The eligibility agency shall send a denial notice to the enrollee if the enrollee is ineligible.

(18) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.

(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.

(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without a spenddown, MWI premium or a poverty level, pregnant woman asset copayment, the enrollee may choose to remain on UPP.

R414-320-16. Open Enrollment Period.

(1) The [~~Department~~]eligibility agency accepts applications for enrollment at times when sufficient funding is

available to justify enroll[~~ing~~]ment of more individuals. The [~~Department~~]eligibility agency limits the number it enrolls according to the funds available for the program.

(2) The [~~Department~~]eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) The [~~Department and local offices shall~~]eligibility agency may not accept applications [~~n~~]or maintain waiting lists during a [~~time~~]period that it stops enrollment of new individuals[~~ is stopped~~].

R414-320-17. Notice and Termination.

(1) The [~~Department shall notify~~]eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The [~~Department shall~~]eligibility agency shall [~~terminate~~]end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The [~~Department shall~~]eligibility agency shall [~~terminate~~]end an individual's enrollment if the individual fails to complete the [~~recertification~~]periodic review process on time.

(4) The [~~Department shall notify~~]eligibility agency shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. The notice must include[~~ Notices shall provide the following information~~]:

(a) [~~T~~]the action to be taken;

(b) [~~T~~]the reason for the action;

(c) [~~T~~]the regulations or policy that support [~~the~~]an adverse action;

(d) [~~T~~]the applicant's or enrollee's right to a hearing;

(e) [~~H~~]how an applicant or enrollee may request a hearing; and

(f) [~~T~~]the applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The [~~Department~~]eligibility agency need not give ten-day notice of termination if:

(a) [~~T~~]the enrollee is deceased;

(b) [~~T~~]the enrollee [~~has moved~~]moves out[~~-~~]-of[~~-~~]-state and is not expected to return; or

(c) [~~T~~]the enrollee [~~has entered~~]enters a public institution or institution for mental disease[~~;~~].

[~~(d) The enrollee has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.~~

]

R414-320-18. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is not eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

([~~1~~]2) An individual who receives benefits under the UPP program for which [~~he~~]the individual is not eligible [~~is responsible to~~]must repay the Department for the cost of the benefits [~~received~~]that he receives.

([~~2~~]3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a[~~ time~~] period that the enrollee [~~was~~]is not [~~actually~~]eligible to receive [~~such~~]the benefits.

R414-320-19. Benefits.

(1) The UPP program shall provide[~~s~~] cash reimbursement to enrollees[~~ as described in this section~~].

(2) The reimbursement [~~shall~~]may not exceed the amount that the [~~individual~~]enrollee pays toward the cost of the employer-sponsored health plan or COBRA continuation coverage.

(3) [~~The amount of reimbursement~~]The UPP program may reimburse [~~for~~]an adult[~~ will be~~] up to $150 [~~per~~]each month[~~ per individual~~].

(4) [~~The amount of reimbursement~~]The UPP program may reimburse[~~ for children will be~~] a child up to $120 [~~per~~]each month [~~per child~~]for medical coverage and an additional $20 if the[~~y~~] child [~~choose~~]elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, [~~the children~~]a child may receive cash reimbursement up to $120 for the medical insurance cost and [~~enroll in direct dental coverage under the CHIP Program~~]may receive dental-only benefits through CHIP.

(b) When the employer-sponsored insurance includes dental coverage, the applicant [~~will be given the choice of enrolling~~]may choose to enroll [~~the children~~]a child in the employer-sponsored dental coverage and [~~receiving~~]receive an additional reimbursement of up to $20.[~~, or enrolling~~] The enrollee may also elect to receive dental-only benefits through CHIP[~~ in direct dental coverage through the CHIP Program~~].

KEY: CHIP, Medicaid, PCN, UPP
Date of Enactment or Last Substantive Amendment: [~~July 29, 2010~~]2011
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Family Health and Preparedness, Licensing
R432-600
Abortion Clinic Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35322
FILED: 10/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to implement H.B. 171 (2011 General Session) found at Chapter 161, Laws of Utah 2011, which was effective 07/01/2011; however, this rule, inspections, and license fees do not take effect until 04/01/2012.

SUMMARY OF THE RULE OR CHANGE: Section R432-600-2 defines abortion clinic to include a facility other than a hospital, including a physician's office, where an abortion is performed. Section R432-600-4 requires both Type I and Type II facilities to be licensed and be subject to health, safety, sanitary and recordkeeping requirements. Other minor revisions to the rule are made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: H.B. 171 mandates fees to regulated clinics to offset regulatory activities. No impact on state budget from this rule is expected.
♦ LOCAL GOVERNMENTS: Local government does not provide this service or pay for this service.
♦ SMALL BUSINESSES: Small businesses will be impacted by the mandated fees required by the statute. This rule does not impose any costs or fees beyond the statute. The regulatory burden of being inspected and responding to concerns or problems is a real cost that will need to be assessed by each business. The Department will strive to minimize the impact while protecting the health and safety of the public.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Businesses will be impacted by the mandated fees required by the statute. This rule does not impose any costs or fees beyond the statute. The regulatory burden of being inspected and responding to concerns or problems is a real cost that will need to be assessed by each business. The Department will strive to minimize the impact while protecting the health and safety of the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule implements statutorily required licensing of abortion clinics. There will be significant compliance costs for the clinics.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule follows the statutory mandates of H.B. 171. Based on public input if there are alternatives proposed that will allow for public safety to be fully protected while minimizing the fiscal impact, the Department will carefully evaluate those options, particularly for small business as required by state statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.
R432-600. Abortion Clinic Rule.
R432-600-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-600-2. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) An "abortion clinic" means a facility, including a physician's office but not including a general acute or a specialty hospital that performs abortions.

R432-600-[~~2~~]3. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

[~~R432-600-3. Time for Compliance.~~

~~All facilities governed by these rules shall be in full compliance at the time of licensure.~~

]**R432-600-4. Licensure.**

(1) A license is required to operate an abortion clinic. The licensee and facility shall maintain documentation that they are members in good standing with the National Abortion Federation or the Abortion Care Network which is required for licensure.

(2) An abortion clinic may be licensed as a Type I facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and

(b) does not perform abortions, as defined in section 76-7-301, after the first trimester of pregnancy.

(3) An abortion clinic may be licensed as a Type II facility if the facility:

(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or

(b) performs abortions, as defined in section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

(4) Abortion clinics must comply with requirements of Title 76, Chapter 7, Part 3 Abortion.

R432-600-5. Construction.

(1) [~~See R432-4-1 through R432-4-24 General Construction Requirements~~]Each facility shall conform with the requirements of R432-4-1 through R432-4-22, with the exception of R432-4-8(1)(b).

(2) Each facility shall conform to the functional, space, and equipment [~~specifications of U. S. Department of Health and Human Services, Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1992-93 edition, including Appendix A, specifically, Chapter 9, Outpatient Facilities, sections 9.1 and 9.2. Modifications or deletion of space and functional requirements may be made with Departmental written approval.~~]requirements of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, sections 3.1 and 3.2 with the following exceptions.

(a) Section 3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance is deleted;

(b) Section 3.1-7.1.1.1 NFPA 101 is deleted;

(c) Section3.1-7.2.2.1 Corridor Width is deleted;

(d) Section 3.1-7.2.2.3(1)(b) is deleted;

(e) Section 3.1-8.2.6 Heating Systems and Equipment is deleted;

(f) 3.2-6.2.4 Multipurpose Rooms is deleted; and

(g) Further modifications or deletion of space and functional requirements may be made with Departmental written approval.

(3) Treatment rooms shall be a minimum of 110 square feet exclusive of vestibules or cabinets.

R432-600-6. Organization.

(1) Each clinic shall be operated by a licensee. If the licensee is other than a single individual, there shall be an organized functioning governing body to assure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility.

(3) Responsibilities shall include at least the following:

(a) Comply with all applicable federal, state and local laws, rules and requirements;

(b) Adopt and institute by-laws, protocols, policies and procedures relative to the operation of the clinic;

(c) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility bylaws, policies and procedures, and for the overall management of the facility;

(d) Appoint, in writing, a qualified medical director to be responsible for clinical services;

(e) Establish a quality assurance committee in conjunction with the medical staff;

(f) Secure contracts for services not provided directly by the clinic;

(g) Receive and respond to the semi-annual inspection report by the Department;

[~~(h) Notify the Department in writing the name of a new administrator within five days of a change of administrator.~~

] ([~~i~~]h) Compile statistics on the distribution of the informed consent material as required in Section 76-7-313.

R432-600-7. Clinic Protocols, Policies, and Procedures.

Clear, explicit written protocols, criteria, policies and procedures in accordance with Section 76-7-302, shall be established by the licensee with consultation of the medical director and the administrator in the following areas:

(1) Patient eligibility criteria;

(2) Physician competency criteria;

(3) Informed consent;

(4) Abortion procedure protocols to include;

(a) For Type II Clinics, policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic.

(b) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judg[e]ment of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)

(5) Pre and post counseling;

(6) Clinic operational functions;

(7) Patient care and patient rights policies;

(8) A quality assurance committee;

(9) Ongoing relevant training program for all clinic personnel;

(10) Emergency and disaster plans;

(11) Fire evacuation plans.

R432-600-8. Administrator.

(1) Each facility shall designate, in writing, an administrator who shall have sufficient freedom from other responsibilities to be on the premises of the clinic a sufficient number of hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in his or her absence. This person shall have sufficient power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) The administrator shall be 21 years of age or older.

(4) The administrator shall be experienced in administration and supervision of personnel, and shall be knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) The administrator's responsibilities shall be included in a written job description.

(6) Responsibilities shall include at least the following:

(a) Develop and implement facility policies and procedures;

(b) Maintain an adequate number of qualified and competent staff to meet the needs of clinic patients;

(c) Develop clear and complete job descriptions for each position;

(d) Implement recommendations made by the quality assurance committee;

(e) Notify the Department of Health, Bureau of Health Facility Licensing within 7 days[~~promptly~~] in the event of the death of a patient;

(f) Notify appropriate authorities when a reportable[~~serious~~] communicable disease is diagnosed;

(g) Administrator will ensure that[~~File~~] a fetal death certificate is filed as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery;

(h) Review all incident and accident reports and document what action was taken.

R432-600-9. Medical Director.

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) Be currently licensed to practice medicine in Utah;

(b) Have sufficient training and expertise in abortion procedures to enable [~~him to~~]supervis[e]ion of the scope of service offered by the clinic;

(c) Be a diplomat[e] of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the Department that other training and experience will qualify her or him for admission to an examination by either board; or

(d) Be certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons; or submit evidence to the Department that his training and experience qualifies him or her for admission to an examination by the College or Board;

(e) Be a member in good standing with the National Abortion Federation or the Abortion Care Network.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director shall be responsible for at least the following:

(a) To develop and review facility protocols;

(b) To establish competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) To supervise the performance of the medical staff;

(d) To serve as a member of the clinic's quality assurance committee;

(e) To act as consultant to the director of nursing;

(f) Ensure that a physician's report is filed as required in Section 76-7-313, for each abortion performed.

[~~R432-600-10. Director of Nursing.~~

~~(1) Each clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.~~

~~(2) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.~~

~~(3) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.~~

]**R432-600-10[~~1~~]. Health Surveillance.**

(1) The Facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and clients commensurate with the service offered.

(2) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(3) The health inventory shall obtain at least the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(b) condition which may prevent the employee from performing certain assigned duties satisfactorily;

(4) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702. Communicable Disease Rules;

(5) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for control of Tuberculosis;

(a) The licensee shall ensure that all employees are skin tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(6) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-600-11[~~2~~]. Personnel.

(1) The Administrator shall employ a sufficient number of professional and support staff who are competent to perform their respective duties, services and functions.

(a) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce.

(b) Copies shall be maintained for Department review that all licenses, registration and certificates are current.

(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.

(2) There shall be planned, documented, in-service training program held regularly for all facility personnel.

(3) The training program shall address all clinic protocols and policies.

(4) All clinic personnel shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

R432-600-12[~~3~~]. Contracts.

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility. If the facility contracts for services, there shall be a signed, dated agreement that details all services provided.

(2) The contract shall include:

(a) The effective and expiration dates;

(b) A description of goods or services to be provided;

(c) Copy of the professional license, if applicable.

R432-600-13[~~4~~]. Emergency Transfer Agreements.

(1) The licensee shall maintain either admitting privileges for the medical director or a written transfer agreement with one or more full-service JCAHO-accredited hospitals located within an overall travel time of 15 minutes or less from the clinic.

(2) The transfer agreement shall include provisions for:

(a) Hospital admitting privileges for the clinic medical director or the attending physician;

(b) Transfer of information needed for proper care and treatment of individual transferred;

(c) Security and accountability of the personal effects of the individual transferred.

R432-600-14[~~5~~]. Quality Assurance.

(1) The administrator, in conjunction with the medical staff, shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The minutes shall be available for review by the Department.

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

R432-600-15[~~6~~]. Emergency and Disaster.

(1) Each facility has the responsibility to assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any significant emergency. If not on the premises, the administrator shall[~~should~~] make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of a plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) This plan shall be in writing and shall be distributed or made available to all facility staff to assure prompt and efficient implementation.

(b) The plan shall be reviewed and updated at least annually by the administrator and the licensee.

(4) The names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems shall be posted.

(5) The facility's emergency plan shall address the following:

(a) Evacuation of occupants to a safe place within the facility or to another location;

(b) Delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(d) An inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) Assignment of personnel to specific tasks during an emergency;

(f) Names and telephone numbers of on-call physicians and staff shall be available[~~at each nurses' station~~];

(g) Documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The evacuation plan shall identify evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and shall be posted throughout the facility.

(b) The written fire emergency plan shall include fire-containment procedures and how to use the facility alarm systems and signals.

(c) Fire drills and documentation shall be in accordance with R710-4, State of Utah Fire Protection Board[~~held quarterly--one drill per shift per quarter~~]. The actual evacuation of patients during a drill is optional.

R432-600-16[~~7~~]. Patients' Rights.

(1) The clinic shall provide informed consent material (see Section 76-7-305.5) to any patient or potential patient.

(2) Written policies regarding the rights of patients shall be made available to the patient, public, and the Department upon request.

(3) Each patient admitted to the facility shall have the following rights:

(a) To be fully informed, prior to or at the time of admission and during stay, of these rights and of all facility rules that pertain to the patient;

(b) To be fully informed, prior to or at the time of admission and during stay, of services available in the facility and of any charges for which the patient may be liable;

(c) To refuse to participate in experimental research;

(d) To refuse treatment and to be informed of the medical consequences of such refusal;

(e) To be assured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(f) To be treated with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-600-17[8]. General Patient Care Policies.

(1) Each patient shall be treated as an individual with dignity and respect.

(2) Each clinic shall develop and implement patient care policies to be reviewed annually by the administrator or designee[~~director of nursing~~].

(a) Patient care policies shall be developed and revised through patient-care conferences with all professionals involved in patient care.

(b) Admission and discharge policies shall be included in general patient care policies.

(3) The facility shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

(4) Each patient shall be under the care of a physician who is a member of the clinic staff.

R432-600-18[9]. Nursing Services.

(1) Each facility shall provide nursing services commensurate with the needs of the patients served.

(2) All non-medical patient services shall be under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Each Type II clinic shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(a) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(b) The director of nursing in consultation with the medical director shall plan and direct the delivery of nursing care by nursing staff.

(4[~~3~~]) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

[~~(4) All nursing personnel shall maintain a current Utah nursing license.~~

] (5) The facility shall provide adequate equipment in good working order to meet the needs of patients.

(6[~~a~~]) Disposable and single-use items shall be properly disposed after use.

[~~(b) The type and amount of equipment shall be identified in clinic policy and approved by the medical director.~~

]

[~~R432-600-20. Medication and Treatments.~~

~~Documentation of medications and treatments shall comply with generally accepted professional practice and clinic policy.~~

]**R432-600-19[~~21~~]. Pharmacy Service.**

(1) There shall be written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) There shall be provision for the supply of necessary drugs and biologicals on a prompt and timely basis.

(3) The clinic shall obtain reference material containing monographs on all drugs used in the facility. The drug monographs shall include generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.

(4) All medications, solutions, and prescription items shall be kept in a secure controlled storage area[~~, convenient to the nurses station~~] and separate from non-medicine items.

(5) An accessible emergency drug supply shall be maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) Medications stored at room temperature shall be maintained within 59 degrees - 80 degrees F (15 degrees to 30 degrees C). Refrigerated medications shall be maintained within 36 degrees - 46 degrees F (2 degrees to 8 degrees C).

(7) Medications and other items that require refrigeration shall be stored securely and segregated from food items.

R432-600-20[~~2~~]. Laboratory and Radiology Services.

(1) The facility shall make provisions, as appropriate, for Laboratory and Radiology services.

(2) There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.

(3) Services shall be performed by a qualified licensed provider.

(4) If the facility provides its own laboratory service, these services shall comply with R432-100-22 in the General Hospital Facility Rules.

(5) If the facility provides its own radiology services, these shall comply with R432-100-21.

(6) If laboratory and radiology services are not provided directly, provision shall be made for such services. Reports or results shall be reported promptly to the attending physician and documented in the patient's medical record.

R432-600-21[~~3~~]. Anesthesia Services.

Anesthesia services provided in the clinic shall comply with the General Hospital Rules R432-100-15 and Utah Code 76-3-305.

R432-600-22[~~4~~]. Medical Records.

(1) Medical records shall be complete, accurately documented, and systematically organized to facilitate storage and retrieval. There shall be written policies and procedures to accomplish these purposes.

(2) A permanent individual medical record shall be maintained for each patient.

(3) All entries shall be permanent [~~(typed or handwritten legibly in ink)~~]and capable of being photocopied. Entries must be authenticated including date, name or identified initials, and title of the person making the entry.

(4) Records shall be kept for all patients admitted or accepted for treatment and care. Records shall be kept current and

shall conform to good medical and professional practice based on the service provided to each patient.

(5) All records of discharged patients shall be completed and filed as soon as possible or within 30 days of discharge.

(6) Each patient's medical record shall include the following:

(a) An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;

(b) Reports of physical examinations, laboratory tests and X-rays prescribed and completed, including ultrasound reports;

(c) Signed and dated physician orders for drugs and treatments;

(d) Signed and dated nurse's notes regarding the care of the patient. The notes shall include vital signs, medications, treatments and other pertinent information;

(e) Discharge summary which contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) The pathologist's report of human tissue removed during an abortion;

(g) All information indicated in Section 76-7-313.

(7) Medical records shall be retained for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(8) All patient records shall be retained within the clinic upon change of ownership.

(9) Provision shall be made for filing, safe storage, security, and easy accessibility of medical records.

(10) Medical record information shall be confidential. There shall be written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information which may identify the patient (including photographs) shall require the written consent of the patient.

R432-600-23[5]. Housekeeping Services.

(1) There shall be adequate housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

[~~(2) The housekeeping service shall meet all the requirements of this section.~~

] ([~~3~~]2) Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary.

([4]3) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, orderly manner.

([~~5~~]4) Housekeeping equipment shall be for institutional use and properly maintained.

([~~6~~]5) Cleaning solutions for floors shall be prepared in proper strengths according to the manufacturer's instructions and be checked to insure that the proper germicidal concentrations are maintained.

([~~7~~]6) There shall be sufficient number of noncombustible trash containers. Lids shall be provided where appropriate.

