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, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: http://www.rules.utah.gov/

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for March 2012 Medicaid Rate Changes

Effective March 1, 2012, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Governor's Executive Order EO/002/2012: Declaring a State of Emergency Due to Winter Storm in Davis County

EXECUTIVE ORDER

Declaring a State of Emergency Due to Winter Storm in Davis County

WHEREAS, on November 30 to December 1, 2011, a significant winter storm brought damaging down slope winds exceeding 90 mph with gusts over 100 mph in Northern Utah; and

WHEREAS, areas hardest hit were in Davis County and the communities of Centerville, Bountiful, Farmington, Kaysville, and West Bountiful; and

WHEREAS, the high winds disrupted transportation, communications and power; and

WHEREAS, the high winds have caused structural damage to public and private buildings, and required evacuation of residents, and injuries requiring hospitalization; and

WHEREAS, on December 1, 2011, Davis County declared a local emergency; and

WHEREAS, the circumstances of this significant wind event was beyond the control of the services, personnel, equipment and facilities of any single county and/or city and required the combined forces of a mutual aid region or regions to combat; and

WHEREAS, the Utah Department of Public Safety, Division of Emergency Management increased activities to support the incident, implement response procedures, and coordinated resources to support local officials in alleviating the immediate social and economic impacts to people, property, and infrastructure, and is continuing to assess the magnitude of the event; and

WHEREAS, these conditions do create a "State of Emergency" within the intent of Title 63, Chapter 5 of the Utah Code Annotated 1953, as amended;

NOW, THEREFORE, it is found, determined, and declared that a "State of Emergency" exists due to conditions of extreme peril to the safety of persons and property and such area is declared to be a "State of Emergency" area requiring aid, assistance, and relief available pursuant to the provisions of State Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah this 20th day of January 2012.

(State Seal)

Gary R. Herbert
Governor, State of Utah

ATTEST:

Greg Bell
Lieutenant Governor

EO/002/2012

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between January 18, 2012, 12:00 a.m., and February 01, 2012, 11:59 p.m. are included in this, the February 15, 2012 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **Proposed Rules** published in this issue of the *Utah State Bulletin* until at least March 16, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **Rule Analysis**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **Proposed Rule**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 14, 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, Fleet Operations
R27-9
Dispensing Compressed Natural Gas to the Public

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 35727
FILED: 01/26/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule defines the availability and terms of operations for the public to access state-managed compressed natural gas fueling locations. This rule meets the requirements of Section 63A-9-702.

SUMMARY OF THE RULE OR CHANGE: This rule defines the availability and terms of operations for the public to access state-managed compressed natural gas fueling locations. It sets fueling priority and limits, defines which state managed compressed natural gas fueling locations will be available to the public, and provides conditions upon which a private individual or entity's authorization to purchase compressed natural gas from a state managed fuel location can be revoked or suspended.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-9-702

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: By providing public access to state-managed compressed natural gas fueling locations, the operational cost of these sites will be spread over a larger consumer base. This may result in a small savings to the state budget.
♦ LOCAL GOVERNMENTS: By providing public access to state-managed compressed natural gas fueling locations, the operational cost of these sites will be spread over a larger consumer base. This may result in a small savings to the local governments that have partnered with the State Fuel Network for fuel management.
♦ SMALL BUSINESSES: The cost of compressed natural gas is significantly less than that of gasoline or diesel. By allowing the public to access state-managed compressed natural gas fuel locations, small businesses can take advantage of the increased availability of this fuel and could see substantial savings. This rule is also designed to prevent state-managed fuel sites from competing with private sector fuel providers by closing access to state-managed sites if a private sector provider opens within a designated geographical range.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The cost of compressed natural gas is significantly less than that of gasoline or diesel. By allowing the public to access state-managed compressed natural gas fuel locations, persons other than small businesses can take advantage of the increased availability of this fuel and could see substantial savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The state-managed compressed natural gas fueling locations are already equipped to accept credit cards, as well as fuel cards.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost of compressed natural gas is significantly less than that of gasoline or diesel. By allowing the public to access state-managed compressed natural gas fuel locations, businesses can take advantage of the increased availability of this fuel and could see substantial savings. This rule is also designed to prevent state managed fuel sites from competing with private sector fuel providers by closing access to state-managed sites if a private sector provider opens within a designated geographical range.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 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:
♦ Brian Fay by phone at 801-538-3502, by FAX at 801-359-0759, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: Sam Lee, Director

R27. Administrative Services, Fleet Operations.
R27-9. Dispensing Compressed Natural Gas to the Public.
R27-9-1. Authority.

This rule is established pursuant to subsections 63A-9-702(3) which requires the Department of Administrative Services, Division of Fleet Operations (DFO) to make rules establishing requirements for the sale of compressed natural gas (CNG) to the public.

R27-9-2. Definitions.

In addition to the terms defined in Section 63A-9-702, as used in Title 63A, Chapter 9, or these rules, the following terms are defined.

(1) "Public" means private individuals or entities as defined in 63A-9-702(1).

(2) "State site" means a fuel site owned and/or operated by the State Fuel Network which dispenses compressed natural gas.

(3) "Geographical compressed natural gas needs of a private individual or entity" means providing CNG fuel to the public beyond one road mile from a privately owned and operated fuel site that is able to meet the natural gas distribution needs of the public.

R27-9-3. Fuel Site Availability.

(1) The division will allow the public to purchase compressed natural gas from the state's fuel network if:

(a) there is no commercial fuel site that meets the geographical compressed natural gas distribution needs as defined in R27-9-2(3) and;

(b) there are no emergencies that warrant the holding of compressed natural gas in reserve for use by state or emergency vehicles as determined by the division.

R27-9-4. Terms of Operation.

(1) State owned CNG fuel sites are intended to be operational 24 hours a day, 7 days a week and will be available to the public with the exception of locally posted time restrictions.

(2) CNG dispensing priority shall be given to state and local agencies.

(3) Public customers shall only be able to purchase CNG fuel from the state site with an accepted credit card.

(4) Public customers will be limited to 25 GGE per vehicle per day unless otherwise authorized by the division.

(5) Violation of any term of operation may result in the revocation or suspension of a private individual or entity's authorization to purchase compressed natural gas from state sites.

R27-9-5. Abuse and Neglect of Fueling Equipment.

Damage to fuel equipment that results from the abuse or neglect by a public customer shall be the responsibility of that customer.

KEY: compressed natural gas, CNG, public fueling
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 63A-9-702(3)

Health, Children's Health Insurance Program
R382-10
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35788
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow the Department to provide medical assistance to a child under the age of 19 during a presumptive eligibility period.

SUMMARY OF THE RULE OR CHANGE: This change allows the Department to provide medical assistance to a child under the age of 19 during a presumptive eligibility period. It also clarifies that the Department may complete a simplified eligibility review that does not require a recipient to provide additional information.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 40

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department estimates a cost of about $967 to the General Fund and about $3,793 in federal dollars. This estimate is based on one additional month of coverage for about 34 children during the year.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither determine eligibility for the Children's Health Insurance Program (CHIP) nor provide CHIP services.

♦ SMALL BUSINESSES: The Department estimates an increase in revenue to small businesses of about $4,760. This estimate is based on one additional month of coverage for about 34 children during the year.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department estimates an increase in revenue to CHIP providers of about $4,760. This estimate is based on one additional month of coverage for about 34 children during the year. CHIP recipients will see savings during a presumptive eligibility period, but there is no data to estimate how much based on the services they will receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only increases revenue to a small business or to a CHIP provider, and only increases savings to a CHIP recipient who has coverage during a presumptive eligibility period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change applies to children in foster care and will benefit regulated providers by expediting eligibility for these children and avoiding uncompensated care. The fiscal impact on the State is minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-2. Definitions.

(1) The Department incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2011.

(2) The Department adopts the definitions in Section R382-1[~~0~~]-2. In addition, the Department adopts the following definitions:

([~~3~~]a) "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.

([~~4~~]b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

([~~5~~]c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

([~~6~~]d) "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 CHIP.

[~~(7) "Department" means the Utah Department of Health.~~
]

([~~8~~]e) "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.

([~~9~~]f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

([~~10~~]g) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2([~~1~~]9).

([~~11~~]h) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

([~~12~~]i) "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~~]j) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

([~~14~~]l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

([~~15~~]m) "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.

([~~16~~]n) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

([~~17~~]o) "Verification" means the proof needed to decide if a child meets the eligibility criteria to be enrolled in the 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 a child.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for CHIP assistance.

(3) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but reaches the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(6) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the household's gross annual income; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan [~~is one~~]has a deductible that must be met before

[~~it~~]the plan will pay any claims. For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP.[

~~(d) If the applicant enrolls the child in the employer-sponsored health plan or COBRA coverage and~~] If the employer-sponsored health plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP of up to $20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

([~~e~~]d) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage and UPP may discontinue the employer-sponsored health plan or COBRA coverage and switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(7) The eligibility agency shall deny eligibility if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date for enrollment under CHIP.

(a) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(b) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(c) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny the application.

(8) If an applicant or an applicant's parent voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for CHIP without a 90-day ineligibility period.

(9) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(10) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested [~~has~~]have access to or [~~is~~]are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(11) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(12) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility [~~after~~]effective the end of the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(6) if the change is reported timely. Failure to make a timely report may result in overpayment.

R382-10-14. Budgeting.

(1) The Department shall count the gross income for parents and stepparents of any child included in the household size to determine a child's eligibility, unless the income is excluded under this rule. The Department may only deduct required expenses from the gross income to make an income available to the individual. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) A household [~~with only CHIP coverage~~]may elect upon renewal to have the Department use the most recent adjusted gross income (AGI) from the Utah State Tax Commission.[

~~(a)~~] The eligibility agency shall then use AGI instead of requesting verification of current income. If the use of AGI should result in an adverse decision or change, the household may provide verification of current income.

(5) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(6) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(7) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-16. Application and Eligibility Reviews.

(1) The applicant must complete and sign a written application or an on-line application to enroll in the CHIP program. The application process includes gathering information and verification to determine the child's eligibility for enrollment in the program.

(2) The eligibility agency may accept any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment in person, through the mail, by fax, or online.

(4) The provisions of Section R414-308-3 apply to applicants for CHIP.

(5) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the [~~applicant's~~]parents or spouse, and any adult who assumes responsibility for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise[~~to assist in determining eligibility~~].

(6) According to the provisions of Section 2105(a)(4)(F) of the Social Security Act, the Department provides medical assistance during a presumptive eligibility period to a child if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) the child is not enrolled in a health insurance plan; and

(c) the child's household income exceeds the applicable income limit for Medicaid, but does not exceed 200% of the federal poverty level for the applicable household size.

(7) A child determined presumptively eligible is required to file an application for medical assistance with the eligibility agency in accordance with the requirements of Section 1920A of the Social Security Act.

(8) A child may receive medical assistance during only one presumptive eligibility period in any six month period.

([~~6~~]9) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP 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 shall use available, reliable sources to gather necessary information to complete the review. The eligibility agency may conduct the review without requiring the enrollee to provide additional information.

([~~7~~]10) The eligibility agency may ask the enrollee to respond to a request to complete the review process. If the enrollee fails to respond to the request during the review month, the agency shall end the enrollee's eligibility [~~after~~]effective at the end of the review month and send proper notice to the enrollee. If the enrollee responds to the review or reapplies in the month after the review month, the eligibility agency shall treat the response as a new application. The application processing period then 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.

(i) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month after the closure date.

(ii) If the enrollee fails to return verification within the application processing period or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

[~~(d) If the eligibility agency closes the case for one or more calendar months, the enrollee must reapply for CHIP.~~

~~(e) If the enrollee becomes eligible, the new certification period begins the first day of the month after the closure date.~~

](d) If the enrollee's case is closed for one or more calendar months, the enrollee must reapply for CHIP.

([~~8~~]11) If the enrollee responds to the review request during the review month, the eligibility agency may request verification from the enrollee.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The enrollee has at least ten calendar days to provide the requested verification to the eligibility agency.

(c) If the enrollee provides all verification by the due date in the review month, the eligibility agency shall determine eligibility and notify the enrollee of its decision.

(i) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(ii) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse decision. [~~that becomes effective after the due process month and the~~] The enrollee does not owe a premium for the due process month.

([~~9~~]12) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility [~~after~~]effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the

application is the day after the effective closure date if the enrollee is found eligible.

([~~10~~]13) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

([~~11~~]14) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(2) If a child made presumptively eligible files an application for medical assistance in accordance with the requirements of Section 1920A of the Social Security Act, presumptive eligibility continues only until the eligibility agency makes an eligibility decision based on that application. Filing additional applications does not extend the presumptive eligibility period.

([~~2~~]3) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

([~~3~~]4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

([~~4~~]5) The eligibility agency shall redetermine eligibility at least every 12 months.

([~~5~~]6) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) The enrollee must provide any additional verification needed to determine if a child is eligible for Medicaid or the eligibility agency shall deny the application or review.

(b) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(c) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(d) If the use of the adjusted gross income (AGI) at a review causes the household to appear eligible for Medicaid, the eligibility agency shall request verification of current income and other factors needed to determine Medicaid eligibility. The eligibility agency cannot renew CHIP coverage if the household fails to provide requested verification.

(e) If the AGI causes the household to qualify for a more expensive CHIP plan, the household may choose to verify current income. If current income verification shows the family is eligible for a lower cost plan, the eligibility agency shall change the household's eligibility to the lower cost plan effective the month after verification is provided.

([~~6~~]7) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Sections R414-306-6 and R382-10-10, the effective date of CHIP enrollment is the first day of the application month.

(2) The presumptive eligibility period begins on the first day of the month in which a child is determined presumptively eligible for CHIP. Coverage cannot begin in a month that the child is otherwise eligible for medical assistance.

([~~2~~]3) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(4) If a child determined eligible for a presumptive eligibility period files an application in accordance with the requirements of Section 1920A of the Social Security Act and is determined eligible for regular CHIP based on that application, the effective date of CHIP enrollment is the first day of the month of application or the first day of the month in which the presumptive eligibility period began, if later.

(a) The four-day grace period defined in Subsection R382-10-18(3) applies if the applicant meets that criteria and the child was not eligible for any medical assistance during such time period.

(b) Any applicable CHIP premiums apply beginning with the month regular CHIP coverage begins, even if such months are the same months as the CHIP presumptive eligibility period.

([~~3~~]5) For a family who [~~enrolls~~]has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections -306-6, R382-10-10 and the provisions of Subsection R382-10-18([~~2~~]3).

([~~4~~]6) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month. The enrollee must complete the

review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-19. Enrollment Period.

(1) Subject to the provisions in Subsection R382-10-19(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

(a) turns 19 years of age before the end of the 12-month enrollment period;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) begins to be covered under a group health plan or other health insurance coverage[~~:~~];

(e) enters a public institution or an institution for mental diseases; or

(f) does not pay the quarterly premium.

(3) The presumptive eligibility period ends on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the child's application when that application is made in accordance with the requirements of Section 1920A of the Social Security Act; or

(b) the last day of the month following the month in which a presumptive eligibility period begins if an application for medical assistance is not filed on behalf of the child by the last day of such month.

([~~3~~]4) The month that a child turns 19 years of age is the last month that the child may be eligible for CHIP, including CHIP presumptive eligibility coverage.

([~~4~~]5) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If the decrease in income causes the child to be eligible for a lower premium, the change in eligibility becomes effective the month after the eligibility agency receives verification of the change.

(d) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

([~~5~~]6) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

KEY: children's health benefits
Date of Enactment or Last Substantive Amendment: [~~December 1, 2011~~]2012
Notice of Continuation: May 19, 2008
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-303
Coverage Groups

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35789
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow the Department to provide medical assistance to a child under the age of 19 during a presumptive eligibility period.

SUMMARY OF THE RULE OR CHANGE: This rulemaking allows the state to provide medical assistance to a child under age 19 during a presumptive eligibility period. The presumptive eligibility is determined by a qualified entity that the Department believes is capable of making such decisions. The presumptive eligibility period is based on preliminary information provided by the applicant that the child meets citizenship or qualified alien status, and has household income at or below the applicable percent of the federal poverty guideline for the age of the child.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- Removes Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, published by Social Security Administration, 01/01/1993
- Updates Title XIX of the Social Security Act, Sections 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) for pregnant women and children under age 19, and Sections 1902(e)(4) and (5) and 1902(l) , published by Social Security Administration, 01/01/2011

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department estimates an annual cost to Medicaid of about $21,077 to the General Fund and about $51,579 in federal dollars. This estimate is

based on one additional month of Medicaid coverage for about 304 children during the year.
♦ LOCAL GOVERNMENTS: There is no impact to local governments as they neither determine Medicaid eligibility nor provide Medicaid services.
♦ SMALL BUSINESSES: The Department estimates an annual increase in revenue to small businesses of about $72,656. This estimate is based on one additional month of coverage for about 34 children during the year.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department estimates an annual increase in revenue to Medicaid providers of about $72,656. This estimate is based on one additional month of coverage for about 34 children during the year. Medicaid recipients will see annual savings during a presumptive eligibility period, but there is no data to estimate how much based on the services they will receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only increases revenue to a small business or to a Medicaid provider, and only increases savings to a Medicaid recipient who has coverage during a presumptive eligibility period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change applies to children in foster care and will benefit regulated providers by expediting eligibility for these children and avoiding uncompensated care. The fiscal impact on the State is minimal.

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 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-11. [~~Prenatal~~]Poverty-Level Pregnant Woman and [~~Newborn~~]Poverty-level Child Medicaid.

(1) The Department incorporates by reference Title XIX of the Social Security Act, Sections 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) for pregnant women and children under age 19, 1902(e)(4) and (5) and 1902(l), in effect January 1, 2011[~~2009, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993,~~] which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman, or a child under age 19, based on self-declaration that [~~she~~]the pregnant woman, or the child under age 19, meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider has verified that she is pregnant and determines, based on preliminary information, that the woman:

(a) meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(c) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

[~~(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.~~

~~(6) The presumptive eligibility period shall end on the earlier of:~~

~~(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or~~

~~(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.~~

] ([~~7~~]5) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(6) The Department provides medical assistance in accordance with Section 1920A of the Social Security Act to children under age 19 during a period of presumptive eligibility if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) for a child under age 6, the declared household income does not exceed 133% of the federal poverty guideline applicable to the declared household size;

(c) for a child age 6 through 18, the declared household income does not exceed 100% of the federal poverty guideline applicable to the declared household size; and

(d) the child is not already covered on Medicaid or CHIP.

(7) No resource test applies to determine presumptive eligibility of a child.

(8) A child may receive medical assistance during only one period of presumptive eligibility in any six-month period.

([~~8~~]9) The Department elects to impose a resource standard on [~~Newborn~~]poverty-level child Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

([9]10) The Department elects to provide [~~Prenatal~~] Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

([~~10~~]11) At the initial determination of eligibility for [~~Prenatal~~]Poverty-level Pregnant Woman Medicaid, the eligibility agency determines the applicant's countable resources using SSI resource methodologies. Applicants for [~~Prenatal~~]Poverty-level Pregnant Woman Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive [~~Prenatal~~]Poverty-level Pregnant Woman Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, [~~2009~~]2011.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the eligibility agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

([~~11~~]12) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

([~~12~~]13) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. [~~without regard to whether the~~] The infant does not have to remain[~~s~~] in the birth mother's home [~~or whether~~]and the birth mother [~~would~~]does not have to continue to be eligible for Medicaid[~~, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3~~]. The infant must continue to be a Utah resident to receive coverage.

([~~13~~]14) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the [~~newborn~~]poverty-level child program through the month in which they turn 19. A child determined presumptively eligible may receive presumptive eligibility only through the applicable period or until the end of the month in which the child turns 19, whichever occurs first. The eligibility agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

KEY: income, coverage groups, independent foster care adolescent
Date of Enactment or Last Substantive Amendment: [~~January 27, 2011~~]2012
Notice of Continuation: January 25, 2008
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-308
Application, Eligibility Determinations and Improper Medical Assistance

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 35790
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to define the application requirements and enrollment period for pregnant women and children under the age of 19 who are determined eligible during a presumptive eligibility period.