([~~8~~]7) Storage areas containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, shall be stored in a locked area to prevent unauthorized access[~~safeguarded~~]. Toilet rooms shall not be used as storage places.

R432-600-24[6]. Laundry Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for patient care.

(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.

(3) Each facility shall develop and implement policies and procedures relevant to operation of the laundry[~~which shall be reviewed and updated annually~~].

(4) Clean linen shall be stored, handled, and transported in a manner to prevent contamination.

(a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.

(b) Clean linen shall be covered if stored in alcoves and transported through the facility.

(c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.

(d) Linens shall be maintained in good condition[~~repair~~].

(e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.

(5) Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.

(a) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.

(b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.

(6) Laundry chutes shall be maintained in a clean sanitary state.

R432-600-25[~~7~~]. Maintenance Services.

(1) There shall be adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair at all times, in accordance with manufacturer specifications for the safety and well-being of patients, staff, and visitors.

(2) The administrator shall employ or contract with a person qualified by experience and training to be in charge of facility maintenance.

(3) The facility shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.

(4) All buildings, fixtures, equipment and spaces shall be maintained in operable conditions.

(5) A pest control program shall be conducted to ensure the facility is free from vermin and rodents[~~by a licensed pest control contractor or an employee certified in pest control procedures~~].

(6) Equipment used in the clinic shall be approved by Underwriter's Laboratory and meet all applicable Utah

Occupational Safety and Health Act requirements in effect at the time of purchase.

(7) Electrical systems including appliances, cords, equipment, call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electrical Code.

[~~(8) Heating and cooling systems shall be inspected annually to guarantee safe operation. Documentation of these inspection reports shall be maintained for Department review.~~

] ([~~9~~]8) There shall be regular inspections, to clean or replace all filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.

R432-600-26[8]. Emergency Electric Service.

(1) The clinic shall make provision for emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.

(2) The method utilized for emergency electrical power is subject to Departmental review and approval.

(3) There shall be provision for emergency exit lighting according to NFPA 101.

(4) Flashlights shall be available for emergency use by staff.

(5) All emergency electrical power systems shall be maintained in operating condition and tested as follows:

(a) Emergency generators shall be tested in accordance with NFPA 99[~~every 14-days, and run under load for 20 minutes every month~~].

(b) Transfer switches and battery operated equipment shall be functionally tested every 30 days and load tested at least annually, for 90 minutes[~~14-days~~].

(6) A written record of inspection, performance, test period, and repair of the emergency electrical system shall be maintained on the premises for review.

R432-600-27[9]. Storage and Disposal of Solid Wastes.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-600-28[~~30~~]. Oxygen.

If oxygen is utilized:

(1) Provision shall be made for safe handling and storage of oxygen according to the [~~National Fire Protection Association~~]NFPA 101, Life Safety Code and referenced NFPA standards[~~manual~~].

(2) [~~Facility personnel shall not transfer gas from one cylinder to another.~~

~~(3)~~]Piped oxygen systems shall be tested and installed in accordance with NFPA 99[~~56F and 56K~~].

([~~4~~]3) A written report shall be filed with the Utah Department of Health as follows:

(a) Upon completion of initial installation;

(b) Whenever changes are made to a system; and

(c) Whenever the integrity of the system has been breached.

R432-600-29[31]. Lighting.

[~~(1) Sodium and mercury vapor lights may not be used inside the facility, but may be utilized as a source of exterior lighting.~~

] ([~~2~~]1) At least 30 foot-candles of light shall illuminate reading, patient care (bed level) and working areas in patient treatment areas and not less than 20 foot-candles of light shall be provided in the rest of the room.

([~~3~~]2) All accessible storeroom, stairway, ramp, exit and entrance areas shall be illuminated by at least 20 foot-candles of light at floor level.

([~~4~~]3) All corridors shall be illuminated with a minimum of 20 foot-candles of light at floor level.

([~~5~~]4) Other areas shall be provided with the following minimum foot-candles of light at working surfaces:

(a) Operating rooms 50 Foot-candles

(b) Medication preparation areas 50 foot-candles

(c) Charting areas 50 foot-candles

(d) Reading rooms 50 foot-candles

(e) Laundry areas 20 foot-candles

(f) Bath and shower rooms 20 foot-candles

R432-600-30[~~2~~]. Water Supply.

(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.

(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.

(3) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The facility shall [~~endeavor to~~]maintain hot water delivered to patient care areas at temperature between 105 degrees and 120[~~15~~] degrees F.

(4) There shall be grab bars at each toilet, bathtub, and shower used by patients.

(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.

R432-600-31[~~3~~]. Smoking Policy.

The smoking policy shall comply with the "Utah Clean Air Act", Title 26, Chapter 38, and Section 20.7.4[~~31-4.4~~] of the Life Safety Code[~~, 1991~~].

R432-600-32[~~3~~]. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
Date of Enactment or Last Substantive Amendment: [~~April 11,~~]2011
Notice of Continuation: December 13, 2010
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-6; 26-21-16

Human Services, Child and Family Services
R512-205-4
Investigation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35310
FILED: 10/05/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being revised to include certain recommendations received by public comment.

SUMMARY OF THE RULE OR CHANGE: The proposed changes add criteria related to sexual assault, strangulation, and other assault likely to result in substantial or serious bodily injury. This revision also provides that information will be given to a caseworker for domestic violence assessment on cases where an allegation of abuse, neglect, or dependency is being accepted or is in the process of being investigated or if there is an open case, and there is a concern of Domestic Violence Related Child Abuse that does not meet the criteria listed under Subsection R512-205-4(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 76-5-109.1

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Anticipated cost for Child and Family Services is $260,800 in general funds.
♦ LOCAL GOVERNMENTS: No fiscal impact--This rule specifies criteria pertaining to Child and Family Services investigation for a specific allegation of domestic violence-related child abuse pertaining to a specific child. This rule does not require any action by local government and does not impact any formal relationship or interaction between Child and Family Services and local governments.
♦ SMALL BUSINESSES: No fiscal impact--This rule specifies criteria pertaining to Child and Family Services investigation for a specific allegation of domestic violence-related child abuse pertaining to a specific child. This rule does not require any action for small businesses and does not apply to any business relationship or interaction between Child and Family Services and small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No fiscal impact--This rule specifies criteria pertaining to Child and Family Services investigation for a specific allegation of domestic violence-related child abuse pertaining to a specific child. This rule does not require any action that would result in costs or savings for "persons other than small businesses, businesses, or local government entities."

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Affected persons are not required to pay fees or other costs for investigations conducted by Child and Family Services. Affected persons may experience indirect or non-financial costs, such as impact on personal time during the investigation.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
R512-205. Child Protective Services, Investigation of Domestic Violence Related Child Abuse.
R512-205-4. Investigation.

(1) An allegation of Domestic Violence Related Child Abuse, that meets all other requirements for acceptance, shall be accepted by Child and Family Services for investigation if it is alleged that a child was physically present or saw or heard an incident of domestic violence and:

(a) The alleged perpetrator used or threatened to use a dangerous weapon; or

(b) The alleged perpetrator threatened to cause substantial or serious bodily injury; or

(c) The alleged perpetrator committed a sexual assault, strangulation, or other assault likely to result in substantial or serious bodily injury; or

(d[e]) The alleged victim sustained substantial or serious bodily injury; or

(e[~~d~~]) There is a pattern of two or more CPS investigations of Domestic Violence Related Child Abuse within the previous two years; or

(f[e]) Another allegation of abuse, neglect, or dependency is being accepted or is in the process of being investigated.

(2) If during an open, non-CPS case, a referral is received for Domestic Violence Related Child Abuse which does not meet the criteria for acceptance under subparagraph (1) above, the information will be sent to the ongoing caseworker for assessment.

KEY: child abuse, domestic violence
Date of Enactment or Last Substantive Amendment: [~~July 28,~~] 2011
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 76-5-109.1

Insurance, Administration
R590-225
Submission of Property and Casualty Rate and Form Filings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35331
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule are being made to come into compliance with GRAMA.

SUMMARY OF THE RULE OR CHANGE: A new Section R590-225-11 has been added to the rule and the following sections renumbered. The new section adds GRAMA requirements that allow insurance companies who file documents with the department to designate them as protected from public access. This can be done as the company files their documents electronically. Documents can only be considered protected if they are a trade secret or commercial information, as defined in the law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-19a-203 and Section 31A-2-201.1 and Subsection 31A-2-201(2) and Subsection 31A-2-201(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Currently and in the past the department has determined which property and casualty company filed documents are to be protected, as per the code. That responsibility is being turned over to the insurance company. They will mark the files to be protected when they file them electronically with the department. No programming changes will needed or additional work required of the department in order to make this change.
♦ LOCAL GOVERNMENTS: These rule changes will have no effect on local government since they deal solely with rate and form filing procedures of the department's property and casualty insurance company licensees.
♦ SMALL BUSINESSES: No small businesses will be affected by this rule. The rule only affects insurance companies, which are large businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule affects all licensed property and casualty insurance companies. It will have no fiscal impact on them since it simply allows them to determine which of the filed documents they send to the department are to be protected. It will have no fiscal impact on individual insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule affects all licensed property and casualty insurance companies. It will have no fiscal impact on them since it simply allows them to determine which of the filed documents they send to the department are to be protected. It will have no fiscal impact on individual insureds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule merely make the insurance company responsible for marking their own documents as protected when they file them with the department instead of having the department do it for them. This will have no fiscal impact on insurers.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 11/15/2011 09:00 AM, State Office Bldg, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-225. Submission of Property and Casualty Rate and Form Filings.
R590-225-11. Classification of Documents.

(1) The Department will not classify as protected, certain information in property and casualty rate filings unless these procedures are complied with.

(2) Utah Code Ann. Section 31A-19a-204 requires rates, and supplementary rate information to be open for public inspection. Supporting information in a rate filing is not designated under Utah Code Ann. Section 31A-19a-204 as public information, however, under the Government Records Access and Management Act (GRAMA)supporting information in a rate filing would be considered open for public inspection unless it is classified as private, controlled, or protected. Under GRAMA the Department may classify certain information in a record as private, controlled, or protected. It is clear that the only category applicable to rate, rule and form filings other than as a public record is as a protected record. If a record is classified as protected, the Department may not disclose the information in the record to third persons specifically and to the public generally.

(3) The only information the Department may classify as protected, absent clear documentation otherwise, in accordance with Utah Code Ann. Section 63G-2-305 is the following items:

(a) Information deemed to be trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) "Commercial Information and non-individual financial information obtained from a person which:"

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(4) The person submitting the information under either section R590-225-11(3)(a) and or (b) above and claiming that such is or should be protected has provided the governmental entity with the information in Utah Code Ann. Section 63G-2-309(1)(a)(i).

(5) The department will handle supporting information a filer submits as part of a rate filing in the following manner:

(a) The filer will need to request which specific document the filer believes qualifies under GRAMA section 63G-2-305(1) or (2) or both when the filing is submitted; and

(b) the document must include a written statement of reasons supporting the request that the information should be classified as protected.

(c) If the filer does not request the information in the document to be classified as protected, the document will be classified as public.

(d) The Department will not automatically classify any document in a filing as protected.

(e) The Department will not re-open a filing to permit a company to request protected classification of previously filed documents.

(6) Once the filing has been received, the Department will review the documents the filer has requested to be classified as protected to see if it meets the requirements of Utah Code Ann. Section 63G-2-305(1)or(2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected, and the information will not be available to the public or third parties.

(b) If all the information in the document does not meet the requirements for being classified as protected, the Department will notify the filer of the denial, the reasons therefore, and of the filer's right under GRAMA to appeal the denial. The filer will have 30 days to appeal the denial as allowed by Utah Code Ann. 63G-2-401. Despite the denial of classifying the information as protected, the Department, pursuant to GRAMA, will nonetheless treat the information as if it had been classified as protected until:

(i) the filer has notified the Department that the filer withdraws the request for designation as protected; or

(ii) the 30 day time limit for an appeal to the Commissioner has expired; or

(iii) the filer has exhausted all appeals under GRAMA and the documentation has been found to be a public document.

(c) If the filer combines in the same document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

(7) Filings submitted that show a pattern of requesting non-qualifying items as a protected document may be considered a violation of this rule. This would include putting both protected and public information in one document.

R590-225-[~~11~~]12. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;
(b) date of filing; and
(c) Submission method, SERFF, or email; and
(d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-225-[~~12~~]13. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents in Subsections R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-[~~13~~]14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-[~~14~~]15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-[~~15~~]16. Severability.

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

KEY: property casualty insurance filing
Date of Enactment or Last Substantive Amendment: [~~May 26, 2010~~]2011
Notice of Continuation: March 12, 2009
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-201.1; 31A-2-202; 31A-19a-203

Labor Commission, Administration
R600-3-1
Authority and Scope

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35362
FILED: 10/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment implements H.B. 3003, enacted during the 2011 Legislature's 3rd special session. Specifically, for purposes of workers' compensation, the amendment allows unincorporated entities that are construction licensees to rebut the presumption that their workers are employees.

SUMMARY OF THE RULE OR CHANGE: The amendment incorporates references to the Utah Workers' Compensation Act into the rule's existing provisions, which define terms and establish procedures by which an unincorporated entity can rebut the presumption that its workers are employees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Subsection 34-28-2(2) and Subsection 34A-2-103(8)(c) and Subsection 34A-5-102(2) and Subsection 34A-6-103(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendment will not increase or decrease the Labor Commission's enforcement/ administration costs, nor will it impact the State's cost of providing workers' compensation benefits to its employees. Consequently, the amendment will have no impact on the state budget.
♦ LOCAL GOVERNMENTS: Because local governments are not among the class of business entities that are subject to the proposed amendment, the amendment will have no impact on such governments.
♦ SMALL BUSINESSES: The proposed amendment establishes standards and procedures by which an unincorporated entity licensed to perform construction can rebut the presumption that its workers are employees. This will allow some unincorporated entities to qualify for workers' compensation coverage waivers and avoid the expense of workers' compensation insurance. The amount of savings depends upon the particular circumstances of each unincorporated entity.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: As a practical matter, it is unlikely that persons other than small businesses can satisfy statutory requirements for proving that their workers are not employees. Consequently, the Commission does not anticipate that the proposed amendment will result in any appreciable affect on persons other than small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule's definitions and procedures do not impose any compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment deals with the ability of an unincorporated entity/construction licensee to demonstrate that its workers are not "employees" under Utah's workers' compensation system. The amendment's definitions and procedures should render these proceedings simpler and more efficient for all the participants and for the Commission. Consequently, the Commission does not anticipate that the proposed rule will have any negative fiscal impact on businesses.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Hennebold by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R600. Labor Commission, Administration.
R600-3. Definitions Applicable to Construction Licensees.
R600-3-1. Authority and Scope.

A. The Commission enacts this rule pursuant to authority granted by 34-28-2(2), 34A-2-103(8)9c), 34A-5-102(2) and 34A-6-103(2).

B. This rule defines terms and establishes procedures by which an unincorporated entity that is a construction licensee may rebut its status as an employer for purposes of Title 34, Chapter 28, Payment of Wages; Title 34A, Chapter 2, Workers' Compensation Act; Title 34A, Chapter 5, Utah Antidiscrimination Act[;]; and Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

KEY: labor commission, unincorporated entity, construction licensees
Date of Enactment or Last Substantive Amendment: [~~September 21, ~~]2011
Authorizing, and Implemented or Interpreted Law: 34A-1-104

Labor Commission, Industrial Accidents
R612-4-2
Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35363
FILED: 10/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Workers' compensation insurance premiums in Utah include an assessment to fund the Employers' Reinsurance Fund (ERF) and the Uninsured Employers Fund (UEF). Employers that self-insure their workers' compensation liabilities are required to pay an equivalent assessment. The proposed rule establishes these assessment rates for the 2012 calendar year.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment extends the existing premium assessment rates of 3% for the ERF and 0.05% for the UEF through the 2012 calendar year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 59-9-101(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Because the premium assessments rates are left unchanged, the proposed amendment will not affect the state's expense for workers' compensation insurance. The proposed assessment rates will continue to produce sufficient revenue to fund the ERF and UEF.
♦ LOCAL GOVERNMENTS: Because the premium assessments rates are left unchanged, the proposed amendment will not affect local government expense for workers' compensation insurance.
♦ SMALL BUSINESSES: Because the premium assessments rates are left unchanged, the proposed amendment will not affect small business expense for workers' compensation insurance.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the premium assessments rates are left unchanged, the proposed amendment will not affect other persons' expense for workers' compensation insurance, nor will it affect the workers' compensation benefits that may be claimed by such persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By leaving the premium assessment rate unchanged, the proposed amendment avoids any compliance costs on any affected person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Retaining the existing premium assessment rates will maintain the fiscal integrity of Utah's workers' compensation system while contributing to the system's cost stability. This stability has a generally-favorable fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2012

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-4. Premium Rates.
R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3 and 34A-2-202 the workers' compensation premium rates effective January 1, 201[~~1~~]2, as established by the Labor Commission, shall be:

1. 0.05% for the Uninsured Employers' Fund;
2. 3.0% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, rates
Date of Enactment or Last Substantive Amendment: [~~December 31, 2010~~]2011
Notice of Continuation: December 8, 2010
Authorizing, and Implemented or Interpreted Law: 59-9-101(2)

Natural Resources, Parks and Recreation
R651-209
Anchored and Beached Vessels

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 35361
FILED: 10/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed definitions will help to minimize the health, safety, and environmental concerns of vessels being left on the water for extended periods of time.

SUMMARY OF THE RULE OR CHANGE: Utah Lake State Park and the Division of Forestry, Fire and State Lands have identified issues relating to vessels that have been left anchored or beached or abandoned on Utah Lake. During the 2011 General Session, S.B. 136 defined "anchored and beached vessels" and gave the State Parks Board authority to regulate those vessels.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-18-4(e)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to state government. This rule is to help minimize the health, safety, and environmental concerns of vessels being left on the water for extended periods of time by stipulating new requirements for beaching and anchoring vessels.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule is to help minimize the health, safety, and environmental concerns of vessels being left on the water for extended periods of time by stipulating new requirements for beaching and anchoring vessels.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small business. This rule is to help minimize the health, safety, and environmental concerns of vessels being left on the water for extended periods of time by stipulating new requirements for beaching and anchoring vessels.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to any small businesses, businesses, or local government entities. This rule is to help minimize the health, safety and environmental concerns of vessels being left on the water for extended periods of time by stipulating new requirements for beaching and anchoring vessels.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule is to help minimize the health, safety, and environmental concerns of vessels being left on the water for extended periods of time by stipulating new requirements for beaching and anchoring vessels.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-209. Anchored and Beached Vessels.
R651-209-1. Anchored Vessels.

Unless permitted to do so by the local managing agency:

(1) an anchored vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be anchored for more than 72 hours in one location.

(3) a vessel anchored for 72 hours that wishes to continue anchorage on a waterbody must move at least two miles away from the last position of anchorage.

R651-209-2. Beached Vessels.

Unless permitted to do so by the local managing agency:

(1) a beached vessel may not be left unattended for more than 48 hours.

(2) a vessel may not be beached for more than 72 hours in one location.

(3) a vessel beached for 72 hours that wishes to continue to beach on a waterbody must move at least two miles away from the last position of being beached.

KEY: boating, anchored vessels, beached vessels
Date of Enactment or Last Substantive Amendment: December 8, 2011
Authorizing, and Implemented or Interpreted Law: 73-18-4(e)

Natural Resources, Parks and Recreation
R651-637
2011 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35330
FILED: 10/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A hunt for bighorn sheep and mule deer was authorized by the legislature for November of 2011. This authorization, however, was for one year. A change in the initial rule will be needed to authorize the hunt for a second year (2012).

SUMMARY OF THE RULE OR CHANGE: A hunt for bighorn sheep and mule deer was authorized by the legislature for November of 2011. This authorization, however, was for one year. A change in the initial rule will be needed to authorize the hunt for a second year (2012). Also, during the 2011 General Session of the Utah Legislature intent language was passed that allowed the proceeds from the hunts for bison, deer, and bighorn sheep, up to the amount of $250,000, to be used on Antelope Island State Park. The hunts were to be coordinated through a cooperative agreement between the Division of State Parks and the Division of Wildlife Resources. This language directs the Division of State Parks and Recreation to continue efforts that will result in a hunt for both mule deer and bighorn sheep during the fall of 2012, and requires that the sale proceeds from the permits directly benefit Antelope Island habitat enhancement. A recent rule change enacted by the Wildlife Board makes it possible for a non-profit wildlife related conservation organization to auction these permits at the February 2012 Western Hunting and Conservation Expo.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 79-4-304

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by the Division of Wildlife Resources (DWR), they are not affected by this rule.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government budgets. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small business. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to other persons. The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only affected persons are those who draw the permits. Since the permit costs are set by either bid conditions or by DWR, they are not affected by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have a positive impact on wildlife funding and filming business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
PARKS AND RECREATION
ROOM 116
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Fred Hayes, Acting Operations Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-637. [~~2011~~]2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt.
R651-637-1. Authorization of a Hunt.

(1) A hunt for mule deer and bighorn sheep on Antelope Island State Park is authorized for the fall of [~~2011~~]2012. Access on Antelope Island State Park is authorized for the purpose[~~purposed~~] of hunting mule deer and bighorn sheep in the fall of [~~2011~~]2012.

(2) All hunting shall be confined to the designated hunting unit which consists of that portion of approximately 26,000 acres on Antelope Island lying south of the chain link fence, commonly known as the "2000 acre fence" beginning in Farmington Bay and running in a south southwesterly direction and ending at White Rock Bay.

R651-637-2. Applicability of Law and Rules.

Hunting during the [~~2011~~]2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted in accordance with applicable state law, administrative code, hunting guidebooks of the Utah Wildlife Board, and in accordance with this rule.

R651-637-3. Season Dates.

The [~~2011~~]2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt shall be conducted during legal hunting hours as follows:

(1) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the competitive bid process may hunt during legal hours beginning 30 minutes before official sunrise on [~~November 15, 2011~~]November 12 2012 and ending 30 minutes after official sunset on [~~November 24, 2011~~]November 21, 2012.

(2) Hunters obtaining a permit to hunt mule deer or bighorn sheep on Antelope Island through the public draw process may hunt during legal hours beginning 30 minutes before official sunrise on [~~November 19, 2011~~]November 15, 2012 and ending 30 minutes after official sunset on [~~November 24, 2011~~]November 21, 2012.

R651-637-4. Hunting Party Size.

Each hunter licensed to hunt during the [~~2011~~]2012 Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt may be accompanied by up to four (4) non-hunting companions. Guides, photographers, packers and all other individuals accompanying the hunter in camp or in the field are included in this limit.

R651-637-5. Fees.

(1) Day use fees for licensed hunters and their companions will be waived for the duration of their hunt.

(2) Camping fees for hunters and their companions who desire to camp on Antelope Island during the hunt will be charged per the current fee schedule. All campers shall camp in designated areas as directed by park management.

R651-637-6. Access.

(1) Motor vehicle access will be limited to publicly accessible roads. No off-road, motorized vehicular travel will be allowed.

(2) Off-highway vehicles as defined in Title 41-22-2 UCA are not allowed on Antelope Island.

(3) During the hunt, foot and horse travel, including cross-country foot and horse travel, will be allowed in all areas of the hunting unit.

(4) Foot and horse travel [~~outside the actual hunting season will be confined to designated roads and trails. This includes preseason scouting trips, unless conducted during regularly scheduled "Open Access Events". ~~]including cross-country foot and horse travel for the purposes of pre-season scouting is authorized for hunters and their guides. Hunters and guides conducting pre-season scouting shall notify Park Management of their presence on the Island, and shall adhere to instructions provided by Park Management. Standard day use and camping fees shall apply to pre-season scouting visits.

R651-637-7. Mandatory Orientation.

A mandatory orientation will be held prior to the hunt at the Antelope Island State Park Visitor Center. All license holders and their guides shall be in attendance at this orientation session.

R651-637-8. Mandatory Check-in and Check-out.

All hunters and their companions shall check in with Park Management at the beginning of their hunt and shall check out at the end of their hunt. In addition, any hunter or companion leaving or returning to Antelope Island during the course of the hunt shall check in or check out with Park Management. Instructions on checking in and out will be provided at the mandatory orientation.

R651-637-9. Handling of Harvested Wildlife.

The carcasses of all harvested wildlife shall be covered while being transported on Antelope Island or on the Antelope Island Causeway. This includes all parts of the harvested wildlife, including the head.

KEY: parks, hunting
Date of Enactment or Last Substantive Amendment: [~~October 26, 2010~~]December 8, 2011
Authorizing, and Implemented or Interpreted Law: 79-4-304

Tax Commission, Property Tax
R884-24P-53
2011 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35332
FILED: 10/13/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment annually updates the agricultural productive values to be applied by county assessors to land qualifying for valuation and assessment under the Farmland Assessment Act. The values are recommended to the Commission by the State Farmland Evaluation Advisory Committee, which meets under the authority of Section 59-2-514.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-515 authorizes the State Tax Commission to promulgate rules regarding the Property Tax Act, Part 5, Farmland Assessment Act. Section 59-2-514 authorizes the State Tax Commission to receive valuation recommendations from the State Farmland Advisory Committee for implementation as outlined in Section R884-24P-53.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-515

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amount of savings or cost to state government is undetermined. The state receives tax revenue for assessing and collecting and for the Education Fund based on increased or decreased real and personal property valuation, including property assessed under the Farmland Assessment Act (FAA). Property valuation (taxable value) changes have been recommended by class and by county. This year, 180 class/county valuations will increase, 113 will decrease, and 171 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly qualified for FAA assessment during 2012 and a listing of property no longer qualifying that is removed from FAA during 2011. However, it is estimated that the overall change is minimal due to this amendment.

♦ LOCAL GOVERNMENTS: The amount of savings or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA. Property valuation changes have been recommended by class and by county. This year, 180 class/county valuations will increase, 113 will decrease, and 171 will remain unchanged. No total cost or savings could be calculated without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2012 and a listing of property no longer qualifying that is removed from FAA during 2011. However, it is estimated that the overall change is minimal due to this amendment. County assessor offices statewide will be required to input the new value indicators into their computer systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.
♦ SMALL BUSINESSES: Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 180 such value indicators will increase, 113 will decrease, and 171 will not change. The effect on the property owner will be valuation increase, decrease, or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2012 and a listing of property no longer qualifying which is removed from FAA during 2011. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 180 such value indicators will increase, 113 will decrease, and 171 will not change. The effect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2012 and a listing of property no longer qualifying which is removed from FAA during 2011. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county as 180 such value indicators will increase, 113 will decrease, and 171 will not change. The effect on the property owner will be valuation increase, decrease or no change depending on the mix of property types and situs. No aggregate compliance cost can be determined without an

exhaustive study of farmland acreage in each county by class, a listing of property newly-qualified for FAA during 2012 and a listing of property no longer qualifying that is removed from FAA during 2011. In addition, the compliance cost will further be altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes may effect property values which may result in a change of property tax amounts due.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-53. [~~2011~~]2012 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	[~~840~~]852
2)	Cache	[~~730~~]740
3)	Carbon	[~~545~~]552
4)	Davis	[~~880~~]893
5)	Emery	[~~525~~]530
6)	Iron	[~~840~~]848
7)	Kane	[~~440~~]444
8)	Millard	[~~830~~]840
9)	Salt Lake	[~~730~~]742
10)	Utah	[~~770~~]782
11)	Washington	[~~690~~]695
12)	Weber	[~~835~~]843

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	[~~738~~]748
2)	Cache	[~~623~~]632
3)	Carbon	[~~433~~]440
4)	Davis	[~~773~~]784
5)	Duchesne	[~~508~~]514
6)	Emery	[~~423~~]427
7)	Grand	[~~407~~]410
8)	Iron	[~~738~~]744
9)	Juab	[~~458~~]468
10)	Kane	[~~338~~]341
11)	Millard	[~~728~~]737
12)	Salt Lake	[~~628~~]638
13)	Sanpete	[~~563~~]569
14)	Sevier	[~~588~~]593
15)	Summit	[~~488~~]491
16)	Tooele	[~~472~~]480
17)	Utah	[~~668~~]677
18)	Wasatch	[~~513~~]518
19)	Washington	[~~588~~]592
20)	Weber	[~~733~~]739

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	[~~596~~]602
2)	Box Elder	[~~581~~]589
3)	Cache	[~~471~~]479
4)	Carbon	[~~287~~]291
5)	Davis	[~~622~~]631
6)	Duchesne	[~~357~~]361
7)	Emery	[~~267~~]269
8)	Garfield	[~~222~~]224
9)	Grand	[~~256~~]258
10)	Iron	[~~587~~]591
11)	Juab	[~~307~~]315
12)	Kane	[~~187~~]189
13)	Millard	[~~577~~]583
14)	Morgan	[~~406~~]411
15)	Piute	[~~351~~]354
16)	Rich	[~~187~~]188
17)	Salt Lake	[~~477~~]485
18)	San Juan	[~~182~~]189
19)	Sanpete	[~~412~~]416
20)	Sevier	[~~437~~]442

21)	Summit	[~~332~~]334
22)	Tooele	[~~316~~]322
23)	Uintah	[~~386~~]391
24)	Utah	[~~511~~]519
25)	Wasatch	[~~356~~]359
26)	Washington	[~~432~~]435
27)	Wayne	[~~347~~]350
28)	Weber	[~~582~~]588

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	[~~490~~]495
2)	Box Elder	[~~480~~]486
3)	Cache	[~~365~~]372
4)	Carbon	[~~185~~]187
5)	Daggett	[~~205~~]206
6)	Davis	[~~520~~]527
7)	Duchesne	[~~250~~]253
8)	Emery	[~~165~~]166
9)	Garfield	[~~120~~]121
10)	Grand	[~~155~~]156
11)	Iron	[~~480~~]483
12)	Juab	[~~205~~]209
13)	Kane	[~~85~~]86
14)	Millard	[~~470~~]475
15)	Morgan	[~~300~~]304
16)	Piute	[~~245~~]247
17)	Rich	[~~87~~]88
18)	Salt Lake	[~~370~~]376
19)	San Juan	[~~82~~]86
20)	Sanpete	[~~310~~]313
21)	Sevier	[~~335~~]339
22)	Summit	[~~230~~]232
23)	Tooele	[~~215~~]219
24)	Uintah	[~~285~~]289
25)	Utah	[~~410~~]417
26)	Wasatch	[~~255~~]257
27)	Washington	[~~325~~]327
28)	Wayne	[~~245~~]247
29)	Weber	[~~475~~]479

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	[~~620~~]600
2)	Box Elder	[~~675~~]650
3)	Cache	[~~620~~]600
4)	Carbon	[~~620~~]600
5)	Davis	[~~678~~]655
6)	Duchesne	[~~620~~]600
7)	Emery	[~~620~~]600
8)	Garfield	[~~620~~]600
9)	Grand	[~~620~~]600
10)	Iron	[~~620~~]600
11)	Juab	[~~620~~]600
12)	Kane	[~~620~~]600
13)	Millard	[~~620~~]600
14)	Morgan	[~~620~~]600
15)	Piute	[~~620~~]600
16)	Salt Lake	[~~623~~]600
17)	San Juan	[~~620~~]600
18)	Sanpete	[~~620~~]600
19)	Sevier	[~~620~~]600
20)	Summit	[~~620~~]600
21)	Tooele	[~~620~~]600
22)	Uintah	[~~620~~]600
23)	Utah	[~~685~~]660
24)	Wasatch	[~~620~~]600
25)	Washington	[~~743~~]710
26)	Wayne	[~~620~~]600
27)	Weber	[~~673~~]655

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	[~~245~~]247
2)	Box Elder	[~~260~~]266
3)	Cache	[~~270~~]275
4)	Carbon	[~~130~~]132
5)	Daggett	[~~160~~]161
6)	Davis	[~~270~~]275
7)	Duchesne	[~~165~~]168
8)	Emery	[~~140~~]141
9)	Garfield	[~~105~~]106
10)	Grand	[~~135~~]136
11)	Iron	[~~262~~]265
12)	Juab	[~~150~~]154
13)	Kane	[~~110~~]111
14)	Millard	[~~195~~]198
15)	Morgan	[~~197~~]200
16)	Piute	[~~192~~]194
17)	Rich	[~~107~~]108
18)	Salt Lake	[~~225~~]231
19)	Sanpete	[~~195~~]197
20)	Sevier	[~~200~~]202
21)	Summit	[~~205~~]206
22)	Tooele	[~~187~~]190
23)	Uintah	[~~207~~]210
24)	Utah	[~~250~~]255
25)	Wasatch	[~~210~~]212
26)	Washington	[~~230~~]232
27)	Wayne	[~~175~~]176
28)	Weber	[~~305~~]308

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	[~~55~~]56
2)	Box Elder	[~~97~~]102
3)	Cache	[~~125~~]129
4)	Carbon	[~~52~~]53
5)	Davis	[~~53~~]55
6)	Duchesne	[~~57~~]58
7)	Garfield	52
8)	Grand	[~~52~~]53
9)	Iron	[~~52~~]53
10)	Juab	[~~52~~]54
11)	Kane	[~~52~~]52
12)	Millard	[~~50~~]51
13)	Morgan	[~~68~~]69
14)	Rich	52
15)	Salt Lake	[~~55~~]58
16)	San Juan	[~~55~~]59
17)	Sanpete	[~~57~~]58
18)	Summit	52
19)	Tooele	[~~55~~]56
20)	Uintah	[~~57~~]58
21)	Utah	[~~52~~]54
22)	Wasatch	52

23)	Washington	52
24)	Weber	[~~82~~]83

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	17
2)	Box Elder	[~~61~~]64
3)	Cache	[~~87~~]90
4)	Carbon	16
5)	Davis	[~~16~~]17
6)	Duchesne	21
7)	Garfield	16
8)	Grand	16
9)	Iron	16
10)	Juab	[~~16~~]17
11)	Kane	16
12)	Millard	15
13)	Morgan	31
14)	Rich	16
15)	Salt Lake	[~~16~~]17
16)	San Juan	[~~18~~]19
17)	Sanpete	21
18)	Summit	16
19)	Tooele	16
20)	Uintah	21
21)	Utah	[~~16~~]17
22)	Wasatch	16
23)	Washington	15
24)	Weber	[~~47~~]48

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	[~~73~~]74
2)	Box Elder	[~~74~~]78
3)	Cache	[~~72~~]74
4)	Carbon	[~~52~~]53
5)	Daggett	55
6)	Davis	[~~61~~]63
7)	Duchesne	[~~70~~]71
8)	Emery	[~~73~~]74
9)	Garfield	[~~78~~]79
10)	Grand	[~~79~~]80
11)	Iron	[~~75~~]76
12)	Juab	[~~65~~]67
13)	Kane	[~~76~~]77
14)	Millard	[~~78~~]79
15)	Morgan	[~~68~~]69
16)	Piute	[~~92~~]93
17)	Rich	[~~66~~]67
18)	Salt Lake	[~~67~~]71
19)	San Juan	[~~73~~]79
20)	Sanpete	[~~64~~]65
21)	Sevier	[~~65~~]66
22)	Summit	[~~73~~]74
23)	Tooele	[~~72~~]73
24)	Uintah	[~~82~~]83
25)	Utah	[~~65~~]68
26)	Wasatch	54
27)	Washington	67
28)	Wayne	[~~90~~]91
29)	Weber	[~~70~~]71

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	23
2)	Box Elder	[~~23~~]24
3)	Cache	[~~23~~]24
4)	Carbon	16
5)	Daggett	15
6)	Davis	[~~19~~]20
7)	Duchesne	23
8)	Emery	22
9)	Garfield	24
10)	Grand	23
11)	Iron	23
12)	Juab	[~~19~~]20
13)	Kane	25
14)	Millard	25
15)	Morgan	22
16)	Piute	[~~28~~]27
17)	Rich	21
18)	Salt Lake	[~~21~~]22
19)	San Juan	[~~24~~]26
20)	Sanpete	[~~20~~]19
21)	Sevier	[~~20~~]19
22)	Summit	[~~22~~]21
23)	Tooele	[~~22~~]21
24)	Uintah	29
25)	Utah	[~~23~~]24
26)	Wasatch	18
27)	Washington	22
28)	Wayne	29
29)	Weber	21

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	17
2)	Box Elder	[~~17~~]18
3)	Cache	16
4)	Carbon	13
5)	Daggett	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	15
9)	Garfield	17
10)	Grand	16
11)	Iron	16
12)	Juab	14
13)	Kane	16
14)	Millard	17
15)	Morgan	14
16)	Piute	19
17)	Rich	14
18)	Salt Lake	[~~14~~]15
19)	San Juan	[~~16~~]17
20)	Sanpete	14
21)	Sevier	14
22)	Summit	15
23)	Tooele	14
24)	Uintah	20
25)	Utah	[~~13~~]14
26)	Wasatch	13
27)	Washington	14
28)	Wayne	19
29)	Weber	15

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	[~~7~~]5
8)	Emery	6
9)	Garfield	5
10)	Grand	6
11)	Iron	6
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	6
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	6
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	6

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [~~August 29,~~]2011
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365

Transportation, Administration
R907-66
Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35324
FILED: 10/12/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to set the Utah Department of Transportation (UDOT) small purchase cap for architecture and engineering services to match the recently changed federal simplified acquisition threshold and to indicate the specific parts of the Federal Acquisition Regulations (FAR) found in 48 CFR that are being incorporated. The federal simplified acquisition threshold was increased to account for inflation using the Consumer Price Index. UDOT believes it is generally most efficient to be consistent in federal-aid projects and state-funded projects and to match the federal small purchase cap for both.

SUMMARY OF THE RULE OR CHANGE: The change sets the UDOT small purchase cap for architecture and engineering services to match the recently changed federal simplified acquisition threshold, which is $150,000, and to indicate the specific parts of the Federal Acquisition Regulations (FAR) found in 48 CFR that are being incorporated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-105 and Section 72-1-201

MATERIALS INCORPORATED BY REFERENCES:
- Updates 48 CFR Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42, published by Government Printing Office, October 1, 2010

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: There may be a small cost savings to the state budget due to a small reduction in labor hours of state employees reviewing competitive proposals and administrating consultant selections for architecture and engineering contracts where the contract amount is estimated to be between $100,000 and $150,000.
- LOCAL GOVERNMENTS: There may be a small cost savings to local government due to a small reduction in labor hours of local government employees reviewing competitive

proposals and administrating consultant selections for architecture and engineering contracts where the contract amount is estimated to be between $100,000 and $150,000.
♦ SMALL BUSINESSES: There may be a small cost savings to small businesses due to a small reduction in labor hours in marketing and preparing proposals for architecture and engineering contracts where the contract amount is estimated to be between $100,000 and $150,000.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the change only increases the small purchase cap and clarifies the incorporated material.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons because the change only increases the small purchase cap and clarifies the incorporated material.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be a small cost savings to businesses due to a small reduction in labor hours in marketing and preparing proposals for architecture and engineering contracts where the contract amount is estimated to be between $100,000 and $150,000.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
ADMINISTRATION
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 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: John Njord, Executive Director

R907. Transportation, Administration.
R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.
R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.