SUMMARY OF THE RULE OR CHANGE: This change defines the application requirements and enrollment period for pregnant women and children under the age of 19 who are determined to be eligible during a presumptive eligibility period. This change also clarifies and simplifies eligibility review requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

♦ Adds 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 435.912 and 435.919, 2010 ed., 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 this change only defines administrative requirements for presumptive eligibility. Any costs or savings associated with providing presumptive eligibility are addressed in a companion rule filing (Rule R414-303). (DAR NOTE: The proposed amendment to Rule R414-303 is under DAR No. 35789 in this issue, February 15, 2012, of the Bulletin.)
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither determine Medicaid eligibility nor provide Medicaid services.
♦ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because this change only defines administrative requirements for presumptive eligibility. Any costs or increases in revenue associated with providing presumptive eligibility are addressed in a companion rule filing (Rule R414-303).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients because this change only defines administrative requirements for presumptive eligibility. Any costs, savings, or increases in revenue associated with providing presumptive eligibility are addressed in a companion rule filing (Rule R414-303).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change neither imposes new costs on a single Medicaid provider nor reduces coverage for a Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change applies to children in foster care and will benefit regulated providers by expediting eligibility for these children and avoiding uncompensated care. The fiscal impact on the state is minimal.

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 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
R414-308-3. Application and Signature.

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for medical assistance and delivering it to the eligibility agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the eligibility agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) When completing an on-line application, the individual must either send the eligibility agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and [~~is unable to~~]cannot appoint a representative.

(2) The application date is the day that the eligibility agency receives the request or verification from the recipient. The eligibility agency treats the following situations as a new application without requiring a new application form. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The

eligibility agency waives the open enrollment period requirement during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request in the calendar month that follows the closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment,[~~treats all verification as a new application during an open enrollment period when it receives the verification within 30 days after sending the denial notice. If the eligibility agency stops enrollment,~~] the applicant must wait for an open enrollment period to reapply.

(3) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply.

(4) A child under the age of 19, or a pregnant woman who is eligible for a presumptive eligibility period, must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act.

([~~4~~]5) The eligibility agency shall process low-income subsidy application data transmitted from the Social Security Administration (SSA) in accordance with 42 U.S.C. Sec. 1935(a)(4) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from [~~Social Security~~]SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost-sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the eligibility agency receives the application for Medicaid.

([~~5~~]6) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday. The following rules apply in determining the application date:

(a) If the eligibility agency receives an application after the close of business, the date of application is the next business day;

(b) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff receives the application;

(i) If the applicant delivers the application on a non-business day or after normal business hours, the date of application is the [~~next~~]last business day that a staff person from the eligibility agency was available at the outreach location to receive[~~s~~] or pick[~~s~~] up the application;

(c) When the eligibility agency receives application data transmitted from [~~Social Security Administration~~]SSA pursuant to the requirements of 42 U.S.C. Sec. 1396u-5(a)(4), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy [~~application~~]to the [~~Social Security Administration~~]SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs.

([~~6~~]7) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

([~~7~~]8) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives [~~the~~]a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Section R414-308-6 apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is [~~the date that~~]when the eligibility agency receives a new application.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The eligibility agency shall determine whether the applicant is eligible within the time limits established in 42 CFR 435.911, 2010 ed., which is incorporated by reference. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 2010 ed., which are

incorporated by reference; and 42 CFR 435.912[;] and 435.919, 2010 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

([~~3~~]4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision[~~ on the application~~]. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost of care contribution for waivers, when the recipient [~~must~~]sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

(i) a spenddown of excess income for medically needy Medicaid coverage;

(ii) a Medicaid Work Incentive (MWI) premium;

(iii) an asset copayment for poverty level, pregnant woman coverage; and

(iv) a cost of care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost of care contribution is due each month for a recipient to receive Medicaid coverage. A recipient must pay an asset copayment before eligibility is granted for poverty level, pregnant woman coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost of care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost of care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost of care contribution subject to the limitations in Section R414-304-9. An unpaid cost of care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost of care contribution for home and community-based waiver services.

(g) Eligibility for the poverty level, pregnant woman program does not exist when the recipient fails to pay a required asset copayment.

(h) The [~~E~~]eligibility agency shall continue eligibility for a resident of a nursing home [~~continues~~]even when an eligible resident fails to pay the nursing home the cost of care contribution[~~ to the nursing home~~]. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month [~~for time-limited programs, ~~]in which the time limit ends;

(e) for the poverty level, pregnant woman program, the last day of the month [~~for the poverty level, pregnant woman program, ~~]which is at least 60 days after the date that the pregnancy ends, except that for poverty-level, pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date that the individual dies.

(3) A presumptive eligibility period begins on the day that the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day that the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

([~~3~~]4) For an individual[~~s~~] selected for coverage under the Qualified Individuals Program, the eligibility agency shall

extend[~~s~~] eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

([~~4~~]5) The eligibility agency shall complete[~~s~~] a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, at least once every 12 months. The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

([~~5~~]6) The eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

([~~6~~]7) [~~The periodic eligibility review is a review of eligibility factors that may be subject to change. The eligibility agency shall require the review to determine whether a recipient is still eligible for medical assistance.~~]The eligibility agency shall use available, reliable sources to gather information needed to complete the review. The eligibility agency may complete an eligibility review without requiring the recipient to provide additional information.

([~~7~~]8) The eligibility agency may ask the recipient to respond to a request to complete the review process during the review month. If the recipient fails to respond to the request, the eligibility agency shall end eligibility [~~after~~]effective at the end of the review month [~~ends~~]and send proper notice to the recipient. If the recipient responds to the review or reapplies in the month that follows the review month, the eligibility agency shall consider the response to be a new application. The application processing period shall apply for the new request for coverage.

(a) The eligibility agency may ask the recipient for verification to redetermine eligibility.

(b) Upon receiving the verification, the eligibility agency shall redetermine eligibility and notify the recipient.

(i) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date.

(ii) If the recipient fails to return verification within the application processing period or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

([e]d) If the case is closed for one or more calendar months, the recipient must reapply.

([~~8~~]9) If the recipient responds to the request during the review month, the eligibility agency may request verification from the recipient.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The recipient has at least ten calendar days from the notice date to provide the requested verification to the eligibility agency.

([~~9~~]10) If the recipient responds to the review and provides all verification by the due date within the review month, the eligibility agency shall determine eligibility and notify the recipient of its decision.

(a) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(b) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. This additional month of eligibility is called the due process month. Upon completing an eligibility determination, [~~T~~]the eligibility agency shall [~~notify the recipient~~]send proper notice of the effective date of any adverse decision[~~ that becomes effective after the due process month~~].

([~~10~~]11) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the[~~ following month. This additional month of eligibility is called the~~] due process month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility [~~after~~]effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

([~~11~~]12) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

([~~12~~]13) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility [~~after the named time period~~]when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

KEY: public assistance programs, applications, eligibility, Medicaid
Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~]2012
Notice of Continuation: January 31, 2008
Authorizing, and Implemented or Interpreted Law: 26-18

Human Services, Recovery Services
R527-34
Non IV-A Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35728
FILED: 01/26/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the date of an incorporated Code of Federal Regulation (CFR) citation from "45 CFR 302.33 (2001)" to "45 CFR 302.33 (2010)".

SUMMARY OF THE RULE OR CHANGE: In Subsection R527-34-2(2), deletes the CFR date reference 2001 and adds 2010. Also, adds 45 CFR 302.33 to the list of "Authorizing, and implemented or Interpreted Law."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 302.33 and Section 62A-11-107

MATERIALS INCORPORATED BY REFERENCES:

♦ Updates Services to individuals not receiving title IV-A or title IV-E foster care assistance., published by Office of Management and Budget , October 2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs to the state budget because the change to the rule is only to update the CFR reference.

♦ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government; therefore, there are no anticipated costs or savings for any local businesses due to this amendment.

♦ SMALL BUSINESSES: There are no anticipated costs for small businesses because the change to the rule is only to update the CFR reference.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs for persons because the change to the rule is only to update the CFR reference.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs as the change to the rule is only to update the CFR reference.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses as the change to the rule is only to update the CFR reference from 2001 to 2010.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Authority and Purpose.

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

2. The purpose of this rule is to outline the services that the Office of Recovery Services/Child Support Services (ORS/CSS) will provide to all Non-IV-A Recipients of child support services.

R527-34-2. Non-IV-A Services.

1. ORS/CSS will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if:

i. income withholding is already in effect; and,

ii. the child(ren) still resides with the obligee;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33 ([~~2001~~]2010) which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support
Date of Enactment or Last Substantive Amendment: [~~June 9, 2008~~]2012
Notice of Continuation: November 17, 2011
Authorizing, and Implemented or Interpreted Law: 45 CFR 302.33; 62A-11-107

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35729
FILED: 01/26/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the date of an incorporated Code of Federal Regulation (CFR) citation.

SUMMARY OF THE RULE OR CHANGE: The change updates the date of an incorporated CFR citation from "45 CFR 302.33 (2008)" to "45 CFR 302.33 (2010)".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 302.33 and Section 62A-11-107

MATERIALS INCORPORATED BY REFERENCES:

♦ Updates Services to individuals not receiving title IV-A or title IV-E foster care assistance., published by Office of Management and Budget , October 2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs to the state budget because the change to the rule is only to update the CFR citation.

♦ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government; therefore, there are no anticipated costs or savings for any local businesses due to this amendment.

♦ SMALL BUSINESSES: There are no anticipated costs for small businesses because the change to the rule is only to update the CFR citation.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs for persons because the change to the rule is only to update the CFR citation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs as the change to the rule is only to update the CFR citation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to businesses as the change to the rule is only to update the date of the CFR citation from 2001 to 2010.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: Mark Brasher, Director

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

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

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

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

Pursuant to 45 CFR 302.33 ([~~2008~~]2010) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

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

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

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

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

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

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

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

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

KEY: child support
Date of Enactment or Last Substantive Amendment: [~~February 23, 2010~~]2012
Notice of Continuation: November 17, 2011
Authorizing, and Implemented or Interpreted Law: 45 CFR 302.33; 62A-11-107

Insurance, Administration
R590-230
Suitability in Annuity Transactions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35699
FILED: 01/19/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The National Association of Insurance Commissioners updated their model on Annuity Suitability Transaction. The changes increase consumer protection which is one of our goals.

SUMMARY OF THE RULE OR CHANGE: In Section R590-230-2, adds the requirement for insurers to establish a system to supervise recommendations. In Section R590-230-3, broadens the scope of the rule to include "replaced" policies. In Section R590-230-4, adds new definitions for FINRA, Producer, Recommendation, Replacement, and Suitability Information. In Section R590-230-5, has been completely rewritten. The changes are more specific as to what one assesses regarding suitability of an annuity for a consumer. The new Section R590-230-6 has been added, "Producer Training," which sets standards that must be met prior to a producer selling annuity products. In Section R590-230-7, makes the insurer responsible for the actions of their producers. It also allows penalties to be reduced or eliminated if the insurer takes prompt corrective action or it is apparent the violation is not part of a pattern or practice. In Section R590-230-8, the language removes the terms "general agents" and "independent agencies" because they are now included in the term "Producers." In Section R590-230-9, extends the time to enforce the changes to the rule from 45 to 60 days after it goes into effect.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-425 and Subsection 31A-2-201(3)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No required filings, thus no increase in workload. No increase in supervision of the insurance company.
♦ LOCAL GOVERNMENTS: This rule and the changes to it will have no fiscal impact on local governments since it deals with the relationship between the department and its life and annuity licensees and the relationship between them and their consumers.
♦ SMALL BUSINESSES: This rule requires insurers to train producers regarding their annuity products. It will not have a fiscal impact on the the agency, which would be the small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Requires insurers to establish a system to review the recommendations to purchase an annuity. Insurers will need to train producers on their annuity products. Since 14 states have already adopted this model, and many insurance companies sell in many states, many insurers may already be in compliance with these new standards. The life and annuity industry involved in the writing of this model have already signed off on this model. Producers will have to spend a small amount of time, probably 2-4 hours, away from sales to be trained by the insurer. The training should make the producer a more knowledgeable and effective salesperson. The more information a consumer receives may help them make a better decision of what is best for them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Requires insurers to establish a system to review the recommendations to purchase an annuity. Insurers will need to train producers on their annuity products. Since 14 states have already adopted this model, and many insurance companies sell in many states, many insurers may already be

in compliance with these new standards. The life and annuity industry involved in the writing of this model have already signed off on this model. Producers will have to spend a small amount of time, probably 2-4 hours, away from sales to be trained by the insurer. The training should make the producer a more knowledgeable and effective salesperson. The more information a consumer receives may help them make a better decision of what is best for them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be minimal fiscal impact on insurers, producers, and agencies. The reason for these changes is to provide greater consumer protections and to offer more applicable information to the consumer.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/07/2012 11:00 AM, State Office Bldg, 450 N State St, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-230. Suitability in Annuity Transactions.
R590-230-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-230-2. Purpose.

(1) The purpose of this rule is to:

(a) set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed; and

(b) require insurers to establish a system to supervise recommendations.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-230-3. Scope.

(1) This rule shall apply to any recommendation to purchase, replace, or exchange an annuity made to a consumer by a[~~n insurance~~] producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

R590-230-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "FINRA" means the Financial Industry Regulatory Authority or its successor.

(3) "Producer" includes an individual producer or agency producer.

(4) "Recommendation" means advice provided by a[~~n insurance~~] producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, replacement or exchange of an annuity in accordance with that advice.

(5) "Replacement" is as defined in R590-93-3.

(6) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(a) age;

(b) annual income;

(c) financial situation and needs, including the financial resources used for the funding of the annuity;

(d) financial experience;

(e) financial objectives;

(f) intended use of the annuity;
(g) financial time horizon;
(h) existing assets, including investment and life insurance holdings;
(i) liquidity needs;
(j) liquid net worth;
(k) risk tolerance; and
(l) tax status.

R590-230-5. Duties of Insurers and of [~~Insurance~~]Producers.

[~~(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.~~

~~(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:~~

~~(a) the consumer's financial status;~~

~~(b) the consumer's tax status;~~

~~(c) the consumer's investment objectives; and~~

~~(d) such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.~~

~~(3)(a) Except as provided under Subsection (3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection (1) related to any recommendation if a consumer:~~

~~(i) refuses to provide relevant information requested by the insurer or insurance producer;~~

~~(ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or~~

~~(iii) fails to provide complete or accurate information.~~

~~(b) An insurer or insurance producer's recommendation subject to Subsection (3)(a) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.~~

~~(4)(a) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections (4)(c) to (4)(e) or shall establish and maintain such a system, including:~~

~~(i) maintaining written procedures; and~~

~~(ii) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.~~

~~(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including:~~

~~(i) maintaining written procedures; and~~

~~(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.~~

~~(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection (4)(a) with respect to insurance producers under contract with or employed by the third party.~~

~~(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection (4)(c) is performing the functions required under Subsection (4)(a) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:~~

~~(i) the insurer annually obtains from a third party's senior manager, who has responsibility for the delegated functions, a certification that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~(ii) the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subsection (4)(c) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(e) An insurer that contracts with a third party pursuant to Subsection (4)(c) and that complies with the requirements to supervise in Subsection (4)(d) of this subsection shall have fulfilled its responsibilities under Subsection (4)(a).~~

~~(f) An insurer, general agent or independent agency is not required by Subsection (4)(a) or (4)(b) to:~~

~~(i) review, or provide for review of all insurance producer solicited transactions; or~~

~~(ii) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.~~

~~(g) A general agent or independent agency contracting with an insurer pursuant to Subsection (4)(c), shall promptly, when requested by the insurer pursuant to Subsection (4)(d), give a certification as described in Subsection (4)(d) or give a clear statement that the third party is unable to meet the certification criteria.~~

~~(h) No person may provide a certification under Subsection (4)(d)(i) unless:~~

~~(i) the person is a senior manager with responsibility for the delegated functions; and~~

~~(ii) the person has a reasonable basis for making the certification.~~

~~(5) Compliance with the National Association of Securities Dealers (NASD) Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this rule.~~](1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is

suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. These requirements are intended to supplement and not replace the disclosure requirements of R590-229;

(b) the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase, or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement that the transaction as a whole is suitable, for the particular consumer based on the consumer's suitability information; and

(d) in the case of an exchange or replacement of an annuity the exchange or replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fee or charges for riders and similar product enhancements;

(ii) the consumer would benefit from product enhancements and improvements; and

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(2) Prior to the execution of a purchase, replacement, or exchange of an annuity resulting from a recommendation, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under Subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(4)(a) Except as provided under Subsection (4)(b), neither a producer nor an insurer shall have any obligation to a consumer under Subsection (1) or (3) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(iv) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or producer.

(b) An insurer's issuance of an annuity subject to Subsection (4)(a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) A producer or, where no producer is involved, the responsible insurer representative, shall at the time of sale:

(a) make a record of any recommendation subject to Subsection (1);

(b) obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation.

(6)(a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this rule, including the following:

(i) the insurer shall maintain reasonable procedures to inform its producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant producer training manuals;

(ii) the insurer shall establish standards for producer product training and shall maintain reasonable procedures to require its producers to comply with the requirements of Section R590-230-6;

(iii) the insurer shall provide product specific training and training materials that explain all material features of its annuity products to its producers;

(iv) the insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(v) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(vi) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(i) Nothing in this subsection restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under Subsection (6)(a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section R590-230-7 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with Subsection (6)(b)(ii).

(ii) An insurer's supervision system under Subsection (6)(a) shall include supervision of contractual performance under this Subsection. This includes the following:

(A) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(B) annually obtaining a certification from a senior manager, who has responsibility for the contracted functions that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(iii) An insurer is not required to include in its system of supervision a producer's recommendations to consumers of products other than the annuities offered by the insurer.

(7) A producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) truthfully responding to an insurer's request for confirmation of suitability information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(8)(a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce, including investigate, the provisions of this rule.

(b) For Subsection(8)(a) to apply, an insurer shall:

(i) monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(ii) provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

R590-230-6. Producer Training.

A producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.

R590-230-7. Compliance Mitigation and Penalties[~~of Responsibility~~].

(1) An insurer is responsible for compliance with this rule. If a violation occurs, either because of the action or inaction of the insurer or its producer, the[~~The~~] commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its [~~insurance~~]producer's, violation of this rule;

(b) [~~an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule; and~~

~~(c)~~]a [~~general agency or independent agency that employs or contracts with an insurance~~]producer [~~to sell, or solicit the sale, of annuities to consumers,~~]to take reasonably appropriate corrective action for any consumer harmed by the [~~insurance~~] producer's violation of this rule; and

(c) appropriate penalties and sanctions.

(2) Any applicable penalty under 31A-2-308 for a violation of [~~Subsection R590-230-5.(1), (2), or (3)(b)~~]this rule may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

R590-230-[~~7~~]8. Records.

Insurers[~~, general agents, independent agencies~~] and [~~insurance~~]producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a[~~n insurance~~] producer.

R590-230-[~~8~~]9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule [~~45~~]60 days from the rule's effective date.

R590-230-[~~9~~]10. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: insurance, annuity suitability
Date of Enactment or Last Substantive Amendment: [~~August 29, 2006~~]2012
Notice of Continuation: June 2, 2009
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425

Natural Resources, Wildlife Resources
R657-20
Falconry

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35734
FILED: 01/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted regularly for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to falconry.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule make it consistent with new guidelines issued by the Federal Fish and Wildlife Service.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-17-7

MATERIALS INCORPORATED BY REFERENCES:
♦ Updates 50 CFR 21, published by Government Printing Office, 10/01/2000

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments clarify the rules that regulate the possession and use of raptors for falconry. Therefore, DWR determines that theses amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since the amendments clarify the rules that regulate the possession and use of raptors for falconry, this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: These amendments clarify the rules that regulate the possession and use of raptors for falconry. Therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments clarify the rules that regulate the possession and use of raptors for falconry. Therefore, this rule does not impose any additional financial requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments are for clarification, thus the DWR determined that there were no additional compliance costs associated with this amendment.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22 (10/01/2000), which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in [~~S~~]section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order [~~Falconiformes~~]Accipitriformes (i.e., vultures, California Condor, kites, eagles[~~,~~] and hawks), Order Falconiformes (i.e., caracaras, and falcons) and[~~all avian species in the~~] Order Strigiformes [~~such as~~](i.e., owls), and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov/guidebooks/2007_falconry.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "[~~falconry~~]Falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. [~~falconry~~]Falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in [~~S~~]section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in [~~S~~]section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor.

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to a protected indoor [~~facilities~~]facility (a residence or non-residence) where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Accipitriformes, Order Falconiformes (falcons and caracaras) or the Order Strigiformes (owls) and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), Rock Dove/feral pigeon (Columba livia). pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least [~~14~~]12 years of age.