(1) 23 U.S.C. 112 requires States to use the relevant parts of the Federal Acquisition Regulations (FAR), contained in 48 CFR [~~Part~~]Chapter 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

(2) Consequently, the Department adopts and incorporates 48 CFR [~~Part~~]Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in Federal-Aid transportation projects.

(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Department[~~s~~] also adopts and incorporates 48 CFR [~~Part~~]Chapter 1 Parts 1, 2, 30, 31, 32, 36 and 42 for use in most state-financed transportation projects.

R907-66-2. Financial Screening.

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

R907-66-3. Contract Negotiations.

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

R907-66-4. Award of Contracts.

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

R907-66-5 Small Purchase Cap.

To be consistent between federal-aid projects and state-financed projects, UDOT adopts the federal small purchase cap or simplified acquisition threshold established in 48 CFR 2.101, which is currently $150.000.

R907-66-[5]6. Execution of Contracts.

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

KEY: transportation, contracts[~~, reimbursement, bonuses~~]
Date of Enactment or Last Substantive Amendment: [~~January 3, 2007~~]2011
Notice of Continuation: November 29, 2006
Authorizing, and Implemented or Interpreted Law: 63G-6-105; 72-1-201

Transportation, Operations, Aeronautics
R914-1
Rules and Regulations of the Utah State Aeronautical Committee

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35326
FILED: 10/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to eliminate reference to the Utah Aeronautical Committee, which no longer exists, to provide some discretion in the licensing process, to correct statutory citations, and make other stylistic and grammatical corrections.

SUMMARY OF THE RULE OR CHANGE: The change eliminates reference to the Utah Aeronautical Committee, which no longer exists, provides some discretion in the licensing process, corrects statutory citations. and makes other stylistic and grammatical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-10-103 and Section 72-10-116

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because the changes only bring the rule up to date with the current structure of the Department and make other stylistic and grammatical changes.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the changes only bring the rule up to date with the current structure of the Department and make other stylistic and grammatical changes.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small business because the changes only bring the rule up to date with the current structure practices of the Department and make other stylistic and grammatical changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses or local government entities because the changes only bring the rule up to date with the current structure and practices of the Department and make other stylistic and grammatical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the changes only bring the rule up to date with the current structure and practices of the Department and make other stylistic and grammatical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the changes only bring the rule up to date with the current structure and practices of the Department and make other stylistic and grammatical changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, AERONAUTICS
135 N 2400 W
SALT LAKE CITY, UT 84116-2982
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 12/01/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: John Njord, Executive Director

R914. Transportation, Operations, Aeronautics.
R914-1. Rules and Regulations[~~ of the Utah State Aeronautical Committee~~].
R914-1-1. Purpose and Authority.

[~~A.~~]The purpose of [~~T~~]this rule is to regulate the use, licensing and supervision of airports, govern the establishment, location and use of air navigational aids, and establish[~~ed~~] minimum standards for operational safety as authorized and required by Section 72-10-103.

R914-1-2. Definitions.

[~~A.~~]As used in this rule:

(1) [~~Committee - the Utah Aeronautical Committee~~]"Department" means the Utah Department of Transporation;

(2) "FAA" [-]means the Federal Aviation Administration; and

(3) Division [-]means the Aeronautical Operations Division.

R914-1-3. Licensing, Inspection and Closure of Airports.

[A.]In accordance with Section 72-10-11[7]6, all public use airports will be licensed annually by the Aeronautical Operations Division.

(1[-]) A license will be granted provided the airport is found to substantially meet all safety requirements.

(2[-]) The Division may refuse or revoke a license and close an airport if safety criteria is not met.

(3[-]) Safety criteria required includes:

(a[-]) [N]no pot holes or rutting in the surface of the runway, taxiway, or parking area[-];

(b[-]) [N]no break-up of paved surfaces or improperly maintained surface[-];

(c[-]) [N]no obstructions in the approach path or near the airport that cause an unsafe condition[-];

(d[-]) [N]no excessive growth of vegetation in the runway or taxiway surface[-];

(e[-]) [N]no inoperative or obscured runway or taxiway lighting system[-];

(f[-]) [N]no unsecured airport area that allows livestock, people, or vehicles uncontrolled access to the runways, taxiways, or airport area[-];

(g[-]) [N]no improper or inadequate runway marking[-]; and

(h[-]) [N]no other items that can be determined to be a hazard to the operation of aircraft.

(4) A license may be issued at the discretion of the Division if an airport does not comply with all safety requirements but is satisfactorily working with the Division to correct any known deficiencies.

R914-1-4. Establishment and Location of Navigational Aids.

[A.]Procedure.

(1[-]) Location site is selected.

(2[-]) Site is surveyed for location and elevation.

(3[-]) Selected site is submitted to the FAA for approval.

(4[-]) Upon receiving FAA approval, navigational aid may be installed.

(5[-]) After installation, navigational aid is checked and certified for operation by the FAA.

R914-1-5. Operational Safety.

[A.]In order to enhance the safety of aircraft operations and protect people and property, the [Committee]Department imposes the following operational safety rules[:].

(1[-]) All pilots operating aircraft in the State of Utah will comply with applicable Federal Aviation Regulations[, Part 61, August 31, 1989; Part 91, April 6, 1989; Part 135, April 6, 1989; and Part 121, July 24, 1989].

(2[-]) Obstruction to flight[:]. Any obstacle or structure which obstructs the airspace above the ground or water level which is determined to be a hazard to the safe flight of aircraft shall be plainly marked, lighted or removed.

(3[-]) Determination of obstruction[:]. When an obstacle or structure is determined to be a hazard to flight, the owner will be notified and will have ten days after receipt of the notice to take action to correct the hazard or appeal the determination to the [Committee]Department.

KEY: air traffic, aviation safety, airports, airspace
Date of Enactment or Last Substantive Amendment: [1990]2011
Notice of Continuation: October 23, 2007
Authorizing, and Implemented or Interpreted Law: 72-10-103; 72-10-11[9]6

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **Proposed Rule** in the *Utah State Bulletin*, it may receive public comment that requires the **Proposed Rule** to be altered before it goes into effect. A **Change in Proposed Rule** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends December 1, 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 February 29, 2012, an agency may notify the Division of Administrative Rules that it wants to make the **Change in Proposed Rule** effective. When an agency submits a **Notice of Effective Date** for a **Change in Proposed Rule**, the **Proposed Rule** as amended by the **Change in Proposed Rule** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **Change in Proposed Rule**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **Change in Proposed Rule** in response to additional comments received. If the Division of Administrative Rules does not receive a **Notice of Effective Date** or another **Change in Proposed Rule** by the end of the 120-day period after publication, the **Change in Proposed Rule** filing, along with its associated **Proposed Rule**, lapses and the agency must start the process over.

Changes in Proposed Rules are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Insurance, Administration
R590-192
Unfair Accident and Health Claims Settlement Practices

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 35103
FILED: 10/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to comply with changes in federal regulations, Technical Release number 2011-02 from the Department of Labor.

SUMMARY OF THE RULE OR CHANGE: The requirement to make urgent care decisions within 24 hours is being reversed to 72 hours. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the August 15, 2011, issue of the Utah State Bulletin, on page 32. 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 31A-1-301 and Section 31A-2-201 and Section 31A-2-204 and Section 31A-2-308 and Section 31A-21-312 and Section 31A-26-303

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This change will have no fiscal impact on the department. It will not affect filings made to the department or its revenues and expenses.
♦ LOCAL GOVERNMENTS: The change to this rule will have no impact on local government since the rule deals solely with the information being provided by a medical provider to the insurance company.
♦ SMALL BUSINESSES: The change to this rule affects decisions made by insurance companies who are large employers.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The change provides insurers with an additional 48 hours to make urgent care claim decisions. This was the requirement prior to 06/30/2011 when the requirement was changed to 24 hours. The department is not aware of any fiscal impact this may have on consumers, insurers, or medical providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change provides insurers with an additional 48 hours to make urgent care claim decisions. This was the requirement prior to 06/30/2011 when the requirement was changed to 24 hours. The department is not aware of any fiscal impact this may have on consumers, insurers, or medical providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule should have no fiscal impact on those involved in urgent care claims issues. It is a procedural change.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 11/15/2011 11:00 AM, State Office Bldg, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-192. Unfair Accident and Health Claims Settlement Practices.

. . . . . .

R590-192-9. Minimum Standards for Claim Benefit Determination and Settlement.

(1) All benefit determination time limits begin once the insurer receives a claim, without regard to whether all necessary information was filed with the original claim. If the insurer requires an extension due to the claimant's failure to submit necessary information, the time for making a decision is tolled from the date the notice is sent to the claimant through:

(a) the date that the claimant provides the necessary information; or

(b) 48 hours after the end of the period afforded the claimant to provide the specified additional information.

(2) Urgent Care Claims:

(a) In a case of urgent care, an insurer shall notify the claimant of the insurer's benefit decision, adverse or not, as soon as

possible, taking into account the medical exigencies of the situation, but no later than[~~:~~

~~(i)~~] 72 hours after the receipt of the claim[~~ for health benefit plans, except for a grandfathered health benefit plan as defined in 45 CFR 147.140, starting with the plan year that begins on or after January 1, 2012; or~~

~~(ii) 72 hours after the receipt of the claim for all other accident and health coverage.~~]

(b)[~~(i) If~~]It is the insurer's duty to determine whether a claim is urgent based on the information provided by the claimant. If the claimant does not provide sufficient information for the plan to make a decision, the plan must notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim, of the specific information that is required. The claimant shall be given reasonable time, but not less than 48 hours, to provide that information.

(ii) The insurer must notify the claimant of the insurer's decision as soon as possible but not later than 48 hours after the earlier of the plan's receipt of the requested information or the end of the time given to the claimant to provide the information.

(3) Concurrent Care Decision:

(a) Reduction or termination of concurrent care:

(i) Any reduction in the course of treatment is considered an adverse benefit determination.

(ii) The insurer must give the claimant notice, with sufficient time to appeal that adverse benefit determination and sufficient time to receive a decision of the appeal before any reduction or termination of care occurs.

(b) Extension of concurrent care:

(i) A claimant may request an extension of treatment beyond what has already been approved.

(ii) If the request for an extension is made at least 24 hours before the end of the approved treatment, the insurer must notify the claimant of the insurer's decision as soon as possible but no later than 24 hours after receipt of the claim.

(iii) If the request for extension does not involve urgent care, the insurer must notify the claimant of the insurer's benefit decision using the response times for a post-service claim.

(4) Pre-Service Benefit Determination:

(a) An insurer must notify the claimant of the insurer's benefit decision within 15 days of receipt of the request for care.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 15 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(d) once the pre-service claim determination has been made and the medical care rendered, the actual claim filed for payment will be processed according to the time requirements of a post-service claim.

(5) Post-Service Claims:

(a) An insurer must notify the claimant of the insurer's benefit decision within 30 days of receipt of the request for claim.

(b) If the insurer is unable to make a decision within that time due to circumstances beyond the insurer's control, such as late receipt of medical records, it must notify the claimant before expiration of the original 30 days that it intends to extend the time and then the insurer may take as long as 15 additional days to reach a decision.

(c) If the extension is due to failure of the claimant to submit necessary information, the extension notice of delay must give specific information about what the claimant has to provide and the claimant must be given at least 45 days to submit the requested information.

(6) A health benefit plan is required to provide continued coverage for an ongoing course of treatment pending the outcome of an internal appeal.

(7) Except for a grandfathered individual health benefit plan as defined in 45 CFR 147.140, an insurer offering an individual health benefit plan shall provide only one level of internal appeal before the final determination is made.

. . . . . .

KEY: insurance law
Date of Enactment or Last Substantive Amendment: 2011
Notice of Continuation: June 25, 2009
Authorizing, and Implemented or Interpreted Law: 31A-1-301; 31A-2-201; 31A-2-204; 31A-2-308; 31A-21-312; 31A-26-303

Insurance, Administration
R590-203
Health Grievance Review Process

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 35104
FILED: 10/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language in Subsection R590-203-4(6)(a)(ii) is being reversed to language that was in the rule prior to 06/30/2011 regarding urgent care claims.

SUMMARY OF THE RULE OR CHANGE: A medical opinion in the case of an urgent care claim needs to be obtained from a physician rather than an attending provider who may not be a physician. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the August 15, 2011, issue of the Utah State Bulletin, on page 35. 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 31A-2-201 and Section 31A-2-203 and Section 31A-22-629 and Section 31A-4-116

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This change will have no impact on the department. It will not affect filings made to the office or revenues coming into the office.
♦ LOCAL GOVERNMENTS: The change to this rule will have no impact on local government since it deals solely with the information being provided by a medical provider to the insurer.
♦ SMALL BUSINESSES: This change will require a physician, rather than attending provider, i.e., anyone other than a physician, to give a medical opinion to the insurer in the case of an urgent care claim. Those offices without a physician, or without an adequate number of physicians, may be required to hire where needed. This will differ from medical provider to medical provider.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This change could limit urgent care claims received by insurance companies, at least until medical providers acquire adequate staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will require a physician, rather than attending provider, i.e., anyone other than a physician, to give a medical opinion to the insurer in the case of an urgent care claim. Those offices without a physician, or without an adequate number of physicians, may be required to hire where needed. This will differ from medical provider to medical provider. This change could limit urgent care claims received by insurance companies, at least until medical providers acquire adequate staff.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact of this change is unknown at this time. The impact will depend on the number of urgent care claims.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 11/15/2011 11:00 AM, State Office Bldg, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-203. Health Grievance Review Process.

. . . . . .

R590-203-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

(1)(a) "Adverse benefit determination" means the:

(i) denial of a benefit;

(ii) reduction of a benefit;

(iii) termination of a benefit; or

(iv) failure to provide or make payment, in whole or in part, for a benefit.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a plan;

(ii) a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of a utilization review; and

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not a medical necessity or appropriate.

(2) "Carrier" means any person or entity that provides health insurance or disability income insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance or disability income insurance plan under Title 31A.

(3) "Consumer Representative" may be an employee of the carrier who is a consumer of a health insurance or a disability income policy, as long as the employee is not:

(a) the individual who made the adverse determination; or

(b) a subordinate to the individual who made the adverse determination.

(4) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) that when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(5)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(6)(a) "Urgent care claim" means a request for a health care service or course of treatment with respect to which the time periods for making non-urgent care request determination:

(i) could seriously jeopardize the life or health of the insured or the ability of the insured to regain maximum function; or

(ii) in the opinion of [~~the insured's attending provider~~]a physician with knowledge of the insured's medical condition, would subject the insured to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

(b)(i) Except as provided in Subsection (6)(a)(ii), in determining whether a request is to be treated as an urgent care request, an individual acting on behalf of the carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

(ii) Any request that a physician with knowledge of the insured's medical condition determines is an urgent care request within the meaning of Subsection (6)(a) shall be treated as an urgent care claim.

. . . . . .

KEY: insurance
Date of Enactment or Last Substantive Amendment: 2011
Notice of Continuation: April 17, 2007
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-203; 31A-4-116; 31A-22-629

Insurance, Administration

R590-261
Health Benefit Plan Adverse Benefit Determinations

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 35105
FILED: 10/14/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to comply with the Patient Protection and Affordable Care Act and to respond to comments made during the previous comment period.

SUMMARY OF THE RULE OR CHANGE: The rule changes clarify the difference between an adverse benefit determination and a final adverse benefit determination; deletes the incorporation by reference section; adds a definition for final adverse benefit determination; clarifies when the Notice of the Right to an Independent Review is to be provided; clarifies what the carrier must do when an adverse benefit determination is overturned; and renumbers sections. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the August 15, 2011, issue of the Utah State Bulletin, on page 38. 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 31A-2-201 and Section 31A-2-212 and Section 31A-22-629

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Changes will not create a fiscal impact on the department or the state's budget. No additional filings will need to be made to the department. Only if insurers fail to pay a claim immediately in the instance of the overturning of an final adverse benefit determination may a fine be levied against an insurer. The fine would then go into the department's budget.
♦ LOCAL GOVERNMENTS: This rule only affects the relationship between the department and their licensees, in this case, health insurance companies.
♦ SMALL BUSINESSES: One change requires health insurance companies to approve and pay a claim within one day if the final adverse benefit determination is overturned. Failure to do so could result in a fine to the insurance company.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Insurers will only need to provide a notification to the insured on a final adverse benefit determination rather than all adverse benefit determinations thus saving some mailing and paper costs as well as time. Failure to pay an overturned final adverse benefit determination claim immediately could result in a fine to the insurance company.

COMPLIANCE COSTS FOR AFFECTED PERSONS: One change requires insurance company to approve and pay a claim within one day if the final adverse benefit determination is overturned. This change will not increase cost but will require payment be done immediately or the insurer will be fined. Insurers will only need to provide a notification to the insured on a final adverse benefit determination rather than all adverse benefit determinations thus saving some mailing and paper costs as well as time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have reduced the fiscal impact on insurers who will only be required to send a notification to those who have had their FINAL adverse benefit determination overturned.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 11/15/2011 11:00 AM, State Office Bldg, 450 N State Stree, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-261. Health Benefit Plan Adverse Benefit Determinations.
R590-261-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-629(4) which requires the commissioner to adopt rules that establish standards for independent reviews, Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and 31A-2-212(5)(b) wherein the commissioner requires compliance with the Patient Protection and Affordable Care Act.

R590-261-2. Purpose.

The purpose of this rule is to provide a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of a[~~n~~] final adverse benefit determination.

R590-261-3. Scope.

(1) Except as provided in Subsection (2), this rule applies to all health benefit plans as defined in 31A-1-301 except for a grandfathered health plan as defined in 45 CFR 147.140.

(2) If all grandfathered health benefit plans are administered consistently, a carrier may, for the grandfathered health benefit plans, voluntarily comply with the independent review process set forth in this rule, otherwise a grandfathered health benefit plan is subject to R590-203.

(3) A self-funded health plan may voluntarily comply with the independent review process set forth in this rule.

R590-261-4. [~~Incorporation by Reference.~~

~~The following appendices are hereby incorporated by reference within this rule and are available at www.insurance.utah.gov/legalresources/currentrules.html:~~

~~(1) Appendix A, Independent Review Organization Application and Checklist, dated 09-2011.~~

~~(2) Appendix B, Independent Review Request Form, dated 09-2011.~~

~~R590-261-5.~~] Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions apply for purposes of this rule:

(1)(a) "Adverse benefit determination" means:

(i) based on the carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit, the:

(A) denial of a benefit;

(B) reduction of a benefit;

(C) termination of a benefit; or

(D) failure to provide or make payment, in whole or part, for a benefit; or

(ii) rescission of coverage.

(b) "Adverse benefit determination" includes:

(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a health benefit plan;

(ii) failure to provide or make payment, in whole or part, for a benefit resulting from the application of a utilization review; and

(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:

(A) experimental;

(B) investigational; or

(C) not medically necessary or appropriate.

(2) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;
(b) a prepaid hospital or medical care plan;
(c) a health maintenance organization;
(d) a multiple employer welfare arrangement; and
(e) any other person or entity providing a health insurance plan under Title 31A.