R657-20-11. Take of Wild Raptors.

(1) A licensed falconer may take from the wild any raptor species of the Order Accipitriformes, Falconiformes or Strigiformes only as provided in this rule.

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptors taken from the wild for falconry is a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A raptor taken from the wild for falconry must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the date of capture.

(2) Resident Take of Wild Raptors

(a) A Utah Resident may not take any raptor from the wild without first obtaining a COR and a Raptor Capture Permit from the Division.

(b) A Raptor Capture Permit is valid for one raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(c) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-21(2) and (3) as long as the permit holder is present.

(d) Raptor Capture Permits are valid only for the season specified on the permit.

(e) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a raptor.

(f) Raptors may not be taken at any time or in any manner that violates any State, federal, tribal, or local law.

(g) While trapping, falconers shall not retain and transport more than one captured raptor per capture permit.

(3) Taking of wild raptors is prohibited within the boundaries of all National Parks in Utah and on all Utah State Parks.

(4) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(5) No more than two 2 raptors may be taken from the wild each calendar year to use in falconry.

(6) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred raptor will not count as a capture by the recipient.

(c) The transferred raptor will always be considered a wild bird.

(7) A permittee may not intentionally capture raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a raptor he or she is not allowed to possess, it must be released immediately.

(8) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part [~~17 subpart C,~~]17, and if a federal endangered species permit is obtained before taking the bird.

(9) A General or Master Class falconers may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(10) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(11) Periods for Allowable Take Of Raptors From the Wild

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Accipitriform and Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1 through December 31.

(i) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) A peregrine falcon banded with a Federal Bird Banding Laboratory aluminum band may not be taken from the wild and retained.

(iv) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(v) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(d) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(i) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(e) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(i) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(ii) Recapture of falconry raptors must be reported to the Division no more than 5 business days from the date of recapture.

(iii) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(A) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(B) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

(12) Special provisions for take of peregrine falcons.

(a) Only General and Master Class falconers only may take eyas or passage age peregrine falcons in accordance with Sections R657-20-11 and R657-20-12 and as provided in this rule.

(i) Application procedures for taking eyas or passage Peregrine Falcons are provided in Section R657-20-12 and R657-20-13.

(ii) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(iii) The number of permits issued to take peregrine falcons will be set by the Division annually.

(A) One non-resident take permit will be issued annually. If that permit is not applied for, it will be made available to resident falconers.

(B) Any remaining permits that are not applied for will be made available to resident and nonresident falconers on a first-come first-served basis.

(iv) Issued permits will allow take of one eyas or passage age Peregrine Falcon.

(b) An eyas peregrine falcon may not be removed from its aerie prior to 10 days of age.

(c) Aeries of peregrine falcon may not be entered when young are 28 days or more of age.

(d) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(e) A peregrine falcon that is marked with a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(13) Special provisions for take of golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-18(2)(c)(i).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands;

(14) Acquiring a bird for falconry from a permitted rehabilitator.

(a) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A raptor acquired for falconry from a rehabilitator must be reported by entering the required information in the electronic database at http://permits.fws.gov/186A or by submitting a paper form 3-186A, or FWS pdf i-381A via email, to the Division within 10 business days of the transaction.

(ii) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-16. Apprentice Class Falconer and Sponsors.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 14 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 14th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-8, R657-20-9, and R657-20-10 before a falconry COR can be issued.

(2)(a) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(i) Husbandry and training of raptors held for falconry;

(ii) Relevant wildlife laws and regulations, and

(iii) Determining what species of raptor is appropriate for the Apprentice to possess.

(b) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(c) A sponsor must be:

(i)[~~.~~] a Master Class Falconer who holds a valid Utah falconry COR or tribal falconry permit;

(ii) a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR or tribal falconry permit

(d) Unless approved by the Division in writing, the sponsor cannot reside

(i) greater than a 100 mile distance from the Apprentice; or

(ii) outside of Utah.

(e) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

(i) Apprentice Class falconers that change sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements in R657-20-16(2)(a) through (d).

(3) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess any wild-caught passage age raptor or captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes for falconry, provided that the hybrid raptor is not the result of a cross involving any species listed in section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act), with the following exceptions:

[~~(1) Notwithstanding Subsection (3)(a)(i), an Apprentice Class falconer may take or possess raptors specified in the falconry guide book~~

~~(2) An Apprentice Class falconer may possess a hybrid raptor provided that the hybrid raptor is not the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act).~~

] (b[~~) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.~~

~~(c~~]) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

[~~(d~~](c) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-11(6) and R657-20-21.

(d) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-17. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor, captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes except eagles[-] or any wild-caught species listed as a national Species of Conservation Concern in the most recent list of "Birds of Conservation Concern" from the federal Division of Migratory Bird Management to include individuals of any species that may be taken or possessed in accordance with the provisions in 50 CFR 21.29 and Utah regulations.

(b) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-18. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes except a bald eagle (Haliaeetus leucocephalus)[-] or any wild-caught species listed as a national Species of Conservation Concern in the most recent list of "Birds of Conservation Concern" from the federal Division of Migratory Bird Management to include individuals of any species that may be taken or possessed in accordance with the provisions in 50 CFR 21.29 and Utah regulations.

(i) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(c) below are met.

(b) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, but they must be trained in the pursuit of wild game and used for hunting.

(c) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

(ii) A Master Class falconer that satisfies the requirements of this rule may be authorized to take or possess no more than 3 eagles as part of the 5-wild bird maximum limitation for the Master Class level.

R657-20-29. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary [~~flight~~]wing feathers or [~~rectrices~~]rectrix (tail) feathers from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

KEY: wildlife, birds, falconry[*]
Date of Enactment or Last Substantive Amendment: [~~February 22, 2010~~]2012
Notice of Continuation: December 12, 2011
Authorizing, and Implemented or Interpreted Law: 23-17-7; 50 CFR 21

Natural Resources, Wildlife Resources
R657-33
Taking Bear

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35733
FILED: 01/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking bear.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) add the definitions for "Harvest-objective hunt", "Harvest-objective permit", "Harvest-objective unit", "Premium limited entry hunt", and "Premium limited entry permit"; 2) set the criteria for participating in a bear harvest-objective hunt; 3) add nuisance bear activity to the list of restrictions for obtaining a bear baiting Certificate of Registration; and 4) make technical corrections.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment adds several definitions and allows harvest-objective hunts, however because harvest-objective hunts for other species have been in place for years there was minimal adjustments needed to set hunts for bear, so additional work hours were not needed. DWR determines that these amendments do not create a cost or savings impact to the state budget, since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since this amendment only adds additional opportunity to those sportsmen wanting to hunt bear during the harvest-objective hunts it should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: Since this amendment only adds additional opportunity to those sportsmen wanting to hunt bear during the harvest-objective hunts it should have little to no effect on small businesses. This filing does not create any direct cost or savings impact to small businesses because they are not directly affected by the rule. Nor are small businesses indirectly impacted because the rule does not create a situation requiring services from small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since this amendment adds additional opportunity to those sportsmen wanting to hunt bear during the harvest-objective hunts it may cause additional permit fees for those who participate, therefore, DWR feels the amendments may impose an additional requirement on other persons, and generate a cost or savings impact to other persons if they choose to participate in a harvest-objective hunt.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments may create additional costs for sportsmen wishing to participate in the harvest-objective bear hunts in Utah. These costs would be in the form of additional permit fees

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 03/23/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Accompany" means at a distance within which visual contact and verbal communication are maintained without the assistance of any electronic device.

(b) "Bait" means any lure containing animal, mineral or plant materials.

(c) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(d) "Bear" means Ursus americanus, commonly known as black bear.

(e) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(f) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing bear for any purpose.

(g) "Cub" means a bear less than one year of age.

(h) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(i) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(j) "Green pelt" means the untanned hide or skin of a bear.

(k) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking bear.

(l) "Harvest-objective permit" means any permit valid on harvest-objective units.

(m) "Harvest-objective unit" means any unit designated as harvest-objective in the hunt table of the guidebook for taking bear.

(n) "Limited entry hunt" means any hunt listed in the hunt table, published in the [~~proclamation~~]guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt and does not include harvest objective hunts or pursuit only.

([~~l~~]o) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

([~~m~~]p) "Premium limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a premium limited entry hunt and does not include harvest objective hunts or pursuit only.

(q) "Premium limited entry permit" means any permit obtained for a premium limited entry hunt as published in the guidebook of the Wildlife Board for taking bear.

(r) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

([~~n~~]s) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

([~~o~~]t) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

([~~p~~]u) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

([~~q~~]v)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

([~~r~~]w) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

([~~s~~]x) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-33-3. Permits for Taking Bear.

(1)(a) To [~~take~~]harvest a bear, a person must first obtain a valid limited entry bear permit or a harvest objective bear permit for a specified hunt unit as provided in the [~~proclamation~~]guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit may pursue bear without a pursuit permit while hunting on the unit for which the take permit is valid, provided the person is the dog handler.

(2) A person may not apply for or obtain more than one bear permit for the same season, except if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(3) Any [~~limited entry~~]bear permit purchased after the season opens is not valid until seven days after the date of purchase.

([~~3~~]4) Residents and nonresidents may apply for limited entry bear permits and purchase harvest objective bear permits and bear pursuit permits.

([~~4~~]5) A mandatory orientation course is required for hunters who obtain a permit to hunt black bear.

(6) To obtain a bear limited entry [~~bear~~]permit, harvest objective permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-4. Permits for Pursuing Bear.

(1)(a) To pursue bear without a limited entry bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the [~~proclamations~~]guidebooks of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take bear:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained a limited entry bear archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery bear hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game [~~Proclamation~~]Guidebook and Waterfowl [~~proclamation~~]guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery bear hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the [~~proclamation~~]guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear provided he or she possesses:

(a) a valid limited entry bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the dog handler must have:

(a) a limited entry bear or harvest objective permit issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry bear permit for the area; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry bear or harvest objective permit for the area.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in [~~proclamation~~]guidebook open to pursuit;

(b) a limited entry bear or harvest objective permit only during the season and in the area designated by the Wildlife Board in [~~proclamation~~]guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in [~~proclamation~~]guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit seasons as established by the Wildlife Board in [~~proclamation~~]guidebook.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use no more than two bait stations. The bait station(s) may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the [~~proclamation~~]guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; [~~or~~]

(b) 1/2 mile of any permanent dwelling or campground; or

(c) any area identified as potentially increasing nuisance bear activity by the division .

(6) Violations of this rule and the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-25. Taking Bear.

(1)(a) A person who has obtained a limited entry bear permit may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in the guidebook of the Wildlife Board for taking bear.

(i) A mandatory online orientation course is required for hunters who wish to purchase a harvest objective permit to hunt black bear.

(2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit to hunt black bear.

(b) Permits for bear hunts will be distributed to successful applicants upon completion of the orientation course.

(5) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-26. Bear Pursuit.

(1)(a) Except as provided in rule R657-33-3(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear; or

(ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the [~~proclamations~~]guidebooks of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the [~~proclamations~~]guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in [~~proclamation~~]guidebook.

(6) The Wildlife Board may establish or designate in [~~proclamation~~]guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry bear permit; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.

(i) A dog owner pursuing bear on a restricted pursuit unit may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog owner;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The Division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in [~~proclamation~~]guidebook; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the [~~proclamation~~]guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-27. [~~General~~]Limited Entry Bear Permit Application Information.

(1) [~~A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a bear hunting~~

~~permit.~~]Limited entry bear permits are issued pursuant to R657-62-20.

[~~(2) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).~~

~~(3) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.~~

]

R657-33-29. [~~Application Procedure.~~]Harvest Objective General Information.

[~~Limited entry bear permits are issued pursuant to R657-62.~~

](1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking bear.

(2) Harvest objective permits are not valid in a specified unit after the harvest objective has been met for that harvest objective unit.

R657-33-30. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking bear.

(2) Any bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a Harvest objective permit.

R657-33-31. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-5466 or visit the division's website to verify that the bear management area is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the bear harvest objective for that harvest objective unit is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking bear.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue bear except as provided in Section R657-33-26.

R657-33-32. Harvest Objective Unit Reporting.

(1) Any person taking a bear with a harvest objective permit must report to the division, within 48 hours, where the bear was taken and have a permanent tag affixed pursuant to Section R657-33-17.

(2) Failure to accurately report the correct harvest objective management unit where the bear was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-33-33. Fees.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-33-[~~31.~~]34. Drawings and Remaining Permits.

Remaining limited entry bear permits are issued pursuant to R657-62.

R657-33-[~~32.~~]35. Bonus Points.

Bonus points are accrued and used pursuant to R657-62-8.

R657-33-[~~33.~~]36. Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

R657-33-[~~34.~~]37. Duplicate License and Permit.

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

KEY: wildlife, bear, game laws
Date of Enactment or Last Substantive Change: [~~April 4, 2011~~]2012
Notice of Continuation: December 11, 2007
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **Proposed Rule** in the *Utah State Bulletin*, it may receive public comment that requires the **Proposed Rule** to be altered before it goes into effect. A **Change in Proposed Rule** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends March 16, 2012.

Following the **Rule Analysis**, the text of the **Change in Proposed Rule** is usually printed. The text shows only those changes made since the **Proposed Rule** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **Change in Proposed Rule** is too long to print, the Division of Administrative Rules will include only the **Rule Analysis**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through June 14, 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

Environmental Quality, Water Quality
R317-2
Standards of Quality for Waters of the State

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 35359
FILED: 01/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are in response to comments received during the public comment period.

SUMMARY OF THE RULE OR CHANGE: As identified in the Notice of Proposed Rule published on 11/01/2011, the reach of the Weber River from Fountain Green to Uintah was mistakenly moved from Subsections R317-2-12(12.1)(a) and R317-2-12(12.2)(a), 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). The changes made in October 2011 incorrectly changed the reference to Category 2 waters in Subsection R317-2-12(12.1.a) to Category 3. This change corrects this error and adds numbers to the noted exceptions for clarity. Also, references to "tributyl tin" were changed to "tributyltin". (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the November 1, 2011, issue of the Utah State Bulletin, on page 78. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No additional costs or savings to the state budget are anticipated. The proposed amendments will be addressed using existing resources.
♦ LOCAL GOVERNMENTS: No additional costs are anticipated because the changes to Section R317-2-12 revert back to the 2011 language and the other change is spelling.
♦ SMALL BUSINESSES: No additional costs are anticipated because the changes to Section R317-2-12 revert back to the 2011 language and the other change is spelling.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No additional costs are anticipated because the changes to Section R317-2-12 revert back to the 2011 language and the other change is spelling.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are anticipated to remain the same. No additional costs are anticipated because the changes to Section R317-2-12 revert back to the 2011 language and the other change is spelling.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are not anticipated to change compliance costs.

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:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 04/01/2012

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.

. . . . . .

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:

1. Category 2[~~3~~] Waters as listed in R317-2-12.2.

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 Main Street in Coalville to headwaters.

Weber River and tributaries, from Utah State Route 32 near 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 Haight Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Haight Bench 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.

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R317-2-14. Numeric Criteria.

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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	
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~~]Tributyltin					
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) 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:

$$\text{mg/l as N (Chronic)} = \left(\frac{0.0577}{1+10^{7.688-pH}}\right) + \left(\frac{2.487}{1+10^{pH-7.688}}\right) * \text{MIN}\left(2.85, 1.45*10^{0.028*(25-T)}\right)$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = \left(\frac{0.0577}{1+10^{7.688-pH}}\right) + \left(\frac{2.487}{1+10^{pH-7.688}}\right) * 1.45*10^{0.028*(25-\text{MAX}(T,7))}$$

(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:

$$\text{mg/l as N (Acute)} = \left(\frac{0.275}{1+10^{7.204-pH}}\right) + \left(\frac{39.0}{1+10^{pH-7.204}}\right)$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = \left(\frac{0.411}{1+10^{7.204-pH}}\right) + \left(\frac{58.4}{1+10^{pH-7.204}}\right)$$

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.

. . . . . .

KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: [~~2011~~]2012
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5

End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a **120-Day (Emergency) Rule** when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **Proposed Rule**, a **120-Day Rule** is preceded by a **Rule Analysis**. This analysis provides summary information about the **120-Day Rule** including the name of a contact person, justification for filing a **120-Day Rule**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (**. . . . . .**) indicates that unaffected text was removed to conserve space.

A **120-Day Rule** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day Rule** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day Rules** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day Rule**, it usually files a **Proposed Rule** at the same time, to make the requirements permanent. Comments may be made on the **Proposed Rule**. Emergency or **120-Day Rules** are governed by Section 63G-3-304; and Section R15-4-8.

Corrections, Administration
R251-106
Media Relations

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35767
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-106 is under DAR No. 35805 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-102 and Section 63G-3-201 and Section 64-13-10 and Section 64-13-17 and Section 77-19-11

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
♦ SMALL BUSINESSES: No costs or savings to small businesses because this filing puts the rule back into place as it was with no changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to other persons because this filing puts the rule back into place as it was with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-106. Media Relations.
R251-106-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, 63G-2-201(12), 63G-2-204, and 77-19-11, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy under which persons representing the news media shall be allowed access to correctional institutions, inmates and other supervised offenders. It is also intended to define UDC actions when a need exists for the safeguarding of information.

R251-106-2. Definitions.

(1) "News magazines" means magazines having a general circulation being distributed or sold to the general public by news stands, by mail circulation, or both.

(2) "News media" means collectively those involved with news gathering for newspapers, news magazines, radio, wire services, television or other news services.

(3) "News media members" means persons over the age of eighteen who are primarily employed in the business of gathering or reporting news for newspapers, news magazines, national or international news services, or radio or television stations licensed by the Federal Communications Commission or other recognized news services.

(4) "Newspaper" means, for the purposes of this rule, the publication being circulated among the general public, and containing items of general interest to the public such as political, commercial, religious or social affairs.

(5) "Press" means the print media; also see "news media", generally.

(6) "UDC" means the Utah Department of Corrections;

(7) "UDC-issued media identification" means identification issued by the UDC to members of the news media to ensure a consistent, controlled, dependable means of recognition.

R251-106-3. Standards and Procedures.

(1) It is the policy of the UDC to permit press access to facilities, inmates, supervised offenders and information. Access shall be:

(a) consistent with the requirements of the constitutions and laws of the United States and State of Utah;

(b) at a level no more restrictive than that allowed the general public.

(2) Access by news media members shall be restricted:

(a) when the UDC finds it necessary to further its legitimate governmental interests, or to maintain safety, security, order, discipline and program goals;

(b) to conform with statutory and constitutional privacy requirements as interpreted by binding case precedent;

(c) when information or access would be contrary to state interests on matters under litigation; or

(d) to safeguard the privacy interests of those under the supervision of the UDC.

(3) The UDC shall make all reasonable efforts to see that the public is kept informed concerning its operations by:

(a) participating and cooperating with the news media to communicate the UDC's mission, goals, policy, procedures, operation, and activities;

(b) providing information in a timely manner, while avoiding disruption or compromise of the UDC's legitimate interests; and

(c) releasing information in accordance with the policy, procedures and requirements of law to provide the public with knowledge about:

(i) UDC philosophy, operations and activities; and

(ii) significant issues and problems facing the UDC.

(4) Inmates shall not be denied the opportunity to communicate with the news media. However, the UDC reserves the right to regulate the manner in which the communication may occur, including:

(a) defining the channels of communication and the circumstances of their use; and

(b) temporarily suspending communication during exigent circumstances including:

(i) riots;

(ii) hostage situations;

(iii) fires or other disasters;

(iv) other inmate disorders; or

(v) emergency lock-down conditions.

(5) Because the UDC faces special management problems with the prison's operation from face-to-face interviews between inmates and the news media:

(a) news media members' requests for face-to-face interviews shall be reviewed on a case-by-case basis by considering the mental competence of the inmate, pending appeals, safety, security, and management issues of the institution;

(b) requests for face-to-face interviews shall be submitted to the Public Information Officer; and

(c) interviews which the UDC determines will jeopardize its legitimate interests, or those of a prison facility, shall not be approved.

(6) Access to executions by the news media shall be consistent with the requirements of Section 77-19-11, of the Utah Code.

(7) News media members shall obtain UDC-issued media identification or shall receive special permission for access to prison property or other UDC Facilities. Special permission may be granted only by the Public Information Officer or Executive Director.

(8) No equipment shall be taken inside the facility unless specifically approved by the Public Information Officer, Deputy Director, or Executive Director. Filming or other recording visits are separate issues and involve individual consideration and decisions.

(9) Ground rules for each opportunity for facility access, filming or recording shall be determined prior to entry.

(10) Access may be terminated at any time without warning, if:

(a) the conditions, ground rules, or other regulations are violated by news media members involved in the access opportunity;
(b) an inmate disorder or other disruption develops;
(c) staff members detect problems created by the media visit which threaten security, safety or order in the facility; or
(d) other reasons related to the legitimate interests of the UDC are present.
(11) Deliberate violation of regulations or other serious misconduct during a facility visit:
(a) shall result in the temporary loss of UDC-issued media identification; and
(b) may result in the permanent loss of UDC-issued media identification.

KEY: corrections, press, media, prisons
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 63G-2-102; 63G-3-201; 64-13-10; 64-13-17; 77-19-11

Corrections, Administration
R251-107
Executions

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35768
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-107 is under DAR No. 35806 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-19-10 and Section 77-19-11

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-107. Executions.
R251-107-1. Authority and Purpose.
(1) This rule is authorized by Sections 63G-3-201, 64-13-10, 77-19-10, and 77-19-11, of the Utah Code, in which the Department shall adopt and enforce rules governing procedures for the execution of judgments of death and attendance of persons at the execution.
(2) The purpose of this rule is to address public safety and security within prison facilities prior to, during and immediately following an execution.

R251-107-2. Definitions.
(1) "Department" means Utah Department of Corrections.
(2) "DIO" means Division of Institutional Operations.
(3) "news media" includes persons engaged in news gathering for newspapers, news magazines, radio, television, online news sources, excluding personal blogs, or other news services.
(4) "news media members" means persons over the age of eighteen who are primarily employed in the business of gathering

or reporting news for newspapers, news magazines, national or international news services, radio or television stations licensed by the Federal Communications Commission or other recognized news services, such as online media.

(5) "newspaper" means a publication that circulates among the general public, and contains information of general interest to the public regarding political, commercial, religious or social affairs.

(6) "press" means the print media, news media, or both.

(7) "USP" means Utah State Prison.

R251-107-3. Crowd Control.

(1) Persons arriving at or driving past the USP shall be routed and controlled in a manner which does not compromise or inhibit:

(a) security;

(b) official escort or movement;

(c) the functions necessary to carry out the execution; or

(d) safety.

(2) Persons controlled/handled through this process shall be handled in a manner with no more restriction than is necessary to carry out the legitimate interests of the Department.

(3) Procedures for crowd control shall be consistent with federal, state and local laws.

(4) Only persons specifically authorized shall be permitted on USP property, except those persons congregating at a designated demonstration/public area.

(5) Persons entering USP property without authorization shall be ordered to leave and may be arrested if:

(a) the trespass was intentional;

(b) the individual failed to immediately leave the USP property following a warning;

(c) the trespass jeopardized safety or security (or) interfered with the lawful business of the Department or its staff or agents; or

(d) it involves entry onto areas clearly posted with signs prohibiting access or trespass.

R251-107-4. Location and Procedures.

(1) The executive director of the Department of Corrections or his designee shall ensure that the method of judgment of death specified in the warrant is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by lethal intravenous injection, the executive director of the department or his designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of sodium thiopental or other equally or more effective substance to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection 77-18-5.5(3) or (4), of the Utah Code, the executive director or his designee shall select a five-person firing squad of peace officers.

(4) Death shall be certified by a physician.

R251-107-5. Demonstration and Public Access.

(1) The Executive Director may permit limited access to a designated portion of state property on Minuteman Drive at or near the Fred House Academy for the public to gather demonstrate during an execution event.

(2) No person may violate the intent of clearly marked signs, fences, doors or other indicant relative to prohibitions against entering any prison property or facility for which permission to enter may not be marked.

(3) The Department neither recognizes, nor is bound by, the policies, allowances or arrangements which may have occurred at prior executions, events or on prior occasions, and by this rule any arrangement provided for public access at previous executions or demonstrations is invalidated.

(4) The Executive Director or Warden may at any time withdraw permission without notice in the event of riot, disturbance, or other factors that in the opinion of the Warden/designee or Executive Director/designee jeopardizes the security, peace, order or any function of the prison.

R251-107-6. Witnesses.

(1) The Department will implement the standards and procedures for inmate witnesses outlined in Section 77-19-11, of the Utah Code.

(2) As a condition to attending the execution, each designated witness shall be required by the Department to sign an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penelogical, security and safety concerns as delineated by the Department.

(3) Witnesses shall be searched prior to being allowed to witness the execution.

R251-107-7. News Media.

(1) The Department shall permit press access to the execution and information concerning the execution consistent with the requirements of the constitutions and laws of the United States and State of Utah.

(2) The Department and the Utah Code recognize the need for the public to be informed concerning executions.

(a) The Department will participate and cooperate with the news media to inform the public concerning the execution; and

(b) information should be provided in a timely manner.

(3) The Executive Director shall be responsible for selecting the members of the news media who will be permitted to witness the execution.

(a) After the court sets a date for the execution of the death penalty, news directors or editors desirous to have a staff member witness the execution may submit, in writing, such request for no more than one news media staff member.The request shall be addressed to the Executive Director and received at least 30 days prior to the execution.

(b) When administrative convenience or fairness to the news media dictates, the Department, in its discretion, may extend the request deadline.

(c) Requests for consideration may be granted by the Executive Director provided they contain the following:

(i) a statement setting forth facts showing that the requesting individual falls within the definition of member of the "press" and "news media" as set forth in this rule;

(ii) an agreement to act as a pool representative for other news gathering agencies desiring information on the execution; and

(iii) an agreement that the media member will abide by all of the conditions, rules and regulations while in attendance at the execution.

(d) Upon receipt of a news director's or editor's request for permission for news media witnesses to attend the execution, the Executive Director may take the steps necessary to verify the statements made in the request. After verifying the information in the request, selection of witnesses shall be made by the Executive Director.

(e) As a condition to attending the execution, each designated media witness shall be required by the department to execute an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penological, security and safety concerns as delineated by the department.

(f) Media witnesses shall be searched prior to being allowed to witness the execution.

(g) The Department shall arrange for pre-execution briefings, distribution of media briefing packages, briefings throughout the execution event, and post-execution briefings by the news media who witnessed the execution.

(4) Persons representing the news media witnessing the execution shall be required to sign a statement or release absolving the institution or any of its staff from any legal recourse resulting from the exercise of search requirements or other provisions of the witness agreement.

(5) News media representatives shall, after being returned from the execution to the staging area, act as pool representatives for other media representatives covering the event.

(a) The pool representatives shall meet at the designated media center and provide an account of the execution and shall freely answer all questions put to them by other media members and shall not be permitted to report their coverage of the execution back to their respective news organizations until after the non-attending media members have had the benefit of the pool representatives' account of the execution.

(b) News media members attending the post-execution briefing shall agree to remain in the briefing room and not leave nor communicate with persons outside the briefing room until the briefing is over.

(c) The briefing shall end when the attending news media members are through asking questions or after 60 minutes, whichever comes first.

(d) Any film/videotape obtained by a pool photographer shall not be used in any news or other broadcast until made available to all agencies participating in the pool. All agencies receiving the film/videotape will be permitted to use them in news coverage and to retain the film/videotape for file footage.

(6) The Department may alter these processes to impose additional conditions, restrictions and limitations on media coverage of the execution when requirements become necessary for the preservation of prison security, personal safety or other legitimate interests which may be in jeopardy.

(7) If extraordinary circumstances develop, additional conditions and restrictions shall be no more restrictive than required to meet the exigent circumstances.

R251-107-8. Authority of Executive Director.

The Executive Director/designee shall be authorized to make changes in policies and procedures that are necessary to ensure the interest of security, safety, and professionalism is maintained during the planning, training, and administering of the execution order.

KEY: corrections, executions, prisons
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 77-19-10; 77-19-11

Corrections, Administration
R251-108
Adjudicative Proceedings

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35769
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-108 is under DAR No. 35807 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 63G-4-202 and Section 63G-4-203

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.

♦ SMALL BUSINESSES: No costs or savings to small businesses because this filing puts the rule back into place as it was with no changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to other persons because this filing puts the rule back into place as it was with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-108. Adjudicative Proceedings.
R251-108-1. Purpose and Authority.

(1) The purpose of this rule is to establish a procedure by which informal adjudicative proceedings shall be conducted as a result of a notice of agency action, or a request by a person for agency action regarding Department rules, orders, policies or procedures. This rule shall not apply to internal personnel actions conducted within the Department.

(2) This rule is authorized by Sections 63G-3-201, 63G-4-202, 63G-4-203, and 64-13-10, of the Utah Code.

R251-108-2. Definitions.

(1) "Adjudicative proceeding" means a departmental action or proceeding.

(2) "Department" means Department of Corrections.

(3) "Hearing" means an adjudicative proceeding which may include not only a face-to-face meeting, but also a proceeding/meeting conducted by telephone, television or other electronic means.

(4) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

(5) "Personnel actions" means any administrative hearings, grievance proceedings and dispositions, staff disciplinary process, promotions, demotions, transfers, or terminations within the department.

(6) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding; if fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

(7) "Petition" means a request for the department to determine the legality of agency action or the applicability of policies, procedures, rules, or regulations relating to agency actions associated with the governing of persons or entities outside the Department.

R251-108-3. Policy.

It is the policy of the Department that:

(1) all adjudicative proceedings not exempted under the provisions of Section 63G-4-202, of the Utah Code, shall be informal;

(2) upon receipt of a petition, the Department shall conduct an informal hearing regarding its actions or the applicability of Department policies, rules, orders or procedures that relate to particular actions;

(3) the Department shall provide forms and instructions for persons or entities who request a hearing;

(4) hearings shall be held in accordance with procedures outlined in Section 63G-4-203, of the Utah Code;

(5) the provisions of this rule do not affect any legal remedies otherwise available to a person or an entity to:

(a) compel the Department to take action; or

(b) challenge a rule of the Department;

(6) the provisions of this rule do not preclude the Department, or the presiding officer, prior to or during an adjudicative proceeding, from requesting or ordering conferences with parties and interested persons to:

(a) encourage settlement;

(b) clarify the issues;

(c) simplify the evidence;

(d) expedite the proceedings; or

(e) grant summary judgment or a timely motion to dismiss;

(7) a presiding officer may lengthen or shorten any time period prescribed in this rule, with the exception of those time periods established in Title 63G, Chapter 4, of the Utah Code, applicable to this rule;

(8) the Executive Director/designee shall appoint a presiding officer to consider a petition within five working days after its receipt;

(9) the presiding officer shall conduct a hearing regarding allegations contained in the petition within 30 working days after notification by the Executive Director;

(10) the presiding officer shall issue a ruling subject to the final approval of the Executive Director within 15 working days following the hearing and forward a copy of same by certified mail to the petitioner;

(11) the petition and a copy of the ruling shall be retained in the Department's records for a minimum of two years;

(12) the ruling issued by the presiding officer terminates the informal adjudicative proceeding process; and

(13) appeals shall be submitted to a court of competent jurisdiction as outlined in Sections 63G-4-401 and 402.

KEY: corrections, administrative procedures
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 63G-4-202; 63G-4-203

Corrections, Administration
R251-703
Vehicle Direction Station

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 35770
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-703 is under DAR No. 35808 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-14

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare. JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
♦ SMALL BUSINESSES: No costs or savings to small businesses because this filing puts the rule back into place as it was with no changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to other persons because this filing puts the rule back into place as it was with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-703. Vehicle Direction Station.
R251-703-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-14 and 64-13-10, of the Utah Code.

(2) The purpose of this rule is to define the Department's policy, procedure and requirements for the operation of the Vehicle Direction Stations located at the South Point and Central Utah Correctional facilities.

R251-703-2. Definitions.

(1) "Central Utah Correctional Facility" or "CUCF" means the institutional housing unit located in Gunnison.

(2) "Civilian" means vendor, deliveryman, construction worker, family members, friend, or other person not acting on behalf of UDC or an allied agency in an official capacity who needs access to prison property.

(3) "Department" means Department of Corrections.

(4) "DIO" means Division of Institutional Operations.

(5) "ID" means identification issued by an authorized government agency.

(6) "South Point" means the Uinta, Wasatch and Oquirrh facilities at the Utah State Prison.

(7) "VDS" means Vehicle Direction Station.

(8) "Visitor" means any person accessing prison property other than a Utah Department of Corrections employee, an inmate, or offender.

R251-703-3. Policy.

It is the policy of the Department that:

(1) the Department shall maintain a Vehicle Direction Station at the main entrance of South Point, and Central Utah

Correctional Facility to control access of vehicles and persons entering or leaving institutional property;

(2) the Vehicle Direction Station (VDS) shall be staffed by an armed member of the Security Unit. The VDS shall be staffed from 0600 to 2200 hours daily;

(3) drivers using the entrance road to the VDS shall observe state traffic laws, keep the road free from equipment or vehicles that would obstruct visibility or impede the free flow of traffic, and follow directives of VDS staff charged with maintaining entry facilities;

(4) drivers and pedestrians using the entrance road shall heed directions of VDS staff, to ensure the safety of vehicular and pedestrian traffic;

(5) visitors to the prison shall be responsible to read and follow signs posted on the entrance road to the VDS prohibiting contraband from being introduced onto prison property;

(6) since the VDS is the initial control point for controlling contraband from being brought onto prison property, visitors may be subjected to search and seizure procedures as provided by law;

(7) the VDS shall be the control point for limiting entry to institutional facilities to persons whose presence is necessary to the institution and to authorized visitors of inmates;

(8) to prevent escape of inmates, a vehicle exiting South Point or CUCF shall be subject to a search. Persons in exiting vehicles shall be required to provide identification and verification of clearance;

(9) civilians 16 years of age and older, in a vehicle or on foot, shall be required to have picture ID in their possession and to submit it for inspection, before being allowed through the VDS. If they do not have a valid ID:

(a) access to the prison through the VDS shall not be allowed;

(b) they shall not be allowed to wait or park on the entrance road to any institutional facility or on any roads adjacent to an institutional facility; but

(c) they may be allowed to wait in a designated parking area adjacent to the VDS;

(10) civilians under 16 years of age shall not be permitted access unless accompanied by an approved adult;

(11) civilians found in the possession of weapons or contraband at the VDS under circumstances which do not constitute a violation of law shall be required to leave prison property;

(12) peace officers from allied agencies shall either secure their firearms at the VDS, another approved location, or lock their weapons in their vehicle trunk if the vehicle will not penetrate the secure perimeter;

(13) persons who have a valid outstanding warrant may be arrested and either cited or transported, depending on the needs of the UDC and the agency holding the warrant;

(14) persons who have a valid outstanding warrant, if not arrested, may be denied entry to prison property until the warrant has been adjudicated; and

(15) visitors shall comply with all directives of VDS officers.

KEY: prisons, corrections
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 64-13-14

Corrections, Administration
R251-704
North Gate

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 35771
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-704 is under DAR No. 35809 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-14

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
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♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to other persons because this filing puts the rule back into place as it was with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-704. North Gate.
R251-704-1. Authority and Purpose.

A. This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-14, of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

B. The purpose of this chapter is to provide the Department's policy, procedures and requirements for the North Gate of the South Point Complex of the Prison.

R251-704-2. Definitions.

1. "ID" means identification.

2. "SSD" means Special Services Dormitory.

R251-704-3. Standards and Procedures.

It is the policy of the Department that:

A. access through the North Gate shall be restricted to authorized persons at authorized times to control contraband, prevent the escape of inmates and to otherwise further the legitimate security interests of the USP;

B. regulations shall be enacted to control access through the North Gate, particularly as that access involves persons who are not members of the USP staff;

C. vehicles accessing the North Gate shall be thoroughly searched to prevent the flow of contraband, prevent the possibility of escape and to otherwise further the legitimate security interests of the USP;

D. vehicles wishing to exit the North Gate which are loaded in such a manner which prohibits the North Gate officer from giving it a thorough shake down shall:

1. be accompanied by a corrections officer who witnessed the loading of the vehicle and verifies, by signing the North Gate Vehicle Security Warrant Form, that the security of the vehicle was maintained during loading to prevent escape; and

2. be detained at the North Gate until all inmates are counted.

E. vendor access through the North Gate may be allowed from 0700 to 1500 hours Monday through Friday;

F. deliveries at other than designated times shall require a special clearance signed by the Security Deputy Warden/designee.

G. the garbage truck:

1. should be allowed access to through the North Gate as needed, beginning at approximately 0400; and

2. shall have an Enforcement Officer escort while inside the secure perimeter;

H. access for contractors and construction workers should be granted between 0700 and 1700 hours, unless an emergency exists that would prevent access;

I. non-prison staff (i.e., contract professional staff including psychologists, vocational rehabilitation personnel, attorneys, legal services providers, etc.), including all volunteers shall not ordinarily be allowed access through the North Gate, but shall be required to use the Oquirrh, Wasatch, or Uinta administration building sallyport for access;

J. vendors shall be required to surrender their driver's license, or official identification to the North Gate officer while inside the compound (any exception shall be cleared through the Watch Commander);

K. construction workers and contractors shall provide name, legal address, social security number, driver's license number, date of birth to the appropriate prison personnel at least 72 hours prior to access onto prison property;

L. prior to exiting through the North Gate, all persons shall be identified;

M. all persons are subject to a search of their person, property and vehicle as a condition of entry onto prison property;

N. the North Gate officer shall search all vehicles to ensure that no unauthorized passengers or contraband items are allowed access through the North Gate; and

O. vehicle operators and passengers shall exit the vehicle during a vehicle search.

KEY: correctional institutions, security measures
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 64-13-14

Corrections, Administration
R251-705
Inmate Mail Procedures

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 35772
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-705 is under DAR No. 35810 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-10 and Subsection 64-13-17(3)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs because this filing puts the rule back into place as it was with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-705. Inmate Mail Procedures.
R251-705-1. Authority and Purpose.
(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17(4), of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.
(2) The purpose of this section is to establish the UDC's policies and procedures for processing mail received in the DIO Mail Unit.

R251-705-2. Definitions.
(1) "Catalog" means a systematized list whose sole purpose is to feature descriptions of items for sale.
(2) "Department" means the Department of Corrections.
(3) "DIO" means Division of Institutional Operations.
(4) "Inspect" means open and examine a letter, correspondence or other material with the primary objective to detect false labeling, contraband, currency, or negotiable instruments.
(5) "Inter-department mail" means mail sent between departments within the state.
(6) "Inter-department mail" mean mail sent from office to office within a department.
(7) "Mail" means written material sent or received by inmates through the United States Postal Service.
(8) "Money instruments" means currency, coin, personal checks, money orders and cashier's or non-personal checks.
(9) "Nuisance contraband" means items that may include, but are not limited to, paper fasteners, hair, ribbons, pins, rubber bands, pressed leaves and/or flowers, promotional gimmicks, gum, stickers, computer disks, maps, calendars, balloons, and other such items having no intrinsic value or not approved by the department administration to be in the possession of the inmates.
(10) "Privileged mail" means correspondence with a person identified by this chapter relating to the official capacity of that person, which has been properly labeled to claim privileged status.
(11) "Publisher-only rule" means a rule limiting books, audio media, magazines, newspapers, etc. to those sent directly from the publisher, a book or tape club or a licensed book store. All media shall be new and audio shall be factory sealed and the return address should be commercially printed or stamped.
(12) "Reasonable cause" means information that could prompt a reasonable person to believe or suspect that there is or might be a threat to the safety, security or management of the UDC facility or that could be harmful to persons.
(13) "UDC" means Utah Department of Corrections.
(14) "USP" means Utah State Prison.

R251-705-3. Standards and Procedures.
It is the policy of the Department that:
(1) inmate mail shall comply with the Constitution and Laws of the United States, the Constitution and Laws of the State of Utah, and the authorized written policies and procedures of the UDC.

(2) inmates shall be permitted to send and receive mail while in custody of the UDC in the manner defined by this rule.

(3) nothing in this rule should be interpreted as creating a greater entitlement for inmates or those with whom they correspond than that currently required by law.

(4) inmate mail regulations shall:

(a) further the legitimate interests of the UDC; while

(b) balancing the UDC's interests with those of the general public and inmates.