(3) "Claimant" means an insured or legal representative of the insured, including a member of the insured's immediate family designated by the insured, making a claim under a policy.

(4) "Clinical reviewer" means a physician or other appropriate health care provider who:

(a) is an expert in the treatment of the insured's medical condition that is the subject of the review

(b) is knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition;

(c) holds an appropriate license or certification; and

(d) has no history of disciplinary actions or sanctions.

(5) "Final adverse benefit determination" means an adverse benefit determination that has been upheld by a carrier at the completion of the carrier's internal review process.

(6) "Independent review" means a process that:

(a) is a voluntary option for the resolution of a[~~n~~] final adverse benefit determination;

(b) is conducted at the discretion of the claimant;

(c) is conducted by an independent review organization designated by the commissioner;

(d) renders an independent and impartial decision on a[~~n~~] final adverse benefit determination; and

(e) may not require the claimant to pay a fee for requesting the independent review.

([~~6~~]7)(a) "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect.

(b) "Rescission" does not include a cancellation or discontinuance of coverage under a health benefit plan if the cancellation or discontinuance of coverage:

(i) has only a prospective effect; or

(ii) is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

R590-261-[6]5. Adverse Benefit Determination Procedure Compliance.

An adverse benefit determination procedure shall be compliant with this rule and the requirements for adverse benefit determinations set forth in 29 CFR 2560.503-1 and 45 CFR 147.136.

R590-261-[~~7~~]6. Notice of Right to Independent Review.

(1) With each notice of a rescission of coverage or final[~~an~~] adverse benefit determination, the carrier shall provide written notice of the claimant's right for an independent review of the determination.

(2) The notice in Subsection (1) shall include the following, or substantially equivalent, statement:

"We have rescinded your coverage or denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by a health care professional who has no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. To receive additional information about an independent review, contact the Utah Insurance Commissioner by mail at Suite 3110 State Office Building, Salt Lake City UT 84114; by phone at 801 538-3077; or electronically at healthappeals.uid@utah.gov."

R590-261-[8]7. Exhaustion of Internal Review Process.

The carrier's internal review process shall be exhausted prior to an independent review unless:

(1) the carrier agrees to waive the internal review process;

(2) the carrier has not complied with the requirements for the carrier's internal review process except for those failures to comply that are based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm to the claimant and are not part of a pattern or practice of violations; or

(3) the claimant has requested an expedited independent review pursuant to Section [~~12~~]11 at the same time as requesting an expedited internal review.

R590-261-[9]8. Independent Review Organizations.

(1) The commissioner shall compile and maintain a list of approved independent review organizations.

(2) To be considered for placement on the list of approved independent review organizations, an independent review organization shall:

(a) be accredited by a nationally recognized private accrediting entity;

(b) meet the requirements of this rule; and

(c) have written policies and procedures that ensure:

(i) that all reviews are conducted within the specified time frames;

(ii) the selection of qualified and impartial clinical reviewers;

(iii) the confidentiality of medical and treatment records and clinical review criteria; and

(iv) that any person employed by or under contract with the independent review organization adheres to the requirements of this rule.

(3) An applicant requesting placement on the list of approved independent review organizations shall submit for the commissioner's review:

(a) the Independent Review Organization A[~~a~~]pplication form [~~attached to this rule as Appendix A~~]available on our website at www.insurance.utah.gov;

(b) all documentation and information requested on the application, including proof of being accredited by a nationally recognized private accrediting entity; and

(c) the application fee.

(4) The commissioner shall terminate the approval of an independent review organization if the commissioner determines that the independent review organization has lost its accreditation or no longer satisfies the minimum requirements for approval.

(5)(a) An independent review organization may not own or control, or be owned or controlled by:

(i) a carrier;
(ii) a health benefit plan;
(iii) a health benefit plan's fiduciary;
(iv) an employer or sponsor of a health benefit plan;
(v) a trade association of:
(A) health benefit plans;
(B) carriers; or
(C) health care providers; or
(vi) an employee or agent of any one listed in Subsection (5)(a)(i) through (v).

(b) An independent review organization and the clinical reviewer assigned to conduct an independent review may not have a material professional, familial, or financial conflict of interest with:
(i) the carrier;
(ii) an officer, director, or management employee of the carrier;
(iii) the health benefit plan;
(iv) the plan administrator, plan fiduciaries, or plan employees;
(v) the insured or claimant;
(vi) the insured's health care provider;
(vii) the health care provider's medical group or independent practice association;
(viii) a health care facility where the service would be provided; or
(ix) the developer or manufacturer of the service that would be provided.

R590-261-[~~10~~]9. General Independent Review Requirements.

The requirements of this section shall apply in addition to the requirements for a standard independent review, an expedited independent review and an independent review of experimental or investigational service or treatment.

(1) The carrier shall pay the cost of the independent review organization for conducting the independent review.

(2) An independent review is available to the claimant regardless of the dollar amount of the claim involved.

(3)(a) The claimant shall have 180 calendar days after the receipt of a notice of a[~~n~~] final adverse benefit determination to file a request with the commissioner for an independent review.

(b) The claimant shall use the Independent Review Request Form [~~attached to this rule as Appendix B~~]available on our website at www.insurance.utah.gov, or a substantially similar form, to file the request.

(c) A request for an independent review sent to the carrier instead of the commissioner shall be forwarded to the commissioner by the carrier within one business day of receipt.

(4) The independent review decision is binding on the carrier and claimant except to the extent that other remedies are available under federal or state law.

R590-261-[~~11~~]10. Standard Independent Review.

(1)(a) Upon receipt of a request for an independent review, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, the carrier shall determine whether:
(i) the individual is or was an insured in the health benefit plan at the time of rescission or the health care service was requested or provided;
(ii) if a health care service is the subject of the adverse benefit determination, the health care service is a covered expense;
(iii) the claimant has exhausted the carrier's internal review process; and
(iv) the claimant has provided all the information and forms required to process an independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:
(A) the request is complete; and
(B) the request is eligible for independent review.
(ii) If the request:
(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or
(B) is not eligible for independent review, the carrier shall:
(I) inform the claimant and commissioner in writing the reasons for ineligibility; and
(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(2) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign on a random basis an independent review organization from the list of approved independent review organizations based on the nature of the health care service that is the subject of the review;

(b) notify the carrier of the assignment and that the carrier shall within five business days provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may submit additional information to the independent review organization within five business days of receipt of the commissioner's notification. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(3) Within 45 calendar days after receipt of the request for an independent review, the independent review organization shall provide written notice of its decision to uphold or reverse the adverse benefit determination to:
(a) the claimant;
(b) the carrier; and
(c) the commissioner.

(4) [~~Upon receipt of a notice reversing the adverse benefit determination, the carrier shall within one business day approve the coverage that was the subject of the adverse benefit determination~~]Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-[~~12~~]11. Expedited Independent Review.

(1) An expedited independent review process shall be available if the adverse benefit determination:

(a) involves a medical condition of the insured which would seriously jeopardize the life or health of the insured or would jeopardize the insured's ability to regain maximum function;

(b) in the opinion of the insured's attending provider, would subject the insured to severe pain that cannot be adequately managed without the care or treatment that is the subject of the adverse benefit determination; or

(c) concerns an admission, availability of care, continued stay or health care service for which the insured received emergency services, but has not been discharged from a facility.

(a) Upon receipt of a request for an expedited independent review, the commissioner shall immediately send a copy of the request to the carrier for an eligibility review.

(b) Immediately upon receipt of the request, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service that is the subject of the adverse benefit determination is a covered expense; and

(iii) the claimant has provided all the information and forms required to process an expedited independent review.

(c)(i) The carrier shall immediately notify the commissioner and claimant whether:

(A) the request is complete; and

(B) the request is eligible for an expedited independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for an expedited independent review notwithstanding the carrier's initial determination that the request is ineligible and shall require that the request be referred for an expedited independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the insured's health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall immediately:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within one business day provide to the assigned independent review organization all documents and information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within one business day submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4)(a) The independent review organization shall as soon as possible, but no later than 72 hours after receipt of the request for an expedited independent review, make a decision to uphold or reverse the adverse benefit determination and shall notify:

(i) the carrier;

(ii) the claimant; and

(iii) the commissioner.

(b) If notice of the independent review organization's decision is not in writing, the independent review organization shall provide written confirmation of its decision within 48 hours after the date of the notification of the decision.

(5) [~~Upon receipt of a notice reversing the adverse benefit determination, the carrier shall within one business day, approve the coverage that was the subject of the adverse benefit determination.~~]Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-[~~13~~]12. Independent Review of Experimental or Investigational Service or Treatment Adverse Benefit Determinations.

(1) A request for an independent review based on experimental or investigational service or treatment shall be submitted with certification from the insured's physician that:

(a) standard health care service or treatment has not been effective in improving the insured's condition;

(b) standard health care service or treatment is not medically appropriate for the insured; or

(c) there is no available standard health care service or treatment covered by the carrier that is more beneficial than the recommended or requested health care service or treatment.

(2)(a) Upon receipt of a request for an independent review involving experimental or investigational service or treatment, the commissioner shall send a copy of the request to the carrier for an eligibility review.

(b) Within five business days following receipt of the copy of the request, one business day for an expedited review, the carrier shall determine whether:

(i) the individual is or was an insured in the health benefit plan at the time the health care service was requested or provided;

(ii) the health care service or treatment that is the subject of the adverse benefit determination is a covered expense except for the carrier's determination that the service or treatment is experimental or investigational for a particular medical condition and is not explicitly listed as an excluded benefit under the insured's health benefit plan;

(iii) the claimant has exhausted the carrier's internal review process unless the request is for an expedited review; and

(iv) the claimant has provided all the information and forms required to process the independent review.

(c)(i) Within one business day after completion of the eligibility review, the carrier shall notify the commissioner and claimant in writing whether:

(A) the request is complete; and

(B) the request is eligible for independent review.

(ii) If the request:

(A) is not complete, the carrier shall inform the claimant and commissioner in writing what information or materials are needed to make the request complete; or

(B) is not eligible for independent review, the carrier shall:

(I) inform the claimant and commissioner in writing the reasons for ineligibility; and

(II) shall inform the claimant that the determination may be appealed to the commissioner.

(d)(i) The commissioner may determine that a request is eligible for independent review notwithstanding the carrier's initial determination that the request is ineligible and require that the request be referred for independent review.

(ii) In making the determination in (d)(i), the commissioner's decision shall be made in accordance with the terms of the health benefit plan and shall be subject to all applicable provisions of this rule.

(3) Upon receipt of the carrier's determination that the request is eligible for an independent review, the commissioner shall:

(a) assign an independent review organization from the list of approved independent review organizations;

(b) notify the carrier of the assignment and that the carrier shall within five business days, one business day for an expedited review, provide to the assigned independent review organization the documents and any information considered in making the adverse benefit determination; and

(c) notify the claimant that the request has been accepted and that the claimant may within five business days, one business day for an expedited review, submit additional information to the independent review organization. The independent review organization shall forward to the carrier within one business day of receipt any information submitted by the claimant.

(4) Within one business day after receipt of the request, the independent review organization shall select one or more clinical reviewers to conduct the review.

(5) The clinical reviewer shall provide to the independent review organization a written opinion within 20 calendar days, five calendar days for an expedited review, after being selected.

(6) The independent review organization shall make a decision based on the clinical reviewer's opinion within 20 calendar days, 48 hours for an expedited review, of receiving the opinion and shall notify:

(a) the claimant;

(b) the carrier; and

(c) the commissioner.

(7) [~~Upon receipt of a notice reversing the adverse benefit determination, the carrier shall within one business day approve the coverage that was the subject of the adverse benefit determination.~~]Within one business day of receipt of notice that an adverse benefit determination has been overturned, the carrier shall:

(a) approve the coverage that was the subject of the adverse benefit determination; and

(b) process any benefit that is due.

R590-261-[~~14~~]13. Disclosure Requirements.

(1) Each carrier shall include a description of the independent review procedure in or attached to the policy and certificate, and may include a description with other evidence of coverage provided to the insured.

(2) The description required in Subsection (1) shall include a statement that informs the insured:

(a) of the right to file a request for an independent review of a[~~n~~] final adverse benefit determination and include the contact information for the commissioner; and

(b) that an authorization to obtain medical records shall be required for the purpose of reaching a decision.

R590-261-[~~15~~]14. Records.

(1) An independent review organization shall maintain a written record of each independent review for the current year plus 5 years.

(2) The records of an independent review organization shall be available for review by the commissioner upon request.

R590-261-[~~16~~]15. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-261-[~~17~~]16. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-261-[~~18~~]17. Severability.

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

KEY: health benefit plan insurance
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Statutes: 31A-22-629; 31A-2-201; 31A-2-212

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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

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

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

Administrative Services, Administration
R13-2
Access to Records

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35309
FILED: 10/04/2011

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 63A-12-104 allows the executive director of the department, with the recommendation of the state archivist, to implement provisions of Title 63G, Chapter 2, Government Records Access and Management Act, dealing with procedures for access to records. Subsection 63G-2-204(2)(d) allows the department to make rules governing where and to whom requests for records are to be made.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As required by statute, the rule outlines the procedures for access and denial of access to government records. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
ADMINISTRATION
ROOM 3120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sal Petilos by phone at 801-538-3091, by FAX at 801-538-3844, or by Internet E-mail at spetilos@utah.gov

AUTHORIZED BY: Kimberly Hood, Executive Director

EFFECTIVE: 10/04/2011

Commerce, Occupational and Professional Licensing
R156-15
Health Facility Administrator Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35360
FILED: 10/13/2011

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: Title 58, Chapter 15, provides for the licensure of health facility administrators. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce

rules to administer Title 58. Subsection 58-15-3(3) provides that the Health Facility Administrators Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 15, with respect to health facility administrators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2006, it has been amended twice in June 2010 and May 2011. However, the Division has received no written comments with respect to this rule since it was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 15, with respect to health care facility administrators. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/13/2011

Commerce, Occupational and Professional Licensing
R156-55a
Utah Construction Trades Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35308
FILED: 10/04/2011

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: Title 58, Chapter 55, provides for the licensure of contractors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-103(1)(b)(i) provides that the Construction Services Commission shall, with the concurrence of the Division director, make reasonable rules under Title 63G, Chapter 3. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to contractors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2006, it has been amended several times. A 07/22/2010 email was received from Zach Coverston in which he made comments regarding contractor license work experience when working for a non-profit corporation or as an unpaid intern. The Construction Services Commission and the Division reviewed Mr. Coverston's written comment regarding the proposed amendments to this rule; however the rule was made effective on 08/16/2010 with no additional changes being proposed. The Division received an 10/01/2008 email from Hunter Finch in which he identified incorrect paragraph numbering in a Division proposed rule. The Division corrected the paragraph numbering in a nonsubstantive rule filing which was made effective on 11/17/2008. The Division also received a 06/03/2008 email from Hunter Finch in which he identified two incorrect statute citations. The Division filed a nonsubstantive rule filing to make these corrections and the nonsubstantive rule filing was made effective on 08/25/2008. The Division also received 05/29/2007 and 08/30/2007 letters from the Utah Home Builders Association in which they opposed the proposed four-year work experience requirement for a S220 carpentry contractor license classification. The Utah Home Builders Association supported the existing two-year work experience requirement for this classification. The Division also received an 08/25/2007 written letter from Dan Rice in which he expressed concerns with the proposed amendments to the S202 Solar Photovoltaic contractor license classification and the existing S215 Solar Energy Systems contractor license classification. In its August 2007 meeting, the Construction Services Commission reviewed these written comments. The Commission voted that the S220 carpentry contractor license classification work experience requirement would be kept as originally proposed as four years. Also the Construction Services Commission indicated that the Utah Solar

Association was in support of the S202 license classification changes and the basis of Dan Rice's comments in regards to the S202 classification were addressed by the Commission. The Division also received an 08/28/2007 letter from Jeff Pedersen, Utah Plumbing and Heating Contractors Association in which that association opposed proposed amendments to the S214 contractor license classification. As a result of comments received and further review by both the Construction Services Commission and the Division, a change in proposed rule filing was filed in which the S214 contractor license classification wording was returned to its original wording. This change in proposed rule filing was made effective on 11/26/2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to contractors. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/04/2011

Commerce, Occupational and Professional Licensing
R156-55b
Electricians Licensing Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35306
FILED: 10/04/2011

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: Title 58, Chapter 55, provides for the licensure of various classifications of electricians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-201(2) provides that the Electricians Licensing Board's duties and responsibilities include recommending appropriate rules to the Construction Services Commission. Subsection 58-55-103(1)(b)(i) provides that the Construction Services Commission shall, with the concurrence of the Division director, make reasonable rules under Title 63G, Chapter 3. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to various classifications of electricians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2006, it has been amended several times. The only written comment the Division has received was a 06/16/2009 letter from an industry association, IEC of Utah/Renee McDonough. Ms. McDonough representing the IEC of Utah opposed a proposed amendment with respect to teaching in an electrical apprenticeship program. Ms. McDonough in her written comment provided some suggested changes to the Division's proposed rule. As a result of further review by the Division, Construction Services Commission and Electricians Licensing Board and the written comment which had been submitted, the Division filed a change in proposed rule filing which incorporated the requested changes. The change in proposed rule filing was eventually made effective on 10/22/2009. The Division has received no other written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to the various classifications of electricians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/04/2011

Commerce, Occupational and Professional Licensing
R156-55c
Plumbers Licensing Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35307
FILED: 10/04/2011

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: Title 58, Chapter 55, provides for the licensure of various classifications of plumbers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-201(2) provides that the Plumbers Licensing Board's duties and responsibilities include recommending appropriate rules to the Construction Services Commission. Subsection 58-55-103(1)(b)(i) provides that the Construction Services Commission shall, with the concurrence of the Division director, make reasonable rules under Title 63G, Chapter 3. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to various classifications of plumbers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2006, it has been amended several times. The Division has received no written comments with respect to this rule since November 2006.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to the various classifications of plumbers. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/04/2011

Community and Culture, Administration
R182-1
Government Records Access And Management Act Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35365
FILED: 10/14/2011

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: The Utah Government Records Access and Management Act, Title 63G, Chapter 2, requires state agencies to develop rules to manage access to public records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department has reviewed this rule and determined that the rule must continue to comply with the statute.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Michael Hansen by phone at 801-538-1556, by FAX at 801-538-1547, or by Internet E-mail at mhansen1@utah.gov

AUTHORIZED BY: Michael Hansen, Deputy Director

EFFECTIVE: 10/14/2011

Health, Disease Control and Prevention, Epidemiology

R386-702

Communicable Disease Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35327
FILED: 10/12/2011

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: The Communicable Disease Rule is enacted under Utah Code Section 26-1-30 (Powers and Duties of Department), Title 26, Chapter 6 (Communicable Disease Control Act), and under Section 26-23-23b (Detection of Public Health Emergencies Act). These provisions require the Department of Health to promote and protect the public's health by identifying, investigating, and controlling diseases that would be detrimental to the community, including those that are naturally occurring, and those that may indicate an act of bioterrorism. The Communicable Disease Rule defines the conditions that are reportable; specifies who is required to report diseases and how; and explains other specific details as to how the Department of Health is authorized to deal with these types of conditions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments regarding the Communicable Disease Rule were solicited during the last five-year review; no comments opposing the rule were received at that time. The rule has been updated several times since the last review, and comments are always solicited from partners including local health department staff (e.g. local health officers, nursing directors, epidemiology staff), hospital Infection control practitioners, and community physicians; all comments received during these updates have been positive as to the need for the rule. There has been no indication of opposition from these partners or the public.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Communicable Disease Rule must be continued in order to enable the Department of Health to continue to promote and protect he public's health as described above, and as required by state statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY
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:
♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