(5) mail received for inmates at the USP shall be delivered to the USP Mail Unit for processing and:

(a) shall be opened and inspected;

(b) may be read at the discretion of the Department;

(c) may be photocopied when such copying is reasonably related to the furtherance of a legitimate Department interest;

(d) may be refused, denied or confiscated where reasonable cause exists to believe the contents may adversely impact the safety, security, order or treatment goals of the Department;

(e) may be used as evidence in criminal, civil or administrative trials or hearings;

(f) is entitled to no expectation of privacy;

(g) all forms of nuisance contraband shall be confiscated and disposed of without notice or opportunity for appeal; and

(h) shall be delivered to inmates without unreasonable delay;

(6) catalog purchases other than through the DIO Commissary catalog are not authorized and catalogs shall not be accepted through the mail, except when sent 1st or 2nd class or from a legal, school, religious or government printing office.

(7) staff-to-inmate mail shall not be sent in "Inter/Intra-department Delivery" envelopes, but in regular mailing envelopes;

(8) outgoing inmate mail and inmate inter/intra-department mail shall be deposited in the housing units' outgoing mail depository, picked up by USP Mail Unit staff, and delivered to the USP Mail Unit for processing;

(9) an inmate shall not direct nor establish a new business through the mail unless authorized by the Warden of the facility;

(10) an inmate who corresponds concerning a legitimately held business, shall correspond through his attorney or a party holding a power of attorney;

(11) an inmate is not authorized to establish credit transactions through the mail while confined unless authorized by the Warden of the facility;

(12) fund raising by inmates for personal gain is prohibited;

(13) envelopes received by the USP Mail Unit displaying threatening, negative gestures or comments, extraneous materials, or grossly offensive sexual comments, shall be confiscated, declared contraband, placed into evidence, and the inmate shall receive disciplinary action;

(14) the publisher-only rule shall govern the receipt of all incoming books, audio media, magazines, and newspapers;

(15) certain types of mail are entitled to constitutionally protected confidentiality (or privilege); accordingly, this privilege prohibits qualifying correspondence material from being read without cause by staff;

(16) incoming privileged mail:

(a) shall be inspected, but only in the presence of the inmate addressee;

(b) shall not be perused;

(c) shall not be photocopied; and

(d) may be denied only for reasonable cause and upon instruction of the DIO Director/designee;

(17) outgoing privileged mail:

(a) shall be inspected only when there is reasonable cause to believe that the correspondence:

(i) contains material which would significantly endanger the security or safety of the Institution; or

(ii) is misrepresented as legal material;

(b) shall only be inspected in the presence of the inmate sender;

(c) shall not be perused;

(d) shall not be photocopied;

(e) may only be denied for a reasonable cause, and upon instruction of the DIO Director/designee; and

(f) from an inmate that cannot be identified, shall be forwarded to the deputy warden who supervises the mail unit, or his or her designee, who will make a determination of the disposition.

(18) all inmate inter/intra-departmental mail shall be processed through the USP Mail Unit;

(19) inmate-to-inmate correspondence shall not be permitted, unless:

(a) there is a compelling justification for an exception;

(b) there is no alternate means of accomplishing that compelling need; and

(c) the inmates present a minimal risk, according to UDC standards, to security, order and/or safety;

(20) inmates have no entitlement to inmate-to-inmate correspondence created by the constitutions of the United States or the State of Utah;

(21) personal mail written in a language other than English may be delayed for purposes of translation;

(22) the USP Mail Unit shall not accept postage-due mail unless payment is waived by the deliverer;

(23) the USP Mail Unit shall not accept letters, cards, money instruments, or property items for which there is reasonable cause to believe the items are contaminated, defaced or handled in such a way as to be offensive.

(24) items received that cannot be searched without destruction or alteration (e.g., electronic greeting cards, multilayered cards, polaroid photographs, etc.) shall be denied and returned to the sender;

(25) inmates are prohibited from receiving currency or personal checks; and

(26) to be identified as incoming privileged mail, the correspondence shall be from an attorney or other sender qualified for privileged correspondence, be properly labeled as claiming privileged status, and have a return address clearly indicating a judicial agency, law firm, individual attorney, or other approved agency or person.

KEY: corrections, prisons
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 64-13-10; 64-13-17(3)

Corrections, Administration
R251-706
Inmate Visiting

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 35773
FILED: 02/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed. The rule is essential and needs to be in place.

SUMMARY OF THE RULE OR CHANGE: This filing puts the rule back into place. (DAR NOTE: A proposed new rule filing for Rule R251-706 is under DAR No. 35811 and will be published in the March 1, 2012, Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 64-13-10 and Section 64-13-17

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: This rule is necessary for defining interaction with the public and the prison.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget because this filing puts the rule back into place as it was with no changes.
♦ LOCAL GOVERNMENTS: No costs or savings to local government because this filing puts the rule back into place as it was with no changes.
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COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact to businesses because this filing puts the rule back into place as it was with no changes.

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CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

EFFECTIVE: 02/01/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

R251. Corrections, Administration.
R251-706. Inmate Visiting.
R251-706-1. Authority and Purpose.
(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17, of the Utah Code.
(2) The purpose of this rule is to provide the Department's policies, procedures and requirements for inmate visitation at the Division of Institutional Operations.

R251-706-2. Definitions.
(1) "abusive" means insulting or harmful.
(2) "adult" means anyone eighteen years of age or older.
(3) "approved adult" means an individual eighteen years of age or older, cleared through background checks and approved by the facility visiting staff to visit an inmate.
(4) "approved visitor" means an individual cleared through BCI and approved by the facility visiting staff to visit an inmate.
(5) "barrier visit" means a non-contact visit where the visitor and inmate are separated by glazing, screen, or other partition.
(6) "BCI" means Bureau of Criminal Identification.
(7) "contraband, illegal" means any item in the possession of an inmate or visitor which violates a federal or state law.
(8) "contraband, nuisance" means any item in the possession of an inmate or visitor which does not violate a federal or state law but does violate a prison policy.
(9) "DIO" means Division of Institutional Operations.
(10) "DMV" means Department of Motor Vehicles.
(11) "emergency visit" means visit occasioned by a verifiable emergency, such as serious illness, accident, or death of an inmate's immediate family member.
(12) "foul" means offensive to the senses; vulgar.
(13) "immediate family" means spouse, children, stepchildren, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, half-sister, grandmother, grandfather and grandchildren.

(14) "inmate visiting request form" means a form given to inmates during the Reception and Orientation process or at a later time to add persons to their approved visitor lists.

(15) "Minor" means any person under the age of 18 years old.

(16) "NCIC" means National Crime Information Center.

(17) "NLETS" means National Law Enforcement Teletype System.

(18) "OMR" means Offender Management Review team.

(19) "positive identification" means document containing a photograph and date of birth, including but not limited to a valid driver's license, federal or state identification card, military identification or passport; does not include credit cards, social security card, employment card, or student identification card.

(20) "R and O" means reception and orientation process for new inmates and parole violators committed to the institution.

(21) "special visits" means visits authorized by the warden/designee for circumstances other than normal visiting procedures.

(22) "UDC" means Utah Department of Corrections.

(23) "Uinta" means housing unit for maximum security inmates.

(24) "USP" means Utah State Prison, including Draper and CUCF.

(25) "visit" means a short meeting with an approved visitor; a privilege, not a right, afforded to inmates/visitors at the Utah State Prison.

(26) "visitor's consent form" means a form given to an approved visitor requiring the visitor's signature indicating that the visitor has received, understands, and shall adhere to the visitor rules.

R251-706-3. Visiting Policies.

(1) Visitors shall complete a visitor's consent form prior to the initial visit.

(2) Visitors shall receive a copy of the visitor rules and regulations which are distributed at the time of the initial visit. Prior to the first visit, visitors shall read the rules and regulations and shall sign that they understand and will comply with the visiting rules.

(3) Any employee, contractor, volunteer or student who has terminated employment or services with the Department may not be cleared for visits until one year has elapsed from the time of termination of employment or services.

(4) Visitors shall be modestly dressed to be permitted to visit. Bare midriffs, hooded sweat shirts, sleeveless, or see-through blouses or shirts, shorts, tube tops, halters, extremely tight or revealing clothing, dresses or skirts more than three inches above the knees, or sexually revealing attire are not allowed. Children under the age of twelve may wear shorts and sleeveless shirts.

(5) Upon reasonable suspicion, visitors shall be subject to search, and visitation may be denied for failure to submit to the search request.

(6) Prior to entering the Utah State Prison visiting room, visitors may be screened with a metal detector.

(7) If contraband is discovered, the duty officer shall be notified, and:

(a) visitors attempting to introduce nuisance contraband, which is in violation of DIO policies and procedures, onto prison property may have their visiting privileges suspended, restricted or revoked; or

(b) visitors attempting to introduce illegal contraband onto prison property may be subject to criminal prosecution and suspension of visiting privileges.

(8) Visitors shall not be permitted to bring pets or other animals, except for seeing-eye dogs, onto prison property.

(9) Food items from outside the prison shall not be allowed.

(10) Visits should not exceed two hours. Visiting hours may be reduced or extended on any day based on facility visiting conditions or special holiday schedules. On special visits, conditions including the length of the visit are approved based on an assessment of the request and capabilities of the facility.

(11) Personal property such as purses, wallets, keys, blankets, coats and sweaters worn as outer garments, and money (except for vending machine change in facilities which allow them) are not allowed in the visiting room.

(12) Visitors with babies may bring into the visiting area infant care items that are reasonably needed during the visit. Staff shall accommodate personal need items that do not present a threat to the safety and security of the inmates, staff, and the institution.

(13) The UDC shall not be responsible for loss of personal property. Visitors may secure items in UDC lockers where available.

(14) Visitors shall not be permitted to visit during any scheduled visiting period if less than 30 minutes remain in the visiting period.

R251-706-4. Uinta Visiting.

Visitors to the Uinta facility may be required to have additional clearances by the warden/designee or unit manager, prior to visiting the facility.

R251-706-5. Processing Visiting Application.

(1) A visiting application shall be completed by inmates who wish to have a visitor. It is the inmate's responsibility to ensure that the visiting application information is complete and approved by facility visiting staff prior to the first visit.

(2) Visiting applications shall be checked by facility visiting staff through BCI, NLETS, DMV and local wants and warrants prior to the applicant being considered for visitation privileges.

(3) Visiting applications shall be denied by the captain/designee if there is reason to believe that visits would jeopardize the safety, security, management or control of the Institution.

(4) Applications may be denied when an extensive or recent history of criminal activity exists, or the visitor has:

(a) transported contraband into or out of a correctional facility;

(b) aided or attempted to aid in an escape from a jail or correctional facility;

(c) been a crime partner of the inmate applicant; or

(d) been under the supervision of UDC for a felony offense.

(5) Visiting application denials may be challenged by visitor applicants through the deputy warden/designee. If the visitor applicant is not satisfied with the deputy warden/designee decision, a second appeal may be made to the warden/designee.

(6) Except for spouses, visitors under 18 years of age shall be accompanied by their parent or legal guardian on the inmate's approved visiting list.

(7) Visitors 16 years of age and older shall present positive identification prior to being permitted to visit.

(8) An individual may not be on more than one inmate's visiting list unless that individual is a member of the immediate family of all inmates involved and is approved as a visitor by the warden/designee.

(9) Adoptions, marriages, or other methods of claiming legal relationships, performed for the purpose of circumventing existing visiting policies shall be considered invalid.

(10) Visitors may have their names removed from any visiting list by sending a written request to the facility visiting staff.

(11) Visitors removed from a visiting list at the written request of an inmate or visitor shall not be reinstated for a 90-day period without prior approval of the facility visiting staff.

(12) Except for members of the inmate's immediate family, only one single adult visitor of the opposite sex shall be permitted to be on the visiting list of any one inmate at any given time.

(13) Divorced visitors shall provide proof of divorce to the facility visiting staff before being allowed to visit an inmate of the opposite sex.

(14) Except for members of the inmate's immediate family, married persons visiting inmates of the opposite sex shall be accompanied by one or more of the following, who shall remain with the visitor for the duration of the visit:

(a) visitor's spouse who is on approved visiting list;

(b) inmate's spouse;

(c) inmate's parent or

(d) other persons approved by the facility visiting staff.

R251-706-6. Visitor Suspensions.

(1) A visit may be suspended, restricted or revoked for dress code violation, foul and abusive language/conduct, or refusal to comply with DIO policies or procedures, or when necessary to meet safety, security, management or control requirements of the Utah State Prison.

(2) The facility visiting staff may suspend, restrict or revoke visits if the behavior of the visitor or inmate jeopardizes the safety, security, management or control of the institution.

(3) If a visit is suspended, restricted, or revoked the facility visiting staff shall document the action by providing notification of the rules infraction to the inmate, visitor, inmate's OMR, and duty officer. The inmate's OMR may review the documentation and make decisions regarding visiting to the visiting staff members for modification of the suspension, restriction, or revocation. The inmate may appeal suspensions, restrictions, or revocations by submitting a written request to the warden/designee.

(4) Visiting privileges may be permanently revoked or altered as follows:

(a) visitors who bring drugs into the institution may be permanently barred from visiting; and

(b) inmates guilty of attempting to introduce drugs, weapons or contraband money to the institution through the visiting process may be placed on barrier visits.

(5) Barrier visits may be required for inmates when:

(a) visitors have not been in compliance with visiting regulations on prior occasions and have been warned or required to leave the visiting area;

(b) inmates are classified as Level 1 or 2;

(c) inmates or visitors have been suspected or attempted to introduce contraband into a correctional facility;

(d) inmates have been convicted of disciplinary infraction A13 (Possession, introduction or use of any unauthorized intoxicants, unauthorized drugs or drug paraphernalia, positive urinalysis, breath analysis, blood test, or refusal to submit to the same; or

(e) inmate or visitor behavior, or a recent history of behavior is a threat to the safety and security of the inmates, visitors, staff and the institution.

R251-706-7. Sex Offender Visiting.

(1) Inmates identified as sex offenders by R and O or visiting staff members may be restricted from visits with minors as follows:

(a) inmates shall not visit with minors identified as the victim of the inmate;

(b) inmates with a documented history of sexual misconduct with a child under the age of 18 years shall not visit with any minor while incarcerated;

(c) court orders or Board of Pardons and Parole orders regarding contact or non-contact between inmates and minors will be enforced;

(d) inmates may appeal visiting restrictions with minors by written appeal to the warden/designee; or

(e) visits between inmates and minors for therapeutic or clinical reasons may be approved on an individual visit basis by the warden/designee.

R251-706-8. Special Visits.

Requests for special visits or emergency visits from individuals not on an approved visiting list may be approved or denied for reasonable cause by the warden/designee.

KEY: corrections, prisons, inmates, inmate visiting
Date of Enactment or Last Substantive Amendment: February 1, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 64-13-10; 64-13-17

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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

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

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

Agriculture and Food, Animal Industry
R58-1
Admission and Inspection of Livestock, Poultry, and Other Animals

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35691
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Title 4, Chapter 31, which allows the Utah Department of Agriculture and Food to make rules governing the importation of animals in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received two written/verbal comments concerning the rule change at the public hearing held in October 2010. The first was a request to add specific requirements for importation of cervids to the rule. The second was a request that the requirements for importation of swine into Utah not be changed. The first request was indeed added to the final rule. The second request was not acted on as the Department felt it was more important for our importation rules be consistent with rules in other states in the Intermountain region and to not impose overly restrictive requirements on the importation of swine into Utah but still ensuring that swine imported in the State of Utah are healthy.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is responsible to insure animals entering the state are healthy.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Animal Industry
R58-6
Poultry

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35692
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Section 4-29-1 which allows the Utah Department of Agriculture and Food to make rules governing the control of poultry sales and disease in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received opposing or in favor of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is responsible to insure a healthy poultry population in the state of Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Animal Industry
R58-18
Elk Farming

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35695
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Section 4-39-106 which allows the Utah Department of Agriculture and Food to make rules governing the control of captive raised elk in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received opposing or in favor of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is still responsible to oversee and regulate the captive raised elk industry in the State of Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Animal Industry
R58-19
Compliance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35696
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Subsection 4-2-2(1)(i) which directs the Utah Department of Agriculture and Food to make rules necessary for the effective administration of the agricultural laws of the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is still responsible to enforce a number of rules and needs to have written procedures that guide the enforcement of those rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Animal Industry
R58-22
Equine Infectious Anemia (EIA)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35694
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Subsections 4-2-2(1)(c) and (j) which allow the Utah Department of Agriculture and Food to make rules governing the control of Equine Infectious Anemia (EIA) in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is still responsible for the control of Equine Infectious Anemia (EIA) in the State of Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Animal Industry
R58-23
Equine Viral Arteritis (EVA)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35693
FILED: 01/18/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule is promulgated under the authority of Subsection 4-2-2(I)(i) which allows the Utah Department of Agriculture and Food to make rules governing the control of Equine Viral Arteritis (EVA) in the State of Utah.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Agriculture and Food justifies the continuation of this rule as it is still responsible for the control of Equine Viral Arteritis (EVA) in the State of Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Agriculture and Food, Plant Industry
R68-19
Compliance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35697
FILED: 01/18/2012

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 promulgated under Subsection 4-2-2(1)(i). The Utah Department of Agriculture and Food is authorized to promulgate this rule to administer the agricultural laws of the State of Utah to protect agricultural interests from injurious plants, animals, insects, animal feeds, unsafe pesticide exposure, and plant diseases.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division of Plant Industry requires this rule to protect the agricultural interests and the public in the State of Utah, from injurious plants, animals, insects, animal feeds, unsafe pesticide exposure, and plant diseases. The ability to issue an Emergency Order and/or a Citation allows the Division to protect the agriculture and public interests in this state. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 01/18/2012

Commerce, Occupational and Professional Licensing
R156-56
Building Inspector and Factory Built Housing Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35735
FILED: 01/31/2012

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 56, provides for the licensure of building inspectors and regulation of factory built housing and up until 2011 the adoption of building codes and amendments to those codes. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-56-8.5(3) provides that the Building Inspector 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. Prior to 2011 legislative statute changes, Subsections 58-56-4 and 58-56-5(10) provided that the Uniform Building Code Commission may recommend to the director of the Division appropriate rules with respect to building codes. This rule was enacted to clarify the provisions of Title 58, Chapter 56, with respect to licensing of building inspectors, regulation of factory built housing, and prior to 2011 the adoption of building codes and amendments made thereto. It should also be noted that in 2011 the adoption of building codes and amendments made thereto were moved to Title 15A and rules associated with that title.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in March 2007, it has been amended seven times. The Division received the following written comments with respect to proposed amendments filed in early 2008. Two letters, both dated 05/28/2008, from Paul Hayward in which he opposed proposed building code amendments in Section R156-56-803 with respect to plumbing amendments to encourage water conservation throughout the state. A 05/01/2008 letter from Anne vonWeller, Murray City Public Services Deputy Director, provided additional information in response to public comments with respect to water conservation zones. A 03/18/2008 letter from Ron Ivie, building official, offered comments regarding a possible $20,000 expenditure by his jurisdiction which would be necessary to conform to the Legislature's stated and mandated form and permit numbering system. The following written comments received all supported proposed amendments with respect to construction of assisted living centers: 04/30/2008 letter from Representative Becky Lockhart; 04/21/2008 letter from Mary Edmondson, Sunrise Senior Living; 04/18/2008 letter from Richard Grimes, Assisted Living Federation of America; 04/16/2008 letter from Paul Fairholm, President of Utah Assisted Living Association; and 04/16/2008 letter from Dana Webster, Western States Lodging and Management. The Division also received an undated article entitled "Could It Happen Here?" by Steve Lutz which was reprinted from Straight Tip Magazine, January 2008 with respect to Wildland Urban Interface. The following written comments received all opposed proposed amendments to delete electrical provisions from the International Residential Code (IRC) Part VIII and replace it with the 2008 National Electrical Code (NEC) dwelling requirements: 04/30/2008 letter from Gilbert Gonzales; 04/28/2008 letter from Edmund C. Domian, West Valley City building official; and undated letter from Ryan Jackson. Based on additional review of written comments received and comments offered during a public rule hearing on May 15, 2008, the Division in consultation with the Uniform Building Code Commission made effective proposed amendments filed under DAR File Nos. 31139 and 31142 (re: Urban Wildland Interface Code) with no additional changes. However, proposed rule amendments filed under DAR No. 31140 with respect to water conservation zones and DAR No. 31141 with respect to IRC and NEC conflicts were allowed to lapse and were not made effective by the Division. The Division also received a 05/30/2007 email from Anne vonWeller in which she notified the Division of International Building Code (IBC) final action regarding proposed changes to the IBC for the code change cycle which in turn would affect the Division's proposed amendments under DAR No. 29865.

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 56, with respect to building inspectors and factory built housing. 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: 01/31/2012

Commerce, Occupational and Professional Licensing

R156-64

Deception Detection Examiners Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35736
FILED: 01/31/2012

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 64, provides for the licensure of deception detection examiners and deception detection interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-64-201(3) provides that the Deception Detection Examiners 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 64, with respect to deception detection examiners and deception detection interns.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in April 2007, it has been amended three times. The Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 64, with respect to deception detection examiners and deception detection interns. 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:
♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 01/31/2012

Community and Culture, Arts and Museums

R207-1

Utah Arts Council General Program Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35723
FILED: 01/24/2012

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 9-6-205 gives the Utah Arts Council board the authority to make, amend, or repeal rules in conducting the business of the division. It also empowers them to receive gifts, bequests, property, and to provide grants and awards for competitions. It mandates the board to make policy for the Division of Arts and Museums. This rule is required in order to ensure that the division establishes standards, rules, and guidelines for funding and competitions. It also requires that the division notify the public of these opportunities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of the Utah Arts Council is to advance arts and culture and to engage every person in Utah in the arts. The division's goals are to: 1) increase awareness of the public value of the arts; 2) strengthen communities by investing in local arts and cultural infrastructure; and 3) build a sustainable model of diversified funding sources. These goals will be accomplished by

communicating the public value of art, providing exceptional constituent services, providing capacity building resources, cultivating strategic partnerships, and diversifying and stabilizing funding sources. These goals and objectives clearly address the mandate of the state statute. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
ARTS AND MUSEUMS
617 E SOUTH TEMPLE
SALT LAKE CITY, UT 84102-1177
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Lynnette Hiskey by phone at 801-236-7552, by FAX at 801-236-7556, or by Internet E-mail at lhiskey@utah.gov

AUTHORIZED BY: Margaret Hunt, Utah Arts Council Director

EFFECTIVE: 01/24/2012

Community and Culture, Arts and Museums
R207-2
Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35724
FILED: 01/24/2012

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 9-6-205 charges the board to set policy for the institute and for the division. This includes purchases for, donations, to and loans from, the state Fine Art Collection.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 critical in that it outlines the procedures required to purchase new works of art, receive donated art, and the process in which the arts council loans art work from the state collection to other agencies. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
ARTS AND MUSEUMS
617 E SOUTH TEMPLE
SALT LAKE CITY, UT 84102-1177
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Lynnette Hiskey by phone at 801-236-7552, by FAX at 801-236-7556, or by Internet E-mail at lhiskey@utah.gov

AUTHORIZED BY: Margaret Hunt, Utah Arts Council Director

EFFECTIVE: 01/24/2012

Environmental Quality, Air Quality
R307-110
General Requirements: State Implementation Plan

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35774
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-110 incorporates by reference the state implementation plan (SIP) allowed under Subsection 19-2-104(3)(e), which allows the Air Quality Board to prepare a state plan for the prevention, abatement, and control of air pollution. Clean Air Act Section 110(a)(1) (42 USC 7410(a)(1)) requires that each state adopt and submit to the Environmental Protection Agency (EPA) a plan providing for implementation, maintenance, and enforcement of each health standard promulgated by EPA. If a state fails to do so, EPA is to issue a federal implementation plan in its place, and other federal sanctions also would apply.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-110 has been amended four times since its last five-year review. FIRST AMENDMENT: DAR No. 29514, effective 05/02/2007 -- No comments were received on this amendment. SECOND

AMENDMENT: DAR No. 31557, effective 11/10/2008 -- The following 15 comments were received on this amendment: COMMENT 1 (Kathy Van Dame, Wasatch Clean Air Coalition): SIP XX.E.3.a(1)(a)(i) and (ii) apparently refer to Subsections R307-250-4(1)(a) and (b). In XX the different types of sources are named "Category 1" and "Category 2". In Section R307-250-4, there is no such simple descriptor. In XX, Category 2 sources are described as "WEB sources that commenced operation on 01/01/2008 or a later date" while in Subsection R307-250-4(1)(b) they are described as "A new source that begins operation after the program trigger date." If in fact, the two descriptions refer to each other, they should be harmonized. In any case, the reference within XX.E.3.a(1)(a) to Rule R307-250 should be to a specific part of Rule R307-250. STAFF RESPONSE: The two descriptions referred to in the comment are not intended to mean the same thing and do not need to be harmonized. The applicability language in the rule identifies the sources that are subject to the trading program. Applicability is determined based on actual emissions for existing sources and Potential to Emit (PTE) for new sources. The language in the state implementation plan (SIP) further divides the sources that are subject to the program into Category 1 and Category 2 sources. Category 1 sources will receive their floor allocation from either the utility or non-utility pool of allowances. These sources will also be eligible for a reducible allocation. Category 2 sources will receive their floor allowances from the new source set-aside, and will not be eligible for a reducible allocation. The reference within SIP Section XX.E.3.a(1)(a) has been changed as recommended to refer to Section R307-250-2 where the term "WEB source" is defined. COMMENT 2 (Kathy Van Dame, Wasatch Clean Air Coalition): In SIP XX.E.3.a(1)(c)(i) "early reduction credit," XX E.3. "early reduction allocation," and the title of Subsection R307-250-7(5) "Early Reduction Bonus Allocation," these terms apparently all refer to the same item, if so, they should be harmonized. In the case of multiple, interlocking documents, lack of uniformity of terms contributes to misunderstandings and disputes. STAFF RESPONSE: The SIP and rule text were modified as recommended to use a consistent terminology "early reduction bonus allocation." COMMENT 3 (EPA Region 8): There are a number of places where the Utah SIP differs from the 04/23/2008 Model SIP/TIP on WRAP's website. For example, Table 8 has different milestone values for the years 2003-2009, Table 10 has different numbers for the 2018 non-utility portion, and Section E.3(a)(2)(g)(ii) has 2000-2006 as the baseline period while the Model SIP/TIP has 2006 as the baseline. We recommend that Utah modify the 2008 SIP to match the 04/23/2008 Model SIP/TIP on WRAP's website. STAFF RESPONSE: In earlier versions of the model SIP that was developed by the four participating states the tribal set-aside was inadvertently left out of the milestone calculation. When this error was discovered, it was corrected in the model SIP but not in Utah's draft SIP. The milestone numbers in Table 8 have been corrected to match the milestones that were developed through the regional process and are included in the model SIP. COMMENT 4 (EPA Region 8): In the flow control example in provision E.(3)(h)(2) on page 60 of the 2008 SIP, the 2008 SIP refers to the 2010 milestone as "(5-state, no smelter)" which is not correct. We recommend that the parenthetical phrase be deleted. The corresponding reference in the Model SIP is provision C4.2(b)(3). STAFF RESPONSE: The example was changed as recommended. COMMENT 5 (EPA Region 8): Utah's RH SIP does not adequately address Utah's impacts from NOx and PM on Class I areas, both in and out of state. 40 CFR Section 51.309(d)(4)(vii) requires that SIPs contain necessary long term strategies and best available retrofit technology (BART) requirements for stationary source emissions of NOx and PM. Utah's NOx emissions have a significant impact on several in-State and out-of-State Class I areas. Specific examples include Capital Reef National Park in Utah and Craters of the Moon National Monument and Preserve in Idaho. In order to address impacts from NOx and PM, 40 CFR Section 51.309(a) requires that each 309 State follow 51.308 requirements, both for BART and reasonable progress, in evaluating Class I areas outside of the Colorado Plateau affected by the State. 40 CFR Section 51.308(d)(3) requires that States must submit a long term strategy that addresses regional haze visibility impairment for each Class I area located outside the State which may be affected by emissions from the State. 40 CFR Section 51.308(d)(3) also requires that long-term strategies include enforceable emission limitations (see comments in 2. above), compliance schedules, and other measures necessary to achieve reasonable progress goals. STAFF RESPONSE: Utah's SIP contains the "necessary long-term strategies and BART requirements for stationary source PM and NOx emissions" as required by Section 309(d)(4)(vii) in several parts of the SIP. Section XX.D.6 includes a BART assessment for NOx and PM, and Table 6 shows the emission reductions that will be achieved by the retrofitted units that are subject to BART: NOx emissions are reduced by 6,206 tons/yr and PM10 emissions are reduced by 926 tons/yr. Section XX.D.5 contains an assessment of NOx and PM strategies that was prepared for the 2003 SIP. This analysis concluded that for the vast majority of Class I areas throughout the WRAP region NOx and PM emissions are not a major contributor to visibility impairment on the average 20% best and 20% worst days. However, on some of the worst days nitrates and PM are the main components of visibility impairment. This assessment was consistent with the conclusions of the GCVTC that recommended focusing efforts on stationary source SO2 emissions because of the widespread impact on visibility impairment. Finally, Section XX.K.1 of the SIP outlines the significant overall emission reductions in NOx and PM in Utah and the region. NOx emissions decline 36% between 1996 and 2018 and PM2.5 emissions decline 38% and SO2 emissions decline 33% during this same time period. Coarse matter emissions are projected to increase, although there is much greater uncertainty in the emission inventories for windblown dust. Taken as a whole Utah's SIP shows the necessary long-term strategies for PM and NOx emissions. Class I areas on the Colorado Plateau (including Capital Reef National Park), as well as all other Class I areas that are affected by emissions from Utah will benefit from these significant emissions reductions. Utah has participated

in the technical and policy forums of the Western Regional Air Partnership (WRAP) as described in Section XX.M of the plan, and further detailed in Appendix D of the plan. Through that process Utah has shared emissions data and other technical information with other states that have Class I areas that might be impacted by emissions from Utah. As described above, Section XX.K.1 of the SIP outlines the overall significant emission reductions in Utah, and these reductions will benefit all Class I areas that might be impacted by emissions from Utah. Utah's emissions reductions are included in the overall WRAP modeling analysis and will therefore be reflected in the reasonable progress demonstrations that are prepared by neighboring states. The following paragraph has been added to the end of Section XX.K.1 to clarify that the emission reductions are occurring throughout the state and will benefit all Class I areas that are impacted by emissions from Utah. The emission reductions in Utah occur throughout the state and will therefore benefit all Class I areas outside of Utah that might be impacted by emissions from Utah: Northern Utah -- The urban area in northern Utah that may impact Class I areas in Idaho, Nevada and Wyoming will have a significant reduction in NOx emissions from mobile sources as described in Section XX.F of this plan. Mobile (on-road and non-road) NOx emissions in the four main urban counties (Weber, Davis, Salt Lake, and Utah) are projected to decrease by 42,000 tons/yr or 61% between 2002 and 2018. Mobile sources dominate the NOx emission inventory in Utah's urban area. Class I areas that have some days when nitrates are a significant contributor to visibility impairment, such as Craters of the Moon National Park, will benefit from the NOx emission reductions during those episodes. Central and Southern Utah -- As described in Section XX.D.6 of this plan, two BART-eligible plants in central Utah are projected to decrease SO2 emissions by 13,200 tons and NOx emissions by 6,200 tons between 2002 and 2018. Central and Southern Utah are sparsely populated and the inventory is dominated by point sources. The exception is Washington County that is becoming more urban due to the growth of St. George and the inventory is therefore dominated by mobile source emissions. In Washington County, NOx emissions from mobile sources (on-road and non-road) are projected to decrease by 2,300 tons or 57% between 2002 and 2018. These emission reductions will benefit Class I areas in southern Colorado, New Mexico and Arizona that may be affected by emissions from Utah. Eastern Utah -- Oil and Gas emissions dominate the inventory in eastern Utah and are increasing between 2002 and 2018. Approximately 90% of current emissions from oil and gas occur on land that is under the jurisdiction of the Ute Indian Tribe of the Uintah Ouray Reservation and is therefore not covered by Utah's SIP. The inventory compiled by the WRAP does not currently separate out these emissions that are not under Utah's jurisdiction. These emissions may affect Class I areas in Northeastern Colorado and the State of Utah expects that this impact will be addressed in the TIP or FIP that is developed for the Ute Tribe. COMMENT 6 (National Parks Service): Section 51.309(d)(4)(vii) required that the SIP contain provisions for a long-term strategy for stationary source emissions of NOx and PM. The Utah SIP provides some assessment of BART for NOx and PM but does not address whether additional emissions controls, beyond those considered for BART, are appropriate to provide for reasonable progress. Given the importance of nitrate at a substantial number of worst days at Utah's Class I areas, we believe that an examination of stationary source controls for nitrogen oxides is required in a regional haze SIP. STAFF RESPONSE: See response to Comment 5. COMMENT 7 (National Parks Service): According to WRAP's Technical Support System (TSS), the 20% worst days at Capitol Reef National Park are calculated based on 106 monitored days between 2000 and 2004. Of those, 23 days are dominated by nitrate and an additional 4 days have nitrate doing a close second to sulfate as the key pollutant contributing to haze. The TSS includes modeling for 2002, when 44 of the worse days are dominated by nitrate. That year Utah's sources are the major contributor on one day. While the SIP does not need to establish reasonable progress goals for Capitol Reef or the other Utah Class I Parks at this time, some decision and supporting assessments on additional NOx controls must be included in this SIP. STAFF RESPONSE: See response to Comment 5. COMMENT 8 (National Parks Service): One critical omission from the SIP is a discussion of how the programs contained in the SIP meet Utah's obligation to address the effects of its emissions on visibility in Class I areas outside of Utah. STAFF RESPONSE: See response to Comment 5. COMMENT 9 (National Parks Service): The regional haze rule requires the SIP to examine how Utah's SIP addresses the State's contribution to reasonable progress at Craters of the Moon National Monument (CRMO). Utah could examine how emissions changes expected from implementation of its SIP would reduce Utah's impact on CRMO between the baseline period and 2018. If Utah reduces its contribution by the same or greater percent required to meet the uniform rate of progress target established by EPA, then the State would be clearly demonstrating that it is doing its fair share toward reasonable progress at CRMO. Otherwise, if the reduction is significantly less than the percent needed to achieve the uniform rate of progress, Utah should establish a list of stationary sources and a geographical area for mobile sources that are most influencing CRMO. The State should also assess, using the four reasonable progress factors, what an appropriate long term strategy should be. STAFF RESPONSE: See response to Comment 5. COMMENT 10 (National Parks Service): Utah has provided specifics on the components listed in 40 CFR 50.309 for Class I areas on the Colorado Plateau. The specifics on programs related to sulfur dioxide backstop trading program, mobile sources, fire programs, road dust, and renewable energy highlight Utah's commitment to assuring reasonable progress. The SIP language is exemplary in the way it balances fire program permitting with appropriate assessment of air quality concerns. STAFF RESPONSE: Thank you. COMMENT 11 (EPA Region 8): Utah's RH SIP does not contain a five factor BART analysis for NOx and PM, as required by 40 CFR Section 51.309(d)(4)(vii). States doing a 309 RH SIP must still do a BART analysis according to 40 CFR Section 51.308(e). Under 40 CFR Section 51.308(e)(1)(ii)(A), states "must take into

consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source." The CAA also requires States to consider the five factors in making their BART determinations (see Clean Air Act Section 169A(g)(2)). STAFF RESPONSE: The latest revision of Section 51.309 Regional Haze "Requirements related to the Grand Canyon Visibility Transport Commission" has new provisions for stationary source emissions of NOx and PM. (71 Federal Register 60632, 10/13/2006). The rule requires Regional Haze SIPs to contain any necessary long term strategies and BART requirements for stationary source PM and NOx emissions (40 CFR Section51.309(d)(4)(vii). BART provisions may be submitted pursuant to either 51.308(e)(1) or 51.308(e)(2). 308(e)(1) requires a source by source five factor determination of BART for sources subject to BART in the State. 308(e)(2) allows a State to participate in an emissions trading program or other alternative measure instead of a source by source BART analysis. Utah, for NOx and PM emissions, has opted to use the 308(e)(1) source by source BART approach and an alternative backstop trading program for SO2 emissions. 308(e)(1)(ii)(A) requires a five factor analysis to determine the best system of continuous emission control technology available and associated emission reductions achievable for each subject to BART source. However, 308(e)(1)(ii)(B) requires that EGUs, with generating capacity greater than 750 MW, to make BART determinations pursuant to guidelines in Appendix Y to Part 51. In 40 CFR Part 51 "Regional Haze Regulations and Guidelines for BART Determinations; Final Rule" (07/06/2005) and in Appendix Y Part 51, EPA requires that coal-fired EGU's meet presumptive limits for NOx and SO2. EPA gives the option to States to challenge presumptive limits based on consideration of the five statutory factors. In effect EPA has determined that presumptive limits for NOx and SO2, are equivalent to a five factor BART analysis. "States, as a general matter, must require owners and operators of greater than 750 MW power plants to meet these BART emission limits... a State may establish different requirements if the State can demonstrate that an alternative determination is justified based on a consideration of the five statutory factors." (40 CFR Part 51 Guidelines for BART Determinations under the Regional Haze Rule (70 Federal Register 39135)). "For Coal-fired EGUs greater than 200 MW located at greater than 750 MW power plants and operating without post-combustion controls (i.e., SCR or SNCR), we have provided presumptive NOx limits, differentiated by boiler design and type of coal burned. You may determine that an alternative control level is appropriate based on careful consideration of the statutory factors." (Appendix Y Part 51 - IV (E)(5) FR 07/06/2005 39171). EPA determined presumptive limits for SO2 and NOx, for EGU sources greater than 750 MW, based on a five factor methodology as required in 50 CFR 51 Appendix Y of the BART Rule. The EPA determination of presumptive limits included: 1) identification of all potential BART-eligible EGUs; 2) presumption that BART eligible units were also Subject to BART; 3) technical analyses and industry research to determine applicable and appropriate SO2 and NOx control options; 4) economic analysis to determine cost effectiveness for each potentially BART-eligible EGU, and evaluation of historical emissions and forecast emission reductions for each BART-eligible EGU; and 5) NOx and SO2 CALPUFF modeling of emission impacts at model Class I areas. The analysis included 419 potential BART EGUs including the Hunter units 1 and 2 and Huntington units 1 and 2. The technical analysis conducted by EPA to determine presumptive BART limits for SO2 and NOx is equivalent to five factors BART determination of the 419 EGUs reviewed including the Hunter and Huntington Units. Under Appendix Y States are given the discretion to challenge presumptive limits through a five factor analysis but presumptive limits were developed by EPA as a reasonable, equivalent and mandatory substitution for a five factor analysis. COMMENT 12 (EPA Region 8): The CAA also requires States to consider the five factors in making their BART determinations (see Clean Air Act Section 169A(g)(2)). STAFF RESPONSE: EPA codified the CAA requirements under 169A(g)(2) in 40 CFR 51.308(e)(1)(ii) in the 07/06/2005 Final Rule "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations: Final Rule." "Section 169(g)(2) of the CAA requires that States must consider the following factors in making BART determinations: 1) cost of compliance; 2) the energy and non-air quality environmental impacts of compliance; 3) any existing pollution control technology in use at the source; 4) the remaining life of the source; and 5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. These statutory factors for BART were codified at 40 CFR 51.308(e)(1)(ii)" (Federal Register 70 39105). As outlined above (question No. 11) CFR 51.308(e)(1)(ii)(B) requires determination of BART for coal-fired EGU's with generating capacity above 750 MW, to be made pursuant to Appendix Y Part 51. Section IV (E)(5) of Appendix Y Part 51 clearly requires the implementation of presumptive NOx limits for coal-fired EGUs greater than 200 MW located at greater than 750 MW power plants. Under Appendix Y States are given the discretion to challenge presumptive limits through a five factor analysis but presumptive limits were developed by EPA as a reasonable, equivalent and mandatory substitution for a five factor analysis. It is DAQ's position that EPA has codified BART requirements under CAA Section 169A(g)(2) in the 07/06/2005 Final BART Rule and it is not within the purview of DAQ, or Region 8, to re-codify CAA statutes. COMMENT 13 (EPA Region 8): The State's RH SIP does not contain the elements necessary to make BART limits practically enforceable. Utah's SIP contains controls, emission limits and general schedules but does not include permit conditions specifying averaging times, record-keeping, monitoring, and specific schedules for compliance. The CAA requires that SIPs, including the RH SIP, contain elements sufficient to ensure emission limits are practically enforceable. It is not sufficient to include these elements in a separate permit or agreement that is not made part of the SIP. EPA does not consider permit conditions adequate to meet this enforceability requirement, as permit conditions may be modified. We also note that the BART guidelines require a