AUTHORIZED BY: David Patton, Executive Director

EFFECTIVE: 10/12/2011

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-320

Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35336
FILED: 10/13/2011

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 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 grants the Department the authority to adopt administrative rules that provide services to Medicaid recipients and reimbursement for Medicaid providers. Section 1115 of the Social Security Act also allows the Department to implement demonstration waivers to verify whether they provide solutions on how to provide cost effective and beneficial services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding 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 necessary because it outlines employer-sponsored coverage and eligibility requirements for enrollees of Utah's Premium Partnership for Health Insurance (UPP) program. It is also necessary because it outlines application requirements for enrollees, notice requirements for the Department, and reimbursement policy for employers. Therefore, this rule should be continued.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 10/13/2011

Health, Disease Control And Prevention, Laboratory Services

R438-10

Rules for Establishment of a Procedure to Examine the Blood of all Adult Pedestrians and all Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35329
FILED: 10/12/2011

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: This rule is authorized by Subsections 26-1-30(2)(q) and 26-1-30(2)(r) to: establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol; provide the commissioner of public safety with monthly statistics reflecting the results of the examinations provided for in Subsection 26-1-30(2)(q); and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in Subsection 26-1-30(2)(r).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to continue until it is adequately replaced through statutory updating of highway death authorities.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
LABORATORY SERVICES

4431 S 2700 W
TAYLORSVILLE, UT 84119
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ David Mendenhall by phone at 801-965-2530, by FAX at 801-965-2544, or by Internet E-mail at davidmendenhall@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 10/12/2011

Labor Commission, Antidiscrimination and Labor, Fair Housing

R608-1

Utah Fair Housing Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35314
FILED: 10/05/2011

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 57-21-8(2)(a) grants the Labor Commission authority to establish rules to administer the Utah Fair Housing Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 57, Chapter 21, "Utah Fair Housing Act" and the statutory authority contained in Subsection 57-21-8(2)(a) to adopt rules necessary to implement the Act. The Commission has received no comments opposing this rule or its continuation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ANTIDISCRIMINATION AND LABOR,
FAIR HOUSING
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:
♦ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Labor Commission, Antidiscrimination and Labor, Labor

R610-1

Minimum Wage, Clarify Tip Credit, and Enforcement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35312
FILED: 10/05/2011

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 34-40-105 gives the Utah Labor Commission authority to establish rules to administer the Utah Minimum Wage Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 34, Chapter 40, "Utah Minimum Wage Act," and the statutory authority contained in Section 34-10-105 to adopt rules to implement the Act. The Commission has received no comments opposing this rule or its continuation. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Asay by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Labor Commission, Antidiscrimination and Labor, Labor
R610-2
Employment of Minors

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35311
FILED: 10/05/2011

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 34-23-104 gives the Labor Commission authority to establish rules to administer the Employment of Minors Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 34, Chapter 23, "Employment of Minors" and the statutory authority contained in Subsection 34-23-104(2) to adopt rules to implement the Act. The Commission has received no comments opposing this rule or its continuation. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Asay by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Labor Commission, Antidiscrimination and Labor, Labor
R610-3
Filing, Investigation, and Resolution of Wage Claims

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35313
FILED: 10/05/2011

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: Subsections 34-28-9(1)(b) and 34-28-19(5) give the Labor Commission authority to establish rules regarding filing of wage claims and retaliation for filing such claims.

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 during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 34, Chapter 28, "Payment of Wages," and the statutory authority contained in Subsections 34-28-9(1)(b) and 34-28-19(5) to adopt rules to implement the Payment of Wages Act. The Commission has received no comments opposing this rule or its continuation. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Asay by phone at 801-530-6802, by FAX at 801-530-7601, or by Internet E-mail at basay@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Labor Commission, Boiler and Elevator Safety
R616-2
Boiler and Pressure Vessel Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35315
FILED: 10/05/2011

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: Subsections 34A-7-103(6) and (7) give the Labor Commission authority to establish inspection and safety standards for boilers and pressure vessels to prevent a "menace to the 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 comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 34A, Chapter 7, Part 1, "Boilers and Pressure Vessels," and the statutory directive contained in Subsections 34A-7-103(6) and (7) to adopt standards for inspection and safe operation of boilers and pressure vessels. The Commission has received no comments opposing this rule or its continuation. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at awindham@utah.gov
♦ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Labor Commission, Boiler and Elevator Safety
R616-3
Elevator Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35316
FILED: 10/05/2011

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 34A-7-703(6) directs the Commission to enact rules adopting "nationally recognized standards or other safety codes to be used in inspecting elevators or escalators."

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 during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule remains necessary in light of the Labor Commission's continuing responsibility to administer Title 34A, Chapter 7, Part 2, the "Elevator and Escalator Safety Act," and the statutory directive contained in Subsection 34A-7-203(6) to adopt national safety standards or other safety codes to be used in inspecting elevators and escalators. The Commission has received no comments

opposing this rule or its continuation. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 10/05/2011

Public Safety, Fire Marshal
R710-11
Fire Alarm System Inspecting and Testing

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35320
FILED: 10/11/2011

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: During the 2006 Utah State Legislature, Section 53-7-225.6 was enacted that required those that engaged in the inspection and testing of fire alarm systems to be certified by the State Fire Marshal. This legislation was enacted by the request of the fire alarm industry, who had requested for several years that legislation be enacted that provided some regulation to the industry. A meeting was held and all fire alarm companies that attended voted unanimously that regulation be enacted that oversees those that inspect and test fire alarm systems. Subsection 53-7-225.6(b) is the specific section of the statute that authorizes the creation of administrative rules by the Utah Fire Prevention Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the creation of these rules in 2006, neither the Utah Fire Prevention Board nor the Utah State Fire Marshal's Office have received any communications from interested persons supporting or opposing the rule. It has been the policy of the Utah Fire Prevention Board to involve all in the industry to be engaged in the creation or amending of the administrative rule so all concerns can be satisfied before the enactment of the rule or the amendment. Therefore, there are very few if any problems created by this approach, and the Board rarely has any comment supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This administrative rule needs to be continued so that those that are inspecting and testing fire alarm systems on a yearly basis can complete specific testing to make sure these life safety systems function as designed to save the occupants lives. Fire alarm systems are the first and most widely used first alarm notification to occupants to exit a home or other occupancy that is on fire. It is imperative that these systems work as designed so that lives will be protected. Those that install, inspect and test these systems need to be trained and certified to make sure the systems works correctly.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Brent Halladay, State Fire Marshal

EFFECTIVE: 10/11/2011

Public Service Commission, Administration
R746-409
Pipeline Safety

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35317
FILED: 10/06/2011

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: Sections 54-13-2 and 54-13-3 require the Public Service Commission (PSC) to establish pipeline safety standards and to adopt and enforce rules incorporating the Natural Gas Pipeline Safety Act. Rule R746-409 adopts safety rules and incorporates by reference 49 CFR Parts 190, 191, 192, 198, and 199, which implement requirements of the Natural Gas Pipeline Safety Act. A rule change has been submitted updating the Parts that are incorporated by reference, from "as amended 2006" to "as amended 2010."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been submitted within the five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to comply with Sections 54-13-2 and 54-13-3. As noted above, these statutes require the PSC to establish pipeline safety standards and to adopt and enforce rules incorporating the Natural Gas Pipeline Safety Act. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 10/06/2011

Transportation, Administration
R907-3
Administrative Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35325
FILED: 10/12/2011

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 63G-2-301 requires that final opinions and orders must be disclosed to the public upon request. This rule requires the Utah Department of Transportation and the Transportation Commission to make these records available for public inspection.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in effect to ensure public availability of opinions and orders as required by Section 63G-2-301. There have been no comments received in opposition to this rule.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 10/12/2011

Transportation, Administration
R907-66
Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35323
FILED: 10/12/2011

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: This rule is enacted under the authority of Section 72-1-201 and incorporates federal requirements referred to in Section 63G-6-105(4) and ensures that the department complies with this section and the federal regulations for federal and state financed transportation projects.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should remain in effect because 23 U.S.C. 112 requires states to use the Federal Acquisition Regulations contained in 48 CFR Part 1 to calculate appropriate contract costs in all federal-aid transportation projects. Therefore, the department needs to continue to comply with the federal regulations incorporated in the rule to remain eligible for federal funding and to efficiently administer funds consistent with state law and federal regulations. It is generally most efficient to also use the Federal Acquisition Regulations for state financed transportation projects as well, so the rule incorporates the same federal regulations for most state financed transportation projects.

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

TRANSPORTATION
ADMINISTRATION
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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 10/12/2011

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

NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

Capitol Preservation Board (State), Administration
R131-10
Commercial Solicitations

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35318
FILED: 10/06/2011

EXTENSION REASON AND NEW DEADLINE: The Board cannot meet until 12/22/2011 to discuss the referenced rule. This date is nine days after the expiration date, therefore an extension is requested. The new review due date is 04/11/2012.

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
♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 10/06/2011

Capitol Preservation Board (State), Administration
R131-11
Preservation of Free Speech Activities

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35319
FILED: 10/06/2011

EXTENSION REASON AND NEW DEADLINE: The Board cannot meet until 12/22/2011 to discuss the referenced rule. This date is nine days after the expiration date, therefore an extension is requested. The new review due date is 04/11/2012.

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
♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 10/06/2011

Public Safety, Peace Officer Standards and Training
R728-408
POST Academy and the Emergency Vehicle Operations Range are Secure Facilities

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35321
FILED: 10/11/2011

EXTENSION REASON AND NEW DEADLINE: Due to some personnel changes, POST was not aware that Rule R728-408 was going to expire on 10/11/2011. Therefore, POST requests an extension. The new deadline is: 02/08/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 10/11/2011

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
RULE EFFECTIVE DATES

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

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

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

Commerce
Occupational and Professional Licensing
No. 35112 (AMD): R156-53. Landscape Architects Licensing Act Rules
Published: 09/01/2011
Effective: 10/13/2011

No. 35158 (AMD): R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rule
Published: 09/01/2011
Effective: 10/13/2011

Real Estate
No. 35137 (AMD): R162-2c-102. Definitions
Published: 09/01/2011
Effective: 10/11/2011

No. 35134 (AMD): R162-2c-204. License Renewal
Published: 09/01/2011
Effective: 10/11/2011

Corrections
Administration
No. 34856 (AMD): R251-102. Release of Communicable Disease Information
Published: 06/15/2011
Effective: 10/12/2011

No. 34857 (AMD): R251-106. Media Relations
Published: 06/15/2011
Effective: 10/12/2011

No. 34904 (AMD): R251-107. Executions
Published: 07/01/2011
Effective: 10/12/2011

No. 34860 (AMD): R251-306. Sponsors in Community Correctional Centers
Published: 06/15/2011
Effective: 10/12/2011

No. 34962 (AMD): R251-705. Inmate Mail Procedures
Published: 07/15/2011
Effective: 10/12/2011

No. 34863 (AMD): R251-707. Legal Access
Published: 06/15/2011
Effective: 10/12/2011

No. 34903 (AMD): R251-710. Search
Published: 07/01/2011
Effective: 10/12/2011

Education
Administration
No. 35162 (NEW): R277-109. Legislative Reporting and Accountability
Published: 09/01/2011
Effective: 10/11/2011

No. 35163 (AMD): R277-112. Prohibiting Discrimination in the Public Schools
Published: 09/01/2011
Effective: 10/11/2011

No. 35164 (AMD): R277-403. Student Reading Proficiency and Notice to Parents
Published: 09/01/2011
Effective: 10/11/2011

No. 35165 (NEW): R277-406. K-3 Reading Improvement Program and the State Reading Goal
Published: 09/01/2011
Effective: 10/11/2011

No. 35166 (AMD): R277-460. Distribution of Substance Abuse Prevention Account
Published: 09/01/2011
Effective: 10/11/2011

No. 35167 (REP): R277-479. Expenditure of Appropriation for District Services
Published: 09/01/2011
Effective: 10/11/2011

No. 35168 (NEW): R277-530. Utah Effective Teaching and Educational Leadership Standards
Published: 09/01/2011
Effective: 10/11/2011

No. 35169 (NEW): R277-708. Enhancement for At-Risk Students Program
Published: 09/01/2011
Effective: 10/11/2011

No. 35170 (NEW): R277-726. Statewide Public Education Online Program
Published: 09/01/2011
Effective: 10/11/2011

Environmental Quality
Environmental Response and Remediation
No. 35155 (AMD): R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks
Published: 09/01/2011
Effective: 10/17/2011

No. 35156 (AMD): R311-212. Administration of the Petroleum Storage Tank Loan Fund
Published: 09/01/2011
Effective: 10/17/2011

Water Quality
No. 35082 (AMD): R317-1-7. TMDLs
Published: 08/01/2011
Effective: 10/04/2011

Financial Institutions
Administration
No. 35153 (REP): R331-3. Rule to Govern Persons Soliciting Savings or Share Accounts, Deposit Accounts, or Similar Evidence of Indebtedness or Participation Interests Therein from Residents of this State
Published: 09/01/2011
Effective: 10/10/2011

Health
Disease Control and Prevention, Laboratory Improvement
No. 35110 (AMD): R444-14. Rule for the Certification of Environmental Laboratories
Published: 09/01/2011
Effective: 10/12/2011

Labor Commission
Administration
No. 35126 (AMD): R600-2. Business Hours
Published: 09/01/2011
Effective: 10/11/2011

Public Safety
Criminal Investigations and Technical Services, Criminal Identification
No. 35139 (R&R): R722-330. Licensing of Private Investigators
Published: 09/01/2011
Effective: 10/12/2011

Tax Commission
Auditing
No. 35142 (AMD): R865-3C-1. Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204
Published: 09/01/2011
Effective: 10/13/2011

No. 35144 (AMD): R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502
Published: 09/01/2011
Effective: 10/13/2011

No. 35145 (AMD): R865-12L-16. Notification to Tax Commission Upon Change in the Election to Collect County or Municipality Imposed Transient Room Taxes Pursuant to Utah Code Ann. Sections 59-12-301 and 59-12-355
Published: 09/01/2011
Effective: 10/13/2011

No. 35146 (AMD): R865-13G-10. Exemption For Purchase of Motor Fuels by State and Local Government Agencies Pursuant to Utah Code Ann. Section 59-13-201
Published: 09/01/2011
Effective: 10/13/2011

No. 35147 (AMD): R865-15O-1. Oil and Gas Severance Tax Pursuant to Utah Code Ann. Sections 59-5-102 and 59-5-104
Published: 09/01/2011
Effective: 10/13/2011

Collections
No. 35148 (AMD): R867-2B-1. Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302
Published: 09/01/2011
Effective: 10/13/2011

Property Tax
No. 35149 (AMD): R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306
Published: 09/01/2011
Effective: 10/13/2011

No. 35150 (AMD): R884-24P-33. 2011 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 09/01/2011
Effective: 10/13/2011

No. 35151 (AMD): R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705
Published: 09/01/2011
Effective: 10/13/2011

Transportation
Operations, Construction
No. 35130 (AMD): R916-1. Advertising and Awarding Construction Contracts
Published: 09/01/2011
Effective: 10/11/2011

No. 35132 (AMD): R916-2. Prequalification of Contractors
Published: 09/01/2011
Effective: 10/11/2011

No. 35135 (AMD): R916-4. Construction Manager/General Contractor Contracts
Published: 09/01/2011
Effective: 10/11/2011

No. 35136 (AMD): R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
Published: 09/01/2011
Effective: 10/11/2011

Workforce Services
Employment Development
No. 35109 (AMD): R986-200-218. Exceptions to the Time Limit
Published: 09/01/2011
Effective: 10/11/2011

End of the Notices of Rule Effective Dates Section

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

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through October 14, 2011. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: Due to space constraints, only the Agency Index is included in this Bulletin.

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/).

RULES INDEX - BY AGENCY (CODE NUMBER)

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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R13-2	Access to Records	35309	5YR	10/04/2011	Not Printed
R13-3	Americans with Disabilities Act Grievance Procedures	34347	AMD	03/10/2011	2011-3/4
R13-3-2	Definitions	34674	NSC	04/27/2011	Not Printed
Facilities Construction and Management					
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34801	EMR	05/10/2011	2011-11/105
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34803	AMD	07/11/2011	2011-11/6
R23-25	Administrative Rules Adjudicative Proceedings	35157	5YR	08/15/2011	2011-17/89
R23-31	Executive Residence Commission	34802	NEW	07/11/2011	2011-11/8
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R28-2	Surplus Firearms	34781	REP	09/13/2011	2011-11/15
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	34782	REP	09/13/2011	2011-11/16
R28-7	Surplus Property Rate Schedule	34783	REP	09/13/2011	2011-11/18
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R51-4	ADA Complaint Procedure	34492	5YR	03/03/2011	2011-7/43
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R58-2	Diseases, Inspections and Quarantines	34352	AMD	03/24/2011	2011-3/13

R58-2	Diseases, Inspections and Quarantines	34975	5YR	06/23/2011	2011-14/135
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	34976	5YR	06/23/2011	2011-14/135
R58-11	Slaughter of Livestock	34694	AMD	06/21/2011	2011-9/2
R58-11-2	Definitions	34914	NSC	06/30/2011	Not Printed
R58-14	Holding Live Raccoons or Coyotes in Captivity	34974	5YR	06/23/2011	2011-14/136
R58-20	Domesticated Elk Hunting Park	34906	EMR	06/07/2011	2011-13/79
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R52-7	Horse Racing	35193	5YR	08/30/2011	2011-18/85
Marketing and Development					
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R68-7	Utah Pesticide Control Act	34488	5YR	03/02/2011	2011-7/44
R68-7	Utah Pesticide Control Act	34430	AMD	06/02/2011	2011-5/2
R68-7	Utah Pesticide Control Rule	34711	AMD	06/21/2011	2011-10/10
R68-7-10	Responsibilities of Business and Applicator	34456	NSC	06/02/2011	Not Printed
R68-7-10	Responsibilities of Business and Applicator	34498	AMD	06/02/2011	2011-7/2
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R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	34517	5YR	03/16/2011	2011-8/30
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	34378	5YR	01/24/2011	2011-4/35
R70-920	Packaging and Labeling of Commodities	35177	5YR	08/22/2011	2011-18/85
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R70-940	Standards and Testing of Motor Fuel	35128	5YR	08/11/2011	2011-17/90
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R81-1	Scope, Definitions, and General Provisions	35070	NSC	08/04/2011	Not Printed
R81-1	Scope, Definitions, and General Provisions	35098	AMD	10/01/2011	2011-16/4
R81-1-11	Multiple-Licensed Facility Storage and Service	35052	AMD	10/01/2011	2011-15/8
R81-1-14	Americans With Disabilities Act Complaint Procedure	35053	AMD	10/01/2011	2011-15/9
R81-1-29	Disclosure of Conflicts of Interest	34337	AMD	02/24/2011	2011-2/4
R81-1-29	Disclosure of Conflict of Interest	35054	AMD	10/01/2011	2011-15/13
R81-1-30	Factors for Granting Licenses	34336	AMD	02/24/2011	2011-2/5
R81-1-30	Factors for Granting Licenses	35055	AMD	10/01/2011	2011-15/14
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R81-2	State Stores	34788	5YR	05/10/2011	2011-11/124
R81-2	State Stores	35057	AMD	10/01/2011	2011-15/17
R81-2-11	Industry Members in State Stores	35188	NSC	10/01/2011	Not Printed
R81-3	Package Agencies	34789	5YR	05/10/2011	2011-11/125
R81-3	Package Agencies	35058	AMD	10/01/2011	2011-15/19
R81-3	Package Agencies	35189	NSC	10/01/2011	Not Printed
R81-3-13	Operational Restrictions	34340	AMD	02/24/2011	2011-2/6
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R81-4B	Airport Lounges	35071	NSC	08/04/2011	Not Printed
R81-4C	Limited Restaurant Licenses	35060	AMD	10/01/2011	2011-15/27