30-day averaging period for BART limits (see 70 FR 39172, col. 3, 07/06/2005). We view a 30-day or shorter averaging period as being necessary to protect visibility in the nearby Class I areas, since visibility is sensitive to short term spikes in pollutants which contribute to visibility impairment. STAFF RESPONSE: The Utah Regional Haze SIP includes all elements required under CAA Section 110 and specifically Section 110 (a)(2) including: 1) emission reduction control technology; 2) emission limits; 3) construction schedules; 4) record-keeping requirements; and 5) monitoring and compliance requirements. The first three conditions are specified explicitly in the DAQ's Regional Haze SIP submittal (SIP XX Section D). The other above conditions are contained in three DAQ Approval Orders (AO) for the Huntington and Hunter units 1 and 2. The DAQ Regional Haze SIP specifically requires the implementation of the requirements of the Hunter and Huntington Approval Orders. Both the Regional Haze SIP and the DAQ Approval Orders are federally enforceable and enforceable as a practical matter as defined in the New Source Review Manual (October 1990): "Federally-enforceable refers to all limitations and conditions which are enforceable by the Administrator, including: a) requirements developed pursuant to any new source performance standards (NSPS) or national emission standards for hazardous air pollutants (NESHAP); b) requirements within any applicable federally-approved State Implementation Plan; and c) requirements contained in a permit issued pursuant to federal PSD regulations, or pursuant to PSD or operating permit provisions in a SIP which has been federally approved in accordance with 40 CFR 51 Subpart I" (Review of New Sources and Modifications) (New Source Review Manual (October 1990) p.A.5-6). "Practical enforceability means the source and/or enforcement authority must be able to show continual compliance (or non-compliance) with each limitation or requirement. In other words, adequate testing, monitoring, and record-keeping procedures must be included either in an applicable federally issued permit, or in the applicable federally approved SIP or permit issued under the same." (New Source review Manual p. A.5-6). The Utah Regional Haze SIP will be federally enforceable when approved by EPA and the NSR AO will be federally enforceable both as a component of the RH SIP and as NSR permits. Both the RH SIP and the NSR permits will be enforceable as a practical matter given that DAQ can show continual compliance either through the SIP conditions or the SIP required conditions in the NSR permits. The EPA comment above seems to indicate that if NSR permits can be modified then they are not enforceable. ("EPA does not consider permit conditions adequate to meet this enforceability requirement, as permit conditions may be modified".) The "practical enforceability" requirement is not dependent on the possibility of a permit modification but rather on the ability of the regulating agency to show continual compliance with permits requirements during the effective life of the SIP or permit. If "enforceability as a practical matter" was dependent on the immutability of SIPs and NSR permits than there would not be an enforceable permit anywhere in the country. EPA and DAQ worked in conjunction on the most recent Utah PM10 SIP (submitted September 2005) to develop an "enforceable framework" for the relationship between SIPs and the NSR permit conditions referenced in a SIP. The Regional Haze SIP was developed around the PM10 collaboration and DAQ is uncertain why Region 8 has chosen to unilaterally ignore the progress made on this issue during the development of the PM10 SIP. COMMENT 14 (National Parks Service): In Section D.1 on page 20-24 of the Draft, Utah addresses BART requirements for NOx and direct PM emissions. We agree with Utah's determination of sources subject to BART, since it is based on procedures developed by the WRAP. Table 4 indicates that many Class I areas are affected by emissions from Hunter Units 1 and 2 and Huntington Units 1 and 2 as levels above 0.5 deciviews for the 98th %. Except for Huntington Unit 2, the State has or is permitting the remaining three units (all owned by PacifiCorp) with specific control technologies listed on page 24, and compares those technologies with Presumptive BART limits developed by EPA in 40 CFR 52 Appendix Y. These permitted and proposed emissions limits do not appear to be developed by examining the five BART factors for an appropriate array of alternative control options. A showing that permitted or proposed emission rates are slightly below the presumptive rates established by the EPA in its rulemaking is not sufficient since EPA's costs, a primary factor, were based on industry averages. In addition, there are multiple Class I areas (all those listed in Table 4) likely to see substantial improvements on worst days by control cost higher than the average from these units. Improvement at many Class I areas could warrant control cost higher than average by EPA in establishing the presumptive levels. Fish and Wildlife and Parks: We request Utah to examine a full array of control technologies, the associated costs of these different levels of technology, as well as anticipated improvements in the visibility impacts for the Class I areas listed in Table 4 to fulfill the requirement of a BART determination. We recognize Table 7 (on page 26) presents a "post control" assessment of visibility change based on the emission rates permitted or proposed and that there is little change in the modeled impact. This type of information provided for an array of technologies and their associated costs would address the major regulatory and statutory factors regarding degree of visibility improvement to be expected and cost of controls. STAFF RESPONSE: See Questions 11 and 12 above and Question 15 below. COMMENT 15: (National Parks Service): In addition, Utah should elaborate on the reasons why the sources have such a large impact on the 98th% when assessing whether the source is subject to BART (Table 4), yet controlling emissions to approximately presumptive BART limits show such a small amount of improvement. For example, does Table 7 only represent improvements from changes in NOx and PM? Are the modeling systems used in Table 4 and Table 7 identical? STAFF RESPONSE: Pursuant to 40 CFR 51.308(e)(1)(ii) the State is required to determine which BART-eligible sources are also "subject to BART." BART-eligible sources are subject to BART if they emit any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area. Both Rocky Mountain Power plants Hunter and Huntington

were determined by the State to be subject to BART. The State utilized the technical modeling services of the WRAP Regional Modeling Center (RMC). Modeling was performed according to the RMC modeling protocols. For the WRAP BART exemption screening modeling, the RMC followed the EPA BART Guidelines in 40 CFR 51, Appendix Y and the applicable CALMET/CALPUFF modeling guidance (e.g., IWAQM, 1998; FLAG, 2000; EPA, 2003c) including EPA's March 16, 2006 memorandum: "Dispersion Coefficients for Regulatory Air Quality Modeling in CALPUFF." The basic assumptions of the WRAP BART CALMET/CALPUFF modeling protocols are as follows: 1) three years of modeling (2001, 2002 and 2003) were used; 2) visibility impacts due to emissions of SO2, NOx and primary PM emissions were calculated; 3) visibility was calculated using the Original IMPROVE equation and Annual Average Natural Conditions; 4) the effective range of CALPUFF modeling was set at 300km from the sources; 5) for pre-control modeling maximum 24-hour average actual emissions from the Acid Rain database were used in CALPUFF model; and 6) for post-control modeling expected New Source Review (NSR) permitted limits were used in the CALPUFF model. As outlined in Question 11 and 12 above Appendix Y Part 51 requires coal-fired power plants greater than 750 MW to meet presumptive NOx limits in place of a five factor analysis. DAQ is not required to undertake an extensive series of modeling runs for each feasible BART control option an analysis already completed by EPA as a part of the determination of presumptive limits. BART CALPUFF modeling for the subject to BART determination utilized maximum 24 hour average actual emissions from EPA's Acid Rain (Clean Air Markets) database. Post-control modeling was based on emissions calculated on expected NSR permit limits (Section XX D (6) Table 5). THIRD AMENDMENT: DAR No. 34350, effective 04/07/2011 -- The following 15 comments were received on this amendment. COMMENT 1 (National Park Service): For Class I areas not on the Colorado Plateau, Section 51.308(d)(1) through (4) are applicable and require demonstration of emission reductions needed to meet the reasonable progress goals for these Class I areas. Utah's long-term strategy needs to address whether additional emission controls for stationary sources beyond those considered for BART are appropriate to provide for reasonable progress at Class I areas outside the Colorado Plateau. Consideration of the WRAP four-factor analysis for reasonable progress would provide general control alternatives for these sources. STAFF RESPONSE: Utah's SIP was developed under Section 309 of the regional haze rule that covers the 16 Class I areas on the Colorado Plateau, including all Class I areas in Utah. Utah's SIP analyzed the emission reductions within Utah to ensure that Class I areas outside of the state were benefiting from Utah's regional haze SIP. Section XX.K.1 of the SIP outlines the significant overall emission reductions in SO2, NOx, and PM in Utah and the region. NOx emissions decline 36% between 1996 and 2018, PM2.5 emissions decline 38%, and SO2 emissions decline 33% during this same time period. Coarse matter emissions are projected to increase, although there is much greater uncertainty in the emission inventories for windblown dust. Taken as a whole, Utah's SIP shows the necessary long-term strategies for Class I areas on the Colorado Plateau, as well as all other Class I areas that are affected by emissions from sources in Utah. Utah has participated in the technical and policy forums of the Western Regional Air Partnership (WRAP) as described in Section XX.M of the plan, and further detailed in Appendix D of the plan. Through that process Utah has shared emissions data and other technical information with other states that have Class I areas that might be impacted by emissions from Utah. The regional haze rule in 40 CFR 51.308(d)(1)(iv) establishes a process for states to consult with upwind states that contribute to visibility impairment in their Class I areas, and includes a process for those states to address impacts from an upwind state that are not adequately addressed by the upwind state's plan. Neighboring states have not identified problems with Utah's SIP through this process. As described above, Section XX.K.1 of the SIP outlines the overall significant emission reductions in Utah, and these reductions will benefit all Class I areas that might be impacted by emissions from Utah. Utah's emissions reductions are included in the overall WRAP modeling analysis and will therefore be reflected in the reasonable progress demonstrations that are prepared by neighboring states. COMMENT 2 (National Park Service): It would be helpful to add an emissions table before the WRAP source apportionment modeling results in Figures 17-19 to illustrate the emission assumptions used in the WRAP source apportionment modeling. Adding the emissions table would explain why mobile source emissions are shown to decrease while point source emissions are shown to increase because the inventory does not include the emission reductions due to BART controls. STAFF RESPONSE: Table 23 was added prior to Figure 17 to compare the inventory used in the source apportionment modeling (shown in Figures 17-19) to the Preliminary Reasonable Progress (PRP) 18a inventory that includes the emission reductions due to the SO2 milestones and BART. COMMENT 3 (National Park Service): Table 21, the labels for VOC and CM are missing. STAFF RESPONSE: Labels for VOC and CM were added to Table 21. COMMENT 4 (National Park Service): On pages 108 and 117, we recommend that you delete the commitment to the final WRAP 2018 inventory and modeling as there is no funding to meet this expectation. STAFF RESPONSE: References to the final WRAP 2018 inventory were deleted. COMMENT 5 (National Park Service): In many places, the SIP references work that the WRAP will provide to implement the SIP. We request to be consulted at the time when Utah assumes any responsibilities assigned to the WRAP in the SIP. STAFF RESPONSE: The SIP outlines Utah's commitment to operate the backstop trading program if the WRAP is not able to perform the functions that were assumed in the SIP. DAQ anticipates that these responsibilities will be met cooperatively with the other Section 309 states. The Section 309 States will work with all stakeholders if future changes are needed to the program. COMMENT 6 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment) (WildEarth Guardians in comments submitted to WRAP on the proposed changes to

the milestones in October 2010): The SIP fails to demonstrate that it will achieve greater reasonable progress than BART for SO2. Utah's SIP contains no BART analysis for SO2 and no explicit determination that the SIP's emission milestones and backstop trading program are better than BART for reducing SO2 emissions. Utah established a BART benchmark based on the claim that the alternative program was designed to meet requirements other than BART. The benchmark was based on EPA's presumptive SO2 emission rate of 0.15 lb/mmbtu. This is not an appropriate benchmark because other western coal fired plants have achieved a more stringent emission rate. Huntington Unit 2 in Utah has an emission rate of 0.12 lb/mmbtu. STAFF RESPONSE: As described in the Better than BART demonstration, the milestones were established to meet the broader reasonable progress goals established by the Grand Canyon Visibility Transport Commission. Because the milestones were developed primarily to meet the broader goal, the regional haze rule in Section 308(e)(2)(c) provides that "the State may determine the best system of continuous emission control technology and associated emission reductions from similar types of sources within a source category based on both source-specific and category-wide information, as appropriate." Presumptive BART was used as the category-wide estimate of the emission reductions achievable due to BART, although in some cases more stringent estimates were used for sources that had already been permitted for other reasons. These estimates were used to establish a benchmark to compare with the alternative program. The milestones meet the benchmark. However, as explained in the document, the milestones provide much greater benefits than would be achieved by BART. The program includes all sources with emissions greater than 100 tons/year of SO2, and most of those sources would not be affected by BART. The program ensures that new source growth will not undermine the progress that is achieved by emission reductions from existing sources. The program also encourages early reductions. COMMENT 7 (WildEarth Guardians in comments submitted to WRAP on the proposed changes to the milestones in October 2010): The Better than BART demonstration claims that the milestones were designed to meet a requirement other than BART. This claim seems a bit absurd. While the 309 Program has not been designed solely to meet BART, the program seems overly implicit, if not explicit, that its requirements are meant to satisfy BART, which is a key statutory component of the Clean Air Act's Regional Haze program. STAFF RESPONSE: The concept of SO2 milestones with a backstop trading program was developed the Grand Canyon Visibility Transport Commission in their 1996 Recommendations. The milestones were part of the overall strategy to address the multiple pollutants and sources that contributed to haze on the Colorado Plateau. The WRAP Market Trading Forum began discussions in 1997 to provide further details for this program. The stationary source strategy was well developed before the BART requirements in the regional haze rule were adopted in 1999. The demonstration that the milestones provided greater reasonable progress than BART was included in the Annex to meet the requirements of the regional haze rule, but BART was a secondary consideration that was added to the underlying stationary source strategy. The overall approach was designed to address the impact from all stationary source SO2 emissions rather than the subset of sources that were subject to BART. COMMENT 8 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment): WRAP fails to support its contention that emission reductions will happen sooner under the alternative program. BART results in emission reductions no later than 5 years after SIP approval. The regulatory requirement to achieve greater reasonable progress under an alternative program requires greater reductions of visibility impairing pollutants by 2018, not simply earlier reductions. STAFF RESPONSE: The SO2 milestones were adopted in 2003. Sources in the region began making long-term plans to meet the milestones, and many of the reductions have already occurred. Pollution control equipment was upgraded at Huntington Unit 2 in 2006, and more recently at Huntington Unit 1 and Hunter Unit 2. These upgrades were the direct result of Utah's 2003 Regional Haze SIP that established the milestones while allowing companies to manage the specific emission reductions across many units in the most cost-effective manner. There is more to the milestone than the number that is used to define the emission cap. The Greater Reasonable Progress than BART demonstration describes the other elements of the program that work with the emission cap to provide greater reasonable progress than BART in 2018. The milestone applies to all SO2 sources, including older plants that are not subject to BART. There are currently 63 sources included in the program that are not subject to BART. There are only 10 sources that are subject to BART. Emissions from these 10 sources account for 62% of SO2 emissions in 2006 and 31% of SO2 emissions

in 2018. The milestone is a mass-based cap that is based on projected actual emissions rather than a permitted emission rate. In addition, the SO2 milestone caps new source growth, a significant control strategy for energy-producing states. COMMENT 9 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment): The better than BART demonstration expresses SO2 milestones in tons/year. Using average annual emission rates as a milestone is insufficiently protective and fails to show better than BART. Sources frequently emit SO2 pollution at emission rates higher than the average annual rate at the same time. STAFF RESPONSE: The visibility goal is different from the national ambient air quality standards. The goal is expressed in terms of progress rather than meeting a specific ambient concentration. EPA established a metric of the 20% best and 20% worst days to measure progress. Baseline conditions were averaged over 5 years to better represent current conditions. The use of an annual emission rate is consistent with the acid rain program and EPA's proposed Transport Rule. COMMENT 10 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy

Environment) (WildEarth Guardians in comments submitted to WRAP on the proposed changes to the milestones in October 2010): The 309 Program is not enforceable. The program must contain monitoring, recordkeeping, and reporting sufficient to ensure compliance, including through enforcement by citizens, States, and EPA, and must be stated with reasonable specificity so as to ensure consistent compliance by all affected parties. Without such enforcement, the 309 states cannot show that their alternative program is better than BART. We are particularly concerned that it is unclear who, exactly, is responsible for ensuring compliance with the milestones and backstop trading program. Specific sources are not required to achieve emission reductions. There appears to be no specific explanation as to how the milestones will be assured over time. STAFF RESPONSE: The tracking system and backstop trading program that were put into place to ensure that the milestones are met have not been changed since the 2003 SIP and will apply to the revised milestones. During the pre-trigger phase, sources report emissions under Section R307-150-4. The requirements of this rule are enforceable, and have been included in the Title V permits for the applicable sources since the adoption of the SIP in 2003. The Section 309 States have prepared milestone reports annually since 2003 to compare actual emissions to the milestones. These milestone reports are made available for public comment each year prior to being finalized. If the milestones are exceeded, a backstop trading program will be triggered. The details of this program are specified in Rule R307-250 that was submitted as part of the 2003 SIP. This rule is enforceable and specifies the monitoring, recordkeeping and reporting requirements for the trading program. The rule was based on the federal acid rain program regulations. The program is currently enforceable at the state level, and will be enforceable by EPA and citizens when the program is approved into the federal SIPs for each of the participating states. COMMENT 11 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment): If the backstop trading program is implemented, questions remain as to the party responsible for its operation and the party that would be held accountable in the event that such a program is not implemented effectively. STAFF RESPONSE: The SIP specifies that the State of Utah is responsible for implementing the trading program in Utah. The Section 309 States will determine a program administrator if the program is triggered, but the ultimate authority and responsibility for enforcing the program is maintained by the individual states. Each state is responsible to implement the program within its own jurisdiction. When EPA approves the SIPs, the federally-approved SIP will provide the enforceable mechanism for the regional program. The trading program is designed as a backstop. The SIP describes the infrastructure that would be needed to run the program and includes all of the enforceable regulations, but implementation will not occur unless the program is triggered. If the program is triggered, then elements of the infrastructure, such as the Emission and Allowance Tracking System will be created using technology that is current at the time. The SIP provides adequate time after the program is triggered to put in place the contracts and database systems that would be needed to run a trading program. COMMENT 12 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment): DAQ has not provided evidence of compliance with 309(g). Utah must demonstrate reasonable progress toward achieving natural visibility conditions in Class I areas outside of the Colorado Plateau. STAFF RESPONSE: All of Utah's Class I areas are included in the 16 Class I areas on the Colorado Plateau. 40 CFR 51.309(g) establishes the requirements for states to demonstrate reasonable progress for Class I areas within their state that are not part of the 16 Class I areas on the Colorado Plateau. Utah is not subject to Section 309(g). Utah's SIP analyzed the emission reductions within Utah to ensure that Class I areas outside of the state were benefiting from Utah's regional haze SIP. Section XX.K.1 of the SIP outlines the significant overall emission reductions in SO2, NOx, and PM in Utah and the region. NOx emissions decline 36% between 1996 and 2018, PM2.5 emissions decline 38%, and SO2 emissions decline 33% during this same time period. Coarse matter emissions are projected to increase, although there is much greater uncertainty in the emission inventories for windblown dust. Taken as a whole, Utah's SIP shows the necessary long-term strategies for Class I areas on the Colorado Plateau, as well as all other Class I areas that are affected by emissions from Utah sources. Utah has participated in the technical and policy forums of the Western Regional Air Partnership (WRAP) as described in Section XX.M of the plan, and further detailed in Appendix D of the plan. Through that process, Utah has shared emissions data and other technical information with other states that have Class I areas that might be impacted by emissions from Utah. The regional haze rule in 40 CFR 51.308(d)((1)(iv) establishes a process for states to consult with upwind states that contribute to visibility impairment in their Class I areas, and includes a process for those states to address impacts from an upwind state that are not adequately addressed by the upwind state's plan. Neighboring states have not identified problems with Utah's SIP through this process. As described above, Section XX.K.1 of the SIP outlines the significant emission reductions in Utah, and these reductions will benefit all Class I areas that might be impacted by emissions from Utah. Utah's emissions reductions are included in the WRAP modeling analysis and are therefore reflected in the reasonable progress demonstrations that were prepared by neighboring states. COMMENT 13 (Western Resource Advocates, National Parks Conservation Association, Southern Utah Wilderness Alliance, Utah Physicians for a Healthy Environment): The SIP improperly defers emissions reductions from oil and gas development. Section K of the SIP states that approximately 90% of current emissions from oil and gas development in Uintah and Duchesne Counties in Eastern Utah occur on land that is under the jurisdiction of the Ute Indian Tribe of the Uintah Ouray Reservation and is therefore not covered by Utah's SIP. The SIP further states that the State of Utah expects that this impact will be addressed in the TIP or FIP that is