R81-4D	On-Premise Banquet License	35061	AMD	10/01/2011	2011-15/30
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R81-6-6	Religious Wine Permits	35099	AMD	10/01/2011	2011-16/6
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R81-10	Off-Premise Beer Retailers	35078	NSC	08/04/2011	Not Printed
R81-10A	On-Premise Beer Retailer Licenses	35064	AMD	10/01/2011	2011-15/39
R81-10B	Temporary Special Event Beer Permits	35079	NSC	08/04/2011	Not Printed
R81-10C	Beer Only Restaurant Licenses	35065	NEW	10/01/2011	2011-15/41
R81-10D	Tavern Beer Licenses	35097	NEW	10/01/2011	2011-16/7
R81-10D-6	Age Verification - Taverns	35198	NSC	10/01/2011	Not Printed
R81-11	Beer Wholesalers	34796	5YR	05/10/2011	2011-11/129
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R81-12	Manufacturer Representative (Distillery, Winery, Brewery)	34797	5YR	05/10/2011	2011-11/130
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R131-11	Preservation of Free Speech Activities	35319	EXT	10/06/2011	Not Printed

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Administration

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R151-4	Department of Commerce Administrative Procedures Act Rule	34479	NEW	04/21/2011	2011-6/4
R151-4-708	Standard of Proof	35018	AMD	09/07/2011	2011-15/44
R151-14	New Automobile Franchise Act Rule	34761	5YR	05/02/2011	2011-10/117
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R151-35-3	Adjudicative Proceedings	34736	NSC	05/25/2011	Not Printed
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R152-11	Utah Consumer Sales Practices Act	35121	5YR	08/09/2011	2011-17/91
R152-11-9	Direct Solicitations	34100	AMD	02/07/2011	2010-20/4
R152-26	Telephone Fraud Prevention Act	35120	5YR	08/09/2011	2011-17/91

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R156-1	General Rule of the Division of Occupational and Professional Licensing	35096	NSC	08/16/2011	Not Printed
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R156-9a	Uniform Athlete Agents Act Rules	34496	NSC	04/06/2011	Not Printed
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	34982	AMD	08/23/2011	2011-14/5
R156-15	Health Facility Administrator Act Rule	34545	AMD	05/26/2011	2011-8/10
R156-15	Health Facility Administrator Act Rule	35117	NSC	08/31/2011	Not Printed
R156-15	Health Facility Administrator Act Rule	35360	5YR	10/13/2011	Not Printed
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	35017	NEW	09/12/2011	2011-15/48
R156-15A-103	Authority	35231	NSC	09/30/2011	Not Printed
R156-17b-310	Exemption from Licensure - Physicians Dispensing Cosmetic Drug or Injectable Weight Loss Drug	34887	AMD	07/26/2011	2011-12/22
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	34409	AMD	03/24/2011	2011-4/6
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R156-38b	State Construction Registry Rule	35102	AMD	09/26/2011	2011-16/11
R156-38b-502	Merging Notices of Commencement	35290	NSC	10/11/2011	Not Printed
R156-39a	Alternative Dispute Resolution Providers Certification Act	34888	REP	07/26/2011	2011-12/25
R156-40	Recreational Therapy Practice Act Rule	35160	5YR	08/15/2011	2011-17/92
R156-46b	Division Utah Administrative Procedures Act Rule	34397	5YR	01/31/2011	2011-4/36
R156-46b	Division Utah Administrative Procedures Act Rule	34469	AMD	04/25/2011	2011-6/33
R156-46b	Division Utah Administrative Procedures Act Rule	34712	NSC	05/25/2011	Not Printed
R156-46b	Division Utah Administrative Procedures Act Rule	34886	AMD	07/26/2011	2011-12/27
R156-46b-403	Evidentiary Hearings in Informal Adjudicative Proceedings	35095	NSC	08/16/2011	Not Printed
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R156-53	Landscape Architects Licensing Act Rules	35112	AMD	10/13/2011	2011-17/12
R156-54	Radiology Technologist and Radiology Practical Technician Licensing Act Rule	35158	AMD	10/13/2011	2011-17/16
R156-55a	Utah Construction Trades Licensing Act Rule	34470	AMD	04/25/2011	2011-6/35
R156-55a	Utah Construction Trades Licensing Act Rule	35013	AMD	09/12/2011	2011-15/57
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R156-55c-302c	Qualifications for Licensure - Examination Requirements	35230	NSC	09/30/2011	Not Printed
R156-55e-303a	Continuing Education - Standards	34673	NSC	04/27/2011	Not Printed
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R156-60c	Professional Counselor Licensing Act Rule	34339	AMD	02/24/2011	2011-2/12
R156-60d	Substance Abuse Counselor Act Rule	34395	5YR	01/31/2011	2011-4/37
R156-63a	Security Personnel Licensing Act Contract Security Rule	34370	AMD	03/24/2011	2011-4/12
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R162-2c	Utah Residential Mortgage Practices and Licensing Rules	34431	AMD	05/10/2011	2011-5/13
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R162-2c-102	Definitions	35137	AMD	10/11/2011	2011-17/19
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R162-2f-407	Administrative Proceedings	34988	AMD	08/22/2011	2011-14/20
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R195-8	Energy Assistance: Special State Programs	35004	AMD	10/01/2011	2011-14/49
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R251-109	Sex Offender Treatment Providers	34861	NSC	06/14/2011	Not Printed
R251-110	Sex Offender Registration Program	34841	NSC	06/14/2011	Not Printed
R251-111	Government Records Access and Management	34862	NSC	06/14/2011	Not Printed
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R251-113	Distribution of Reimbursement for the Felony Probation Inmate Costs Reimbursement Program/Fund	34854	REP	08/03/2011	2011-12/35
R251-114	Offender Long-Term Health Care - Notice	34858	NSC	06/14/2011	Not Printed
R251-301	Employment, Educational or Vocational Training for Community Correctional Center Offenders	34859	NSC	06/14/2011	Not Printed
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R325-3	Utah State Fair Patron Rules	34466	5YR	02/24/2011	2011-6/103
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	34467	5YR	02/24/2011	2011-6/103
R325-5	Interim Renters Rules (Other Than Utah State Fair)	34468	5YR	02/24/2011	2011-6/104
FINANCIAL INSTITUTIONS					
Administration					
R331-3	Rule to Govern Persons Soliciting Savings or Share Accounts, Deposit Accounts, or Similar Evidence of Indebtedness or Participation Interests Therein from Residents of this State	35153	REP	10/10/2011	2011-17/50
R331-26	Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	34207	NEW	02/01/2011	2010-22/61
Banks					
R333-11	Ownership by State-Chartered Banks of Real Estate Other Than Property Used for Bank Business or Held as an Investment	34206	REP	02/01/2011	2010-22/63

Industrial Loan Corporations					
R339-6	Rule Clarifying Industrial Loan Corporation Investments	34205	AMD	02/01/2011	2010-22/65
GOVERNOR					
Economic Development					
R357-5	Motion Picture Incentive Fund	34762	NEW	06/30/2011	2011-10/22
R357-6	Technology and Life Science Economic Development and Related Tax Credits	34929	EMR	06/15/2011	2011-13/80
R357-6	Technology and Life Science Economic Development and Related Tax Credits	34930	NEW	08/08/2011	2011-13/65
Economic Development, Pete Suazo Utah Athletic Commission					
R359-1-102	Definitions	34279	AMD	02/22/2011	2010-24/41
R359-1-301	Qualifications for Licensure	34407	AMD	03/28/2011	2011-4/18
R359-1-501	Promoter's Responsibilities in Arranging a Contest	34366	AMD	03/28/2011	2011-4/19
R359-1-501	Promoter's Responsibilities in Arranging a Contest	34408	AMD	03/28/2011	2011-4/21
R359-1-501	Promoter's Responsibilities in Arranging a Contest	34901	AMD	07/26/2011	2011-12/43
R359-1-506	Drug Tests	34278	AMD	01/31/2011	2010-24/42
R359-1-511	Event Officials	34482	AMD	04/26/2011	2011-6/76
R359-1-512	Announcer	34483	AMD	04/26/2011	2011-6/78
R359-1-515	Competing in an Unsanctioned Unarmed Combat Event	34484	AMD	04/26/2011	2011-6/79
R359-1-515	Competing in an Unsanctioned Unarmed Combat Event	34900	AMD	07/26/2011	2011-12/45
HEALTH					
Administration					
R380-70-6	Electronic Data Interchange Standards	34497	AMD	07/05/2011	2011-7/3
R380-100	Americans with Disabilities Act Grievance Procedures	34554	R&R	08/22/2011	2011-9/55
R380-200	Patient Safety Sentinel Event Reporting	35234	5YR	09/14/2011	2011-19/65
R380-210	Health Care Facility Patient Safety Program	35235	5YR	09/14/2011	2011-19/66
Center for Health Data, Vital Records and Statistics					
R436-3	Amendment of Vital Records	34493	NSC	04/06/2011	Not Printed
R436-5	New Birth Certificates After Legitimation, Court Determination of Paternity or Adoption	35118	5YR	08/08/2011	2011-17/94
Children's Health Insurance Program					
R382-1	Benefits and Administration	34560	AMD	06/16/2011	2011-9/59
R382-10	Eligibility	34561	AMD	08/22/2011	2011-9/61
R382-10	Eligibility	34561	CPR	08/22/2011	2011-14/126
Community and Family Health Services, Children with Special Health Care Needs					
R398-1	Newborn Screening	34588	NSC	05/03/2011	Not Printed
R398-2	Newborn Hearing Screening	34589	NSC	05/03/2011	Not Printed
R398-5	Birth Defects Reporting	34590	NSC	05/03/2011	Not Printed
R398-10	Autism Spectrum Disorders and Mental Retardation Reporting	34591	NSC	05/03/2011	Not Printed
R398-20	Early Intervention	34592	NSC	05/03/2011	Not Printed
Community and Family Health Services, Chronic Disease					
R384-100	Cancer Reporting Rule	34563	NSC	05/03/2011	Not Printed
Community and Family Health Services, Immunization					
R396-100	Immunization Rule for Students	34587	NSC	05/03/2011	Not Printed
Community and Family Health Services, WIC Services					
R406-100	Special Supplemental Nutrition Program for Women, Infants and Children	34593	NSC	05/03/2011	Not Printed
R406-200	Program Overview	34594	NSC	05/03/2011	Not Printed

R406-201	Outreach Program	34595	NSC	05/03/2011	Not Printed
R406-202	Eligibility	34596	NSC	05/03/2011	Not Printed
R406-301	Clinic Guidelines	34597	NSC	05/03/2011	Not Printed
Disease Control and Prevention, Environmental Services					
R392-110	Home-based Child Care Food Service	34985	5YR	06/28/2011	2011-14/140
R392-302	Design, Construction, and Operation of Public Pools	35113	NSC	08/31/2011	Not Printed
Disease Control and Prevention, Epidemiology					
R386-702	Communicable Disease Rule	35327	5YR	10/12/2011	Not Printed
Disease Control and Prevention, Laboratory Improvement					
R444-1	Approval of Clinical Laboratories	35107	5YR	08/03/2011	2011-17/94
R444-14	Rule for the Certification of Environmental Laboratories	35111	5YR	08/04/2011	2011-17/95
R444-14	Rule for the Certification of Environmental Laboratories	35110	AMD	10/12/2011	2011-17/52
Disease Control and Prevention, Laboratory Services					
R438-10	Rules for Establishment of a Procedure to Examine the Blood of all Adult Pedestrians and all Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom	35329	5YR	10/12/2011	Not Printed
Epidemiology and Laboratory Services, Environmental Services					
R392-100	Food Service Sanitation	34571	NSC	05/03/2011	Not Printed
R392-101	Food Safety Manager Certification	34572	NSC	05/03/2011	Not Printed
R392-110	Home-base Child Care Food Service	34573	NSC	05/03/2011	Not Printed
R392-200	Design, Construction, Operation, Sanitation, and Safety of Schools	34144	AMD	02/16/2011	2010-21/17
R392-200	Design, Construction, Operation, Sanitation and Safety of Schools	34574	NSC	05/03/2011	Not Printed
R392-300	Recreation Camp Sanitation	34575	NSC	05/03/2011	Not Printed
R392-301	Recreational Vehicle Park Sanitation	34576	NSC	05/03/2011	Not Printed
R392-302	Design, Construction and Operation of Public Pools	34577	NSC	05/03/2011	Not Printed
R392-303	Public Geothermal Pools and Bathing Places	34578	NSC	05/03/2011	Not Printed
R392-400	Temporary Mass Gatherings Sanitation	34579	NSC	05/03/2011	Not Printed
R392-401	Roadway Rest Stop Sanitation	34580	NSC	05/03/2011	Not Printed
R392-402	Mobile Home Park Sanitation	34581	NSC	05/03/2011	Not Printed
R392-501	Labor Camp Sanitation	34582	NSC	05/03/2011	Not Printed
R392-502	Hotel, Motel and Resort Sanitation	34583	NSC	05/03/2011	Not Printed
R392-510	Utah Indoor Clean Air Act	34584	NSC	05/03/2011	Not Printed
R392-510	Utah Indoor Clean Air Act	34733	AMD	09/12/2011	2011-10/24
R392-600	Illegal Drug Operations Decontamination Standards	34585	NSC	05/03/2011	Not Printed
R392-700	Indoor Tanning Bed Sanitation	34586	NSC	05/03/2011	Not Printed
Epidemiology and Laboratory Services, Epidemiology					
R386-702	Communicable Disease Rule	34564	NSC	05/03/2011	Not Printed
R386-703	Injury Reporting Rule	34508	5YR	03/14/2011	2011-7/48
R386-703	Injury Reporting Rule	34565	NSC	05/03/2011	Not Printed
R386-705	Epidemiology, Health Care Associated Infection	34566	NSC	05/03/2011	Not Printed
R386-800	Immunization Coordination	34567	NSC	05/03/2011	Not Printed
Epidemiology and Laboratory Services, Laboratory Improvement					
R444-1	Approval of Clinical Laboratories	34668	NSC	05/03/2011	Not Printed
R444-11	Rules for Approval to Perform Blood Alcohol Examinations.	34669	NSC	05/03/2011	Not Printed
R444-14	Rule for the Certification of Environmental Laboratories	34670	NSC	05/03/2011	Not Printed

Epidemiology and Laboratory Services, Laboratory Services					
R438-10	Rules for Establishment of a Procedure to Examine the Blood of all Adult Pedestrians and all Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom	34665	NSC	05/03/2011	Not Printed
R438-12	Rule for Law Enforcement Blood Draws	34666	NSC	05/03/2011	Not Printed
R438-13	Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah	34667	NSC	05/03/2011	Not Printed
Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health					
R388-803	HIV Test Reporting	34568	NSC	05/03/2011	Not Printed
R388-804	Special Measures for the Control of Tuberculosis	34569	NSC	05/03/2011	Not Printed
R388-805	Ryan White Program	34570	NSC	05/03/2011	Not Printed
Family Health and Preparedness, Emergency Medical Services					
R426-16	Emergency Medical Services Ambulance Rates and Charges	34902	AMD	07/26/2011	2011-12/49
Family Health and Preparedness, Licensing					
R432-3-3	Deemed Status	35025	AMD	10/01/2011	2011-15/78
R432-31	Life with Dignity Order	35029	AMD	10/01/2011	2011-15/79
R432-35	Background Screening	35030	AMD	10/01/2011	2011-15/81
R432-100-8	Personnel Management Service	35031	AMD	10/01/2011	2011-15/82
R432-200-7	Administration and Organization	35026	AMD	10/01/2011	2011-15/83
R432-270	Assisted Living Facilities	35021	AMD	10/01/2011	2011-15/85
R432-300-8	Administration and Organization	35032	AMD	10/01/2011	2011-15/88
R432-500-11	Staff and Personnel	35033	AMD	10/01/2011	2011-15/89
R432-550-10	Personnel	35023	AMD	10/01/2011	2011-15/90
R432-650-6	Personnel Health	35022	AMD	10/01/2011	2011-15/91
R432-700	Home Health Agency Rule	35028	AMD	10/01/2011	2011-15/92
R432-725	Personal Care Agency Rule	35027	NEW	10/01/2011	2011-15/94
R432-750-8	Personnel	35024	AMD	10/01/2011	2011-15/97
Health Care Financing					
R410-14	Administrative Hearing Procedures	34147	R&R	04/25/2011	2010-21/19
R410-14	Administrative Hearing Procedures	34147	CPR	04/25/2011	2011-6/96
Health Care Financing, Coverage and Reimbursement Policy					
R414-1	Utah Medicaid Program	34228	AMD	01/19/2011	2010-23/49
R414-1-5	Incorporations by Reference	34315	AMD	04/05/2011	2011-1/20
R414-1-5	Incorporations by Reference	34523	AMD	05/25/2011	2011-8/18
R414-1-5	Incorporations by Reference	34938	AMD	08/22/2011	2011-14/53
R414-1-29	Provider-Preventable Conditions	34992	EMR	07/01/2011	2011-14/133
R414-1-29	Provider-Preventable Conditions	34993	AMD	09/01/2011	2011-14/54
R414-3A-6	Services	34893	AMD	09/01/2011	2011-12/46
R414-4A	Outpatient Hospital Services: Payment of Triage Fee	34894	REP	08/01/2011	2011-12/47
R414-14	Home Health Services	34524	AMD	05/25/2011	2011-8/9
R414-14	Home Health Services	34994	AMD	08/22/2011	2011-14/55
R414-14A	Hospice Care	34509	AMD	05/16/2011	2011-7/5
R414-22	Administrative Sanction Procedures and Regulations	34995	AMD	08/22/2011	2011-14/56
R414-54	Speech-Language Pathology Services	34939	AMD	08/22/2011	2011-14/60
R414-54-3	Services	34316	AMD	04/05/2011	2011-1/21
R414-54-3	Services	34525	AMD	05/25/2011	2011-8/22
R414-59	Audiology-Hearing Services	34940	AMD	08/22/2011	2011-14/61
R414-59-4	Client Eligibility Requirements	34317	AMD	04/05/2011	2011-1/22
R414-59-4	Client Eligibility Requirements	34526	AMD	05/25/2011	2011-8/23
R414-61	Home and Community-Based Services Waivers	34314	AMD	04/05/2011	2011-1/23
R414-303-11	Prenatal and Newborn Medicaid	34229	AMD	01/27/2011	2010-23/52
R414-304	Income and Budgeting	34556	AMD	06/16/2011	2011-9/64
R414-305	Resources	34683	AMD	06/16/2011	2011-9/80

R414-308	Application, Eligibility Determinations and Improper Medical Assistance	35100	AMD	10/01/2011	2011-16/27
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	35336	5YR	10/13/2011	Not Printed
R414-401-3	Assessment	34767	AMD	07/01/2011	2011-10/26
R414-501	Preadmission Authorization, Retroactive Authorization, and Continued Stay Review	34267	AMD	04/05/2011	2010-24/44
R414-501-3	Preadmission Authorization	34562	AMD	06/07/2011	2011-9/92
R414-504	Nursing Facility Payments	34766	AMD	07/01/2011	2011-10/27
Health Systems Improvement, Child Care Licensing					
R430-2	General Licensing Provisions, Child Care Facilities	34609	NSC	05/03/2011	Not Printed
R430-3	General Child Care Facility Rules Inspection and Enforcement	34610	NSC	05/03/2011	Not Printed
R430-4	General Certificate Provisions	34611	NSC	05/03/2011	Not Printed
R430-6	Background Screening	34612	NSC	05/03/2011	Not Printed
R430-8	Exemptions From Child Care Licensing	34613	NSC	05/03/2011	Not Printed
R430-30	Adjudicative Procedure	34614	NSC	05/03/2011	Not Printed
R430-50	Residential Certificate Child Care	34615	NSC	05/03/2011	Not Printed
R430-60	Hourly Child Care Center	34616	NSC	05/03/2011	Not Printed
R430-70	Out of School Time Child Care Programs	34617	NSC	05/03/2011	Not Printed
R430-90	Licensed Family Child Care	34618	NSC	05/03/2011	Not Printed
R430-100	Child Care Licensing	34619	NSC	05/03/2011	Not Printed
Health Systems Improvement, Emergency Medical Services					
R426-2	Air Medical Service Rules	34598	NSC	05/03/2011	Not Printed
R426-5	Statewide Trauma System Standards	34599	NSC	05/03/2011	Not Printed
R426-6	Emergency Medical Services Competitive Grants Program Rules	34600	NSC	05/03/2011	Not Printed
R426-7	Emergency Medical Services Prehospital Data System Rules	34358	5YR	01/12/2011	2011-3/55
R426-7	Emergency Medical Services Prehospital Data System Rules	34601	NSC	05/03/2011	Not Printed
R426-8	Emergency Medical Services Per Capita Grants Program Rules	34346	5YR	01/05/2011	2011-3/56
R426-8	Emergency Medical Services Per Capita Grants Program Rules	34602	NSC	05/03/2011	Not Printed
R426-11	General Provisions	34603	NSC	05/03/2011	Not Printed
R426-12	Emergency Medical Services Training and Certification Standards	34604	NSC	05/03/2011	Not Printed
R426-13	Emergency Medical Services Provider Designations	34605	NSC	05/03/2011	Not Printed
R426-14	Ambulance Service and Paramedic Service Licensure	34606	NSC	05/03/2011	Not Printed
R426-15	Licensed and Designated Provider Operations	34607	NSC	05/03/2011	Not Printed
R426-16	Emergency Medical Services Ambulance Rates and Charges	34608	NSC	05/03/2011	Not Printed
Health Systems Improvement, Licensing					
R432-1	General Health Care Facility Rules	34620	NSC	05/03/2011	Not Printed
R432-2	General Licensing Provisions	34621	NSC	05/03/2011	Not Printed
R432-3	General Health Care Facility Rules Inspection and Enforcement	34622	NSC	05/03/2011	Not Printed
R432-4	General Construction	34623	NSC	05/03/2011	Not Printed
R432-5	Nursing Facility Construction	34624	NSC	05/03/2011	Not Printed
R432-6	Assisted Living Facility General Construction	34625	NSC	05/03/2011	Not Printed
R432-7	Specialty Hospital - Psychiatric Hospital Construction	34626	NSC	05/03/2011	Not Printed
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	34627	NSC	05/03/2011	Not Printed
R432-9	Specialty Hospital - Rehabilitation Construction Rule	34628	NSC	05/03/2011	Not Printed
R432-10	Specialty Hospital - Long-Term Acute Care Construction Rule	34629	NSC	05/03/2011	Not Printed
R432-11	Orthopedic Hospital Construction	34630	NSC	05/03/2011	Not Printed

R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	34631	NSC	05/03/2011	Not Printed
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	34632	NSC	05/03/2011	Not Printed
R432-14	Birthing Center Construction Rule	34633	NSC	05/03/2011	Not Printed
R432-16	Hospice Inpatient Facility Construction	34634	NSC	05/03/2011	Not Printed
R432-30	Adjudicative Procedure	34635	NSC	05/03/2011	Not Printed
R432-31	Life with Dignity Order	34636	NSC	05/03/2011	Not Printed
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	34637	NSC	05/03/2011	Not Printed
R432-35	Background Screening	34638	NSC	05/03/2011	Not Printed
R432-40	Long-Term Care Facility Immunizations	34639	NSC	05/03/2011	Not Printed
R432-100	General Hospital Standards	34640	NSC	05/03/2011	Not Printed
R432-101	Specialty Hospital - Psychiatric	34318	AMD	04/11/2011	2011-2/31
R432-101	Specialty Hospital - Psychiatric	34641	NSC	05/03/2011	Not Printed
R432-102	Specialty Hospital - Chemical Dependency/Substance Abuse	34642	NSC	05/03/2011	Not Printed
R432-103	Specialty Hospital - Rehabilitation	34643	NSC	05/03/2011	Not Printed
R432-104	Specialty Hospital - Long-Term Acute Care	34644	NSC	05/03/2011	Not Printed
R432-105	Specialty Hospital - Orthopedic	34645	NSC	05/03/2011	Not Printed
R432-106	Specialty Hospital - Critical Access	34646	NSC	05/03/2011	Not Printed
R432-150	Nursing Care Facility	34319	AMD	04/11/2011	2011-2/32
R432-150	Nursing Care Facility	34647	NSC	05/03/2011	Not Printed
R432-151	Mental Disease Facility	34648	NSC	05/03/2011	Not Printed
R432-152	Mental Retardation Facility	34649	NSC	05/03/2011	Not Printed
R432-200	Small Health Care Facility (Four to Sixteen Beds)	34650	NSC	05/03/2011	Not Printed
R432-201	Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule	34651	NSC	05/03/2011	Not Printed
R432-270	Assisted Living Facilities	34652	NSC	05/03/2011	Not Printed
R432-300	Small Health Care Facility - Type N	34653	NSC	05/03/2011	Not Printed
R432-500	Freestanding Ambulatory Surgical Center Rules	34654	NSC	05/03/2011	Not Printed
R432-550	Birthing Centers	34655	NSC	05/03/2011	Not Printed
R432-600	Abortion Clinic Rule	34320	AMD	04/11/2011	2011-2/36
R432-600	Abortion Clinic Rule	34656	NSC	05/03/2011	Not Printed
R432-650	End Stage Renal Disease Facility Rules	34657	NSC	05/03/2011	Not Printed
R432-700	Home Health Agency Rule	34321	AMD	04/11/2011	2011-2/37
R432-700	Home Health Agency Rule	34658	NSC	05/03/2011	Not Printed
R432-750	Hospice Rule	34659	NSC	05/03/2011	Not Printed
R432-950	Mammography Quality Assurance	34660	NSC	05/03/2011	Not Printed
Health Systems Improvement, Primary Care and Rural Health					
R434-30	Primary Care Grants Program for Medically Underserved Populations	34661	NSC	05/03/2011	Not Printed
R434-40	Utah Health Care Workforce Financial Assistance Program Rules	34662	NSC	05/03/2011	Not Printed
R434-50	Assistance for People with Bleeding Disorders	34327	NEW	03/01/2011	2011-2/38
R434-50	Assistance for People with Bleeding Disorders	34663	NSC	05/03/2011	Not Printed
R434-100	Physician Visa Waivers	34664	NSC	05/03/2011	Not Printed
Medical Examiner					
R448-10	Unattended Death and Reporting Requirements	34671	NSC	05/03/2011	Not Printed
R448-20	Access to Medical Examiner Reports	34672	NSC	05/03/2011	Not Printed
HUMAN RESOURCE MANAGEMENT					
Administration					
R477-1	Definitions	34741	AMD	07/01/2011	2011-10/33
R477-2	Administration	34742	AMD	07/01/2011	2011-10/38
R477-4	Filling Positions	34743	AMD	07/01/2011	2011-10/40
R477-4-12	Career Mobility Programs	34443	AMD	04/07/2011	2011-5/27
R477-6	Compensation	34442	AMD	04/07/2011	2011-5/29
R477-6	Compensation	34744	AMD	07/01/2011	2011-10/41
R477-7	Leave	34745	AMD	07/01/2011	2011-10/45
R477-7	Leave	34996	AMD	09/03/2011	2011-14/62

R477-8	Working Conditions	34746	AMD	09/03/2011	2011-10/50
R477-8	Working Conditions	34997	AMD	09/03/2011	2011-14/63
R477-9	Employee Conduct	34747	AMD	07/01/2011	2011-10/53
R477-10	Employee Development	34748	NSC	05/25/2011	Not Printed
R477-12-3	Reduction in Force	34749	AMD	07/01/2011	2011-10/54
R477-13	Volunteer Programs	34750	AMD	07/01/2011	2011-10/56
R477-14	Substance Abuse and Drug-Free Workplace	34751	AMD	07/01/2011	2011-10/57
HUMAN SERVICES					
Administration					
R495-862	Communicable Disease Control Act	34536	5YR	03/30/2011	2011-8/33
R495-876	Provider Code of Conduct	35124	5YR	08/10/2011	2011-17/95
R495-879	Parental Support for Children in Care	34288	AMD	02/07/2011	2011-1/25
R495-880	Adoption Assistance	35123	5YR	08/10/2011	2011-17/96
Administration, Administrative Services, Licensing					
R501-21	Outpatient Treatment Programs	34212	AMD	01/24/2011	2010-22/81
Aging and Adult Services					
R510-401	Utah Caregiver Support Program (UCSP)	34390	5YR	01/26/2011	2011-4/37
Child and Family Services					
R512-1-6	Out-of-Home Care Services	34344	NSC	01/26/2011	Not Printed
R512-11	Accommodation of Moral and Religious Beliefs and Culture	34368	5YR	01/18/2011	2011-4/38
R512-43	Adoption Assistance	35253	5YR	09/19/2011	2011-20/71
R512-60	Children's Trust Account	35254	5YR	09/19/2011	2011-20/72
R512-203	Child Protective Services, Significant Risk Assessments	34369	5YR	01/18/2011	2011-4/38
R512-205	Child Protective Services, Investigation of Domestic Violence Related Child Abuse	34778	EMR	05/10/2011	2011-11/108
R512-205	Child Protective Services, Investigation of Domestic Violence Related Child Abuse	34779	NEW	07/28/2011	2011-11/69
R512-308	Out-of-Home Services, Guardianship Services and Placements	34471	5YR	02/28/2011	2011-6/104
Recovery Services					
R527-200	Administrative Procedures	34529	5YR	03/25/2011	2011-8/34
R527-231	Review and Adjustment of Child Support Order	34522	5YR	03/17/2011	2011-8/35
R527-250	Emancipation	34685	NEW	07/01/2011	2011-9/96
R527-800	Acquisition of Real Property, and Medical Support Cooperation Requirements	34490	5YR	03/03/2011	2011-7/49
R527-936	Third Party Liability, Medicaid	34521	5YR	03/17/2011	2011-8/35
Services for People with Disabilities					
R539-1	Eligibility	34710	NSC	05/25/2011	Not Printed
R539-9	Supported Employment Pilot Program	35122	5YR	08/10/2011	2011-17/96
Substance Abuse and Mental Health					
R523-20-11	Division Rules of Administration	34726	AMD	07/12/2011	2011-10/59
R523-21	Division of Substance Abuse and Mental Health Rules	34540	5YR	03/30/2011	2011-8/34
R523-24	Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration	35037	5YR	07/13/2011	2011-15/141
Substance Abuse and Mental Health, State Hospital					
R525-8	Forensic Mental Health Facility	34720	5YR	04/26/2011	2011-10/118
INSURANCE					
Administration					
R590-93	Replacement of Life Insurance and Annuities	34026	AMD	01/10/2011	2010-18/59
R590-93	Replacement of Life Insurance and Annuities	34026	CPR	01/10/2011	2010-22/116

R590-99 (Changed to R592-14)	Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices	34931	AMD	08/09/2011	2011-13/66
R590-133	Variable Contracts	34175	AMD	01/10/2011	2010-22/98
R590-142	Continuing Education Rule	34953	R&R	08/23/2011	2011-14/64
R590-142-3	Definitions	35180	NSC	09/14/2011	Not Printed
R590-144	Commercial Aviation Insurance Exemption from Rate and Form Filings	34478	5YR	03/01/2011	2011-6/105
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R865-15O-1	Oil and Gas Severance Tax Pursuant to Utah Code Ann. Sections 59-5-102 and 59-5-104	35147	AMD	10/13/2011	2011-17/62
R865-19S-42	Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104	34882	AMD	08/11/2011	2011-12/71
R865-19S-78	Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	34268	AMD	01/27/2011	2010-24/68
R865-19S-78	Service Plan Charges for Labor and Repair Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	34688	NSC	04/27/2011	Not Printed
R865-19S-92	Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103	34756	AMD	06/23/2011	2011-10/110
R865-19S-103	Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307	34757	AMD	06/23/2011	2011-10/112
R865-20T-5	Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301	34873	AMD	08/11/2011	2011-12/72
R865-20T-6	Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206	34876	AMD	08/11/2011	2011-12/74
R865-20T-13	Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302	34869	AMD	08/11/2011	2011-12/75
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R867-2B-1	Collection of Penalty Pursuant to Utah Code Ann. Section 59-1-302	35148	AMD	10/13/2011	2011-17/63
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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	34686	AMD	06/23/2011	2011-9/103
R873-22M-31	Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102	34877	AMD	08/11/2011	2011-12/76

R873-22M-37	Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211	34878	AMD	08/11/2011	2011-12/77
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R884-24P-8	Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211	34879	AMD	08/11/2011	2011-12/78
R884-24P-14	Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303	34880	AMD	08/11/2011	2011-12/79
R884-24P-17	Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704	34971	AMD	08/25/2011	2011-14/90
R884-24P-28	Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306	35149	AMD	10/13/2011	2011-17/64
R884-24P-33	2011 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301	35150	AMD	10/13/2011	2011-17/65
R884-24P-34	Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704	34972	AMD	08/25/2011	2011-14/91
R884-24P-35	Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102	34883	NSC	06/14/2011	Not Printed
R884-24P-41	Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347	34881	AMD	08/11/2011	2011-12/80
R884-24P-42	Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705	35151	AMD	10/13/2011	2011-17/74
R884-24P-64	Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106	34759	NSC	05/25/2011	Not Printed
R884-24P-72	State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514	34973	AMD	08/29/2011	2011-14/92
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R895-1	Access to Records	34438	5YR	02/15/2011	2011-5/117
R895-2	Americans With Disabilities Act (ADA) Complaint Procedure	34439	5YR	02/15/2011	2011-5/117
R895-2	Americans with Disabilities Act (ADA) Complaint Procedure	34681	AMD	06/08/2011	2011-9/105
R895-5	Acquisition of Information Technology	34722	5YR	04/27/2011	2011-10/120
R895-8	State Privacy Policy and Agency Privacy Policies	34723	5YR	04/27/2011	2011-10/121
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R907-1	Appeal of Departmental Actions	35140	5YR	08/11/2011	2011-17/97
R907-1	Appeal of Departmental Actions	35141	NSC	08/31/2011	Not Printed
R907-3	Administrative Procedure	35325	5YR	10/12/2011	Not Printed
R907-62	Americans with Disabilities Act	35258	5YR	09/19/2011	2011-20/73
R907-63	Structure Repair and Loss Recovery Procedure	35138	5YR	08/11/2011	2011-17/98
R907-66	Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects	35323	5YR	10/12/2011	Not Printed

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R909-3	Standards for Utah School Buses	34956	R&R	08/25/2011	2011-14/93
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	35255	5YR	09/19/2011	2011-20/73
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R912-8	Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah	34453	5YR	02/17/2011	2011-6/107
R912-8	Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah	34454	NSC	03/10/2011	Not Printed
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R916-1	Advertising and Awarding Construction Contracts	35130	AMD	10/11/2011	2011-17/76
R916-2	Prequalification of Contractors	35131	5YR	08/11/2011	2011-17/99
R916-2	Prequalification of Contractors	35132	AMD	10/11/2011	2011-17/78
R916-3	DESIGN-BUILD Contracts	35133	5YR	08/11/2011	2011-17/99
R916-4	Construction Manager/General Contractor Contracts	35135	AMD	10/11/2011	2011-17/80
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R918-5	Construction or Improvement of Highway	34693	NEW	06/07/2011	2011-9/107
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R920-50	Ropeway Operation Safety Rules	34241	AMD	01/10/2011	2010-23/63
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R930-5-13	Notice on Intended Action	34452	AMD	04/21/2011	2011-6/90
Preconstruction, Right-of-Way Acquisition					
R933-1	Right of Way Acquisition	34363	AMD	03/10/2011	2011-3/51
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R926-2	Evaluation of Proposed Additions to or Deletions from the State Highway System	35257	5YR	09/19/2011	2011-20/74
R926-3	Class B and Class C Road Funds	35259	5YR	09/19/2011	2011-20/74
R926-6	Transportation Corridor Preservation Revolving Loan Fund	34451	AMD	04/21/2011	2011-6/87
R926-9	Establishment Designation and Operation of Tollways	34459	5YR	02/24/2011	2011-6/107
R926-9	Establishment Designation and Operation of Tollways	34460	AMD	04/21/2011	2011-6/89
R926-11	Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009	34765	AMD	06/21/2011	2011-10/113
R926-14	Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes	34955	AMD	08/22/2011	2011-14/113
R926-15	Designated Scenic Backways	34954	NEW	08/22/2011	2011-14/118
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R940-1	Establishment of Toll Rates	34462	AMD	04/21/2011	2011-6/91
R940-5	Approval of Highway Facilities on Sovereign Lands	34810	NEW	09/15/2011	2011-11/100

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R982-301	Councils	34934	AMD	08/18/2011	2011-13/68
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R986-100	Employment Support Programs	34933	AMD	09/07/2011	2011-13/69
R986-100-113	A Client Must Inform the Department of All Material Changes	34516	AMD	06/15/2011	2011-7/24
R986-100-122	Advance Notice of Department Action	34444	AMD	04/11/2011	2011-5/96
R986-100-134	Payments of Assistance Pending the Hearing	35002	AMD	09/01/2011	2011-14/121
R986-200-205	How to Determine Who Is Included in the Household Assistance Unit	34677	AMD	06/15/2011	2011-9/108
R986-200-215	Family Employment Program Two Parent Household (FEPTP)	34546	AMD	06/15/2011	2011-8/26
R986-200-215	Family Employment Program Two Parent Household (FEPTP)	35081	AMD	09/07/2011	2011-15/105
R986-200-218	Exceptions to the Time Limit	35109	AMD	10/11/2011	2011-17/84
R986-200-246	Transitional Cash Assistance	34239	AMD	01/13/2011	2010-23/70
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R986-200-247	Utah Back to Work Pilot Program (BWP)	34897	AMD	08/02/2011	2011-12/81
R986-400-404	Participation Requirements	35001	AMD	09/01/2011	2011-14/123
R986-500-506	Safeguarding Records	34935	AMD	08/18/2011	2011-13/72
R986-600	Workforce Investment Act	34277	AMD	01/26/2011	2010-24/69
R986-700	Child Care Assistance	34678	AMD	06/15/2011	2011-9/110
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R994-302	Employer Contribution Payments	34776	5YR	05/05/2011	2011-11/133
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R994-403-112c	Available	34898	AMD	08/02/2011	2011-12/83
R994-403-113c	Work Search	34361	AMD	03/15/2011	2011-3/52
R994-508	Appeal Procedures	34445	AMD	04/11/2011	2011-5/97