developed for the Ute Tribe. The Phase III oil and gas inventory shows that 15% of total NOx emissions and 17% of total VOC emissions in Uintah and Duchesne Counties are from sources under Utah's jurisdiction. DAQ may not simply dismiss the impacts of oil and gas development on visibility at Colorado Class I Areas. STAFF RESPONSE: Section K of the SIP establishes the projection of visibility improvement anticipated from the long-term strategy. This section of the SIP was developed and submitted in 2008 based on the information that was available at that point in time. The 2011 SIP proposal adds WRAP PSAT modeling results that were completed in 2006 to more clearly show the impact of Utah sources on neighboring states, but the underlying analysis has not been updated in this SIP revision. The Phase III emission inventory was completed at the end of 2009 and has not been incorporated into any of the WRAP's modeling analyses. However, the regional haze SIP is designed to adapt to new information. The SIP includes progress reports every 5 years (the first progress report will occur in 2013) to assess whether there have been any significant changes in anthropogenic emissions within or outside of the state, and to assess whether the strategies in the SIP are sufficient. A new regional haze SIP is required every 10 years (the next SIP is due in 2018) to ensure continuing progress toward meeting the national visibility goal. There is significant work underway at both the federal and state level to better understand the impact of oil and gas development in the Uintah Basin. High ozone levels have been monitored in the Basin during the winter, and DAQ anticipates that significant emission reductions will occur in the Basin between now and 2018 to reduce ozone levels. This will need to occur in partnership with the Ute Tribe, the Environmental Protection Agency, the Bureau of Land Management, the State of Colorado and local governments due to the multiple jurisdictions in the area. The emission reduction strategies currently in the regional haze SIP apply to all sources in Utah, including those in the Uintah Basin that are under DAQ's jurisdiction. All major point sources are subject to the SO2 milestones and backstop trading program. Vehicle emissions (both on-road and non-road) are decreasing due to new federal regulations. The smoke management strategies also apply in the area. COMMENT 14: Utah's unavoidable breakdown rule undermines the haze SIP. For example, to establish that the 309 program is better than BART WRAP assumes that all sources in Utah will operate within permit terms and conditions. There is no incentive for a facility subject to BART to operate according to its permits. Rather, sources are free to attribute any excess emissions to an unavoidable event and indeed, are free to prolong this event indefinitely and are free from recourse. STAFF RESPONSE: Questions regarding Utah's unavoidable breakdown rule are currently being addressed through EPA's SIP call process. This rule does not undermine the Regional Haze SIP. Utah enforces applicable permits and rules, and applies significant penalties when violations occur. One of the benefits of the SO2 milestones is that all emissions, including emissions during unavoidable breakdowns or excess emissions when a source is in violation of its permit, are included in the emission inventory that is compared to the milestone. There is no distinction between unavoidable emissions and excess emissions in this process. These provisions are outlined in Section R307-150-4. COMMENT 15: There were a number of detailed comments received on the BART determination for NOx and PM that was completed in 2008 and is described in Section D.6 of the SIP. These comments are outside the scope of the January proposal and apply to work that was completed as part of the 2008 SIP. STAFF RESPONSE: DAQ staff recommended that the Board reserve the detailed comments that have been received on the BART analysis for BART and PM for consideration at a later date, after EPA completes action on the Regional Haze SIP. FOURTH AMENDMENT: DAR No. 34351, effective 05/04/2011 -- The following comments were received on this amendment: Comment II.1: While not a formal or final analysis, EPA raised concerns that the proposed revision to the SIP to allow for Kennecott's BCM expansion will not be approvable. Citing Section 110(l) of the Clean Air Act, EPA says it "shall not approve" a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress. This is pertinent not only to the National Ambient Air Quality Standards (NAAQS) for PM10 says EPA, but to other NAAQS as well, in particular PM2.5, ozone, and NO2. (Comment made by the EPA). DAQ Response - DAQ disagreed with EPA. The state was modifying a PM10 maintenance plan. A maintenance plan requires a demonstration of adequacy. Under EPA regulations such a plan "must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." 40 CFR Section 51.112(a). At issue before the Board is whether the increased material moved at the Bingham Canyon Mine (BCM) will still allow the 2005 PM10 plan to make the demonstration of adequacy for PM10. Based on the staff's review of Kennecott's proposal, the revised 2005 SIP can still make the adequacy demonstration because the air quality models do not predict that PM10 concentrations will exceed the PM10 standard at any location in current or future years. Second, as to the applicability to other NAAQS under section 110(l), EPA's comment is inconsistent with its own prior practice. When Utah submitted its ozone SIP, EPA did not object that the ozone SIP did not address PM10, and when Utah submitted its maintenance plan for PM10 in 2005, EPA did not object that it had not considered the ozone NAAQS. EPA did raise section 110(l) as part of its comments on the 2005 PM10 maintenance plan, but in each case it was only with regard to PM10 - not other NAAQS. Finally, KUC has initiated a parallel process to amend its approval order, which request is governed by a separate set of rules and is currently under review by DAQ. That review will consider the potential impacts on other air pollutants in addition to PM10. The Executive Secretary's decision on whether to amend KUC's approval order is in part dependent on whether the Air Quality Board approves the proposed amendment to the PM10 Maintenance Plan. Comment II.2: EPA, citing its 01/08/2010 comment letter, clarified that the federally enforceable limit applicable to material that may be moved at the BCM is 150.5 million tons per year, as contained in the 1994 PM10 SIP.

EPA also referenced its 1999 and December 2009 comments on the inadequacy of Utah's PM10 SIP and contends that those comments also relate to the SIP revision under consideration (Comment made by the EPA). DAQ Response - DAQ disagreed with EPA's assessment of the federally enforceable limit. In 1999, the 1994 limit affecting the amount of material that could be moved at the mine, 150.5 million tons per year, was revised in Approval Order UDAQE-801-99 and increased to 197 million tons per year. That AO was approved by the Air Quality Board. In 1999, this (Board approval) was a mechanism provided in the EPA-approved 1994 Utah SIP for changing specific limits, such as the limit for the BCM, in the 1994 SIP. The item pending before the Board was whether the 2005 PM10 SIP should be revised, to allow an increase in the amount of material moved at BCM from 197 millions tons to 260 million tons per 12-month period. As noted above, under the 1994 SIP, the Air Quality Board could increase a source's limit specified in the SIP if, first, the source's AO was revised and approved by the Executive Secretary, and then approved by the Board. That option was no longer available under the 2005 SIP. In DAQ's view, for a source to increase a limit specified in the SIP, the Air Quality Board must amend the maintenance plan (the 2005 SIP), provided the State can still make an adequacy demonstration required by 40 CFR Section 51.112(a). There is often a lag time of many years between the State's submittal of a SIP to EPA and EPA's final action on that submittal. In the interim, business in the State must be able to proceed, provided there is compliance with applicable air quality regulations. That is the case here. As EPA has not taken final action on the 2005 SIP revision (but has issued a notice of intent to disapprove it), and as the 2005 SIP is existing State law, the Board had two options: amend the 2005 SIP to increase the limit applicable to Kennecott or require Kennecott to conduct business within the limit currently in the 2005 SIP which was established pursuant to the 1994 SIP. On the technical merits, DAQ recommended that the Board approve the increased limit because the 2005 SIP could still meet the adequacy demonstration required by 40 CFR Section 51.112(a). Comment II.3: The TSD has been revised twice, while the NOI has not been revised. These changes have not been documented in a formal way by DAQ. UPHE requests that DAQ provide to the public the agency's full technical analysis of information presented in the TSD (Comment made by UPHE). DAQ Response - DAQ's technical analysis is and has been available to the public. The final TSD released for public comment is the document that DAQ relies upon to show that the 2005 SIP may be amended as proposed. In particular, the DAQ is relying on the TSD Section 3, 2005 Maintenance Plan Demonstration and Section 4, Emissions Summary. Other parts of the TSD and references made therein corroborate and support the proposed increased limit. Prior to being finalized, the TSD was a dynamic document, updated and revised by Kennecott to satisfy the staff's analysis that the proposed changes met the regulatory requirements to revise the SIP. On the permitting side, a similar process occurred with the NOI, which was also revised. Comment II.4: The administrative processing of the proposed AO has been difficult from the standpoint of an AQB member who had been advised to avoid involvement with the AO, in order to preserve the ability to participate in adjudication of the permit, in the event that it is subsequently challenged. Yet, the SIP TSD refers to some elements of the SIP background contained within the permitting documentation (Comment made by Kathy Van Dame, UAQB member). DAQ Response - All documents relevant to the Kennecott expansion project have been posted on DAQ's website, including the TSD for the SIP, the NOI for the AO and the Executive Secretary's Intent to Approve the AO; as well as public comments received on the SIP and AO actions. There is no restriction on any Board member reviewing any of the information posted on the DAQ website. However, the action the Board will take is based on the record for the SIP. That record includes the TSD and where, for example, the TSD cross-references the information and calculations in the NOI, that information forms part of the record for the SIP. Comment III.A.1: Kennecott's CALPUFF modeling analysis in the Technical Support Document (TSD) did not consider any NAAQS but PM10 (see Comment No. II.1) and was based on the 2005 UAM-AERO modeling effort (part of the Utah's proposed maintenance plan for PM10). EPA Region 8 has proposed to disapprove this plan, in part because of issues with the UAM-AERO modeling. Thus, the current modeling is also inadequate for some of the same reasons cited in the proposed disapproval (see FR 74, No. 229, pp 62717), including the modeled release point of banked emissions and lack of speciated relative response factors. Furthermore, there is insufficient information for both CALPUFF and AERMOD simulations described in the TSD. The impacts of the proposed BCM expansion should be evaluated using the new CMAQ model and additional AERMOD simulations with updated emissions data (Comment made by the EPA). DAQ Response - Taken point-by-point: - "Kennecott's CALPUFF modeling analysis in the Technical Support Document (TSD) did not consider any NAAQS but PM10 (see Comment No. II.1)" Response: DAQ agreed that it only considered PM10, but disagreed that the modeling was inadequate for that reason. The CALPUFF analysis is specific to the PM10 standard because that is the focus of the UAM-AERO modeling for the maintenance plan. The CALPUFF analysis was designed to show that additional emissions from the KUC expansion would not increase PM10 concentrations above the design value of 150 ug/m3 used in the UAM-AERO analysis. - "...was based on the 2005 UAM-AERO modeling effort (part of the Utah's proposed maintenance plan for PM10.) EPA Region 8 has proposed to disapprove this plan, in part because of issues with the UAM-AERO modeling. Thus, the current modeling is also inadequate for some of the same reasons cited in the proposed disapproval (see FR 74, No. 229, pp 62717), including the modeled release point of banked emissions and lack of speciated relative response factors." Response: In the reference, FR 74, No. 229, pp 62717, there are three comments that are specifically related to the UAM-AERO modeling. They are detailed in FR 74, No. 229, pp 62722 - 62724 under the heading: "1. Deficiencies applicable to all three maintenance plans." All three of these comments were addressed by DAQ in responses to EPA in February 2010 -

"Concerning EPA proposed disapproval of PM10 Plan.doc" pp 8 - 11, attached). - "Furthermore, there is insufficient information for both CALPUFF and AERMOD simulations described in the TSD." Response: DAQ disagreed with this comment. The summary information was included in the TSD as governed by the demonstration of adequacy requirements contained in 40 CFR Section 51.112(b). The demonstration must include the following: 1) a summary of the computations, assumptions, and judgments used to determine the degree of reduction of emissions (or reductions in the growth of emissions) that will result from the implementation of the control strategy; 2) a presentation of emission levels expected to result from implementation of each measure of the control strategy; 3) a presentation of the air quality levels expected to result from implementation of the overall control strategy presented either in tabular form or as an isopleth map showing expected maximum pollutant concentrations; and 4) a description of the dispersion models used to project air quality and to evaluate control strategies. The TSD satisfied all four requirements, and is therefore sufficient for DAQ's review. - The impacts of the proposed BCM expansion should be evaluated using the new CMAQ model and additional AERMOD simulations with updated emissions data. Response: - The technical analysis for this project was initiated close to two years ago. At that time the CMAQ modeling analysis for PM2.5 was in its initial phases and was rejected as a viable approach since its completion date was too far out in the future. The best technical approach available was through the use of CALPUFF and AERMOD. Comment III.A.2: Section 3 of the TSD discusses the 2005 SIP revision. While approved by the UAQB, a SIP is a federally-enforceable document, and as such, must be approved by EPA. Not only has EPA not approved the 2005 SIP, but has published its intention to disapprove the SIP on numerous grounds, including issues with the UAM-AERO modeling that supports the plan. Therefore, Section 3 of the TSD is technically moot. Nevertheless, we raise the following issues concerning the technical details presented in Section 3 (Comments made by UPHE). DAQ Response - The UAM-AERO modeling files are available from DAQ; however, the model itself is not available. DAQ transitioned to the current generation of photochemical air quality model (the Community Multi-scale Air Quality Model (CMAQ)) soon after the technical work on the PM10 Redesignation Request was completed in 2005. That model was coded for and compiled on computers that are no longer in use at DAQ or elsewhere. By the same token the input files used for that model are not compatible with this newer class of models. All of the input and output files from that modeling exercised are still archived at DAQ and applicable files needed to apply the CALPUFF results to the UAM-AERO modeled concentrations were provided to KUC. DAQ did not switch modeling platforms, but used both platforms to derive the cumulative impact from all sources including those from the Bingham Canyon Mine expansion. The CALPUFF modeling system contains algorithms for the chemical transformation of precursors to secondary PM10. In the Bingham Canyon Mine expansion analysis the NOx emissions were fully converted to PM10. Using 100% conversion assumes a conservative, i.e., worst case scenario. The differences reported in tables 3-3 and 1-1 are not related to the inclusion, or not, of the Copperton Concentrator. Rather, Table 3-3 reports the two inventories used to make the adequacy demonstration with respect to the 2005 maintenance plan. One is the inventory used in that plan for the UAM-AERO demonstration (at 197 Mtpy) and the other is an assessment made, using the same emissions calculation methodology, assuming a material-moved limit of 260 Mtpy. Pit retention was not considered in making the adequacy demonstration with respect to the 2005 maintenance plan required by 40 CFR Section 51.112(a.). The inventory summarized in Table 1-1 also assumes a material moved limit of 260 Mtpy, but was compiled using the emissions calculation methodology included as part of the NOI (Appendix B.) The totals in this table reflect the application of a pit retention factor, whereas neither of the two inventories summarized in Table 3-3 made that assumption. UAM-AERO results can be deduced through simple subtraction of data provided in Table 3-5 and Table 3-6 on page 3-7 of the TSD. Column 5 in both tables represents the increase in emissions due to the added emissions from the mine expansion. Column 4 in each table represents the UAM-AERO estimate plus the additional concentration from Kennecott. The difference of subtracting column 5 from column 4 will give the UAM-AERO results for the maximum grid cell in the domain. Figures 3-1 and 3-2 on the page 3-8 and page 3-9 show the same data in a graphical format. Comment III.B.1: Section 2.1 of the TSD states that secondary sulfate and nitrate impacts were assumed to be in direct proportion to a source's relative sulfur dioxide and nitrogen oxides emissions. The 1994 SIP describes Kennecott as a large source of secondary PM10. The commenter requests that DAQ describe the meaning of this statement and show where the results of the demonstration account for secondary pollutants (Comment made by UPHE). DAQ Response - The 1994 SIP used Chemical Mass Balance (CMB) modeling to show attainment. CMB is well suited to apportioning source contribution for primary PM, but secondary PM (e.g., ammonium sulfate and ammonium nitrate), having undergone transformation between source and receptor, poses problems. To work around this problem, all of the secondary sulfate and nitrate collected on the filters was apportioned based on the emissions inventory. Kennecott's inventory showed large amounts of SO2 and NOx, hence it was considered a large source of secondary PM10. Comment III.B.2: Section 5 (Conclusion) of the TSD discusses, in the first bullet item, an analysis based on the 1994 SIP supporting the modification of the operational limit at the mine from 150.5 Mtpy to 260. The commenter can find no evidence of this type of analysis, and asks if it was performed previously (Comment made by UPHE). DAQ Response - This topic is first discussed in Section 2.2 of the TSD. The 1994 SIP was built with a limit of 150.5 Mtpy, and the first column reported in Table 2-1 (1994 emission inventory used in the CMB modeling) reflects that limit. The next column shows the emissions as they would have been calculated in 1994, had the limit been 260 Mtpy. The increase is shown in the third column, and this is the basis that was used as the accounting for offsetting with banked

emissions. Comment III.B.i.l: The proposed use of banked emission credits, the TSD identifies a total emissions increase of 5,417 tons per year that includes increases of both PM10 and NOx. To offset this increase, Kennecott proposes to apply banked SO2 credits. The credits were generated at the smelter, which is 25 miles away from the pit, and had been released from the 1,200 foot stack. The proposed inter-precursor trade has not been modeled to demonstrate the effect on ambient air quality. Additionally, EPA has previously asked the State to provide evidence to validate the banked credits and identified concerns with the 1994 PM10 SIP's offset provisions (Comment made by the EPA). DAQ Response - Kennecott was required by the 1994 SIP to reduce emissions. In 1999, KUC was credited for modernization efforts undertaken while operating in compliance with this SIP. This modernization resulted in Kennecott banking 17,656.50 tons of actual SO2 emissions reductions. The offsets were attained from emissions reductions in the same on attainment area as
the BCM and are therefore valid banked emissions (Section R307-403-4). The offsetting rule (Section R307-403-5) developed for and approved by EPA in the 1994 PM10 SIP combines PM10, SO2, and NOx, and allows for inter-pollutant trading for minor sources. For an increase of emission greater than 50 tons per year, a 1.2:1 ratio is required in the nonattainment area. In accordance with the offsetting rule, the total emissions increase of 5,492 tons per year is being offset with 6,590 tons of banked SO2 emissions (see TSD Section 2.2.3.). If the proposed SIP revision is approved by the Air Quality Board, then these offsets will be made enforceable at the time the approval order is finalized. See also response to Comment No. V.C.1. Comment III.B.i.2: Citing EPA's 6/30/99 letter Re: "Intent To Approve" Production Increase for Kennecott Bingham Canyon Mine, which proposed to increase the amount of material moved from 150.5 Mtpy to 197, and wherein there was a discussion concerning the application of banked credits in order to offset the projected increase in emissions, EPA stated that, according to State banking letters to Kennecott, the banked credits were generated based on the difference between the annual emissions allowed in the PM10 SIP and the emissions subsequently allowed by the Approval Order for those operations. And, while acknowledging this practice to be in accord with Section R307-403-7, it does not constitute evidence that actual emission reductions have occurred. Under Subsection R307-403-4(2), any emission offsets shall be in terms of actual emissions, yet no evidence has been provided that there has been a reduction of at least 1,105 tpy in actual emissions (Comment referencing EPA's earlier comment; Terry Marasco). DAQ Response - See response to Comment No. III.B.i.1. Comment No. III.B.i.3: Concerning Kennecott's proposed use of banked SO2 credits, the record does not support the claim that the offsets will provide a positive net air quality benefit in the affected area of nonattainment as required by Subsection R307-403-3(3)(d.) (Comment made by Western Resource Advocates). DAQ Response - This comment is specific to the Executive Secretary's Intent to Approve (UDAQE-IN0105710028-11, dated 02/02/2011), the NOI, and the associated New Source Plan Review. A detailed response will be provided as part of that record. Comment No. III.B.i.4: Kennecott has offered emission reduction credits to offset increases in emissions. Since offsets do not appear to be required by state or federal law, DAQ should explain the regulatory basis for the application of these credits to the SIP modification process (Comment made by UPHE). DAQ Response - This comment is specific to the executive Secretary's Intent to Approve (UDAQE-IN0105710028-11, dated 02/02/2011), the NOI, and the associated New Source Plan Review. A detailed response will be provided as part of that record. Comment No. III.B.i.5: Section 2.2 of the TSD presents the proposal to offset increases in PM10 and NOx. The credits currently represent emissions that are banked and are not being emitted into the airshed. However, the Salt Lake area has experienced exceedances of the PM10 standard even while these credits are in the bank. Using these banked 13 credits to allow additional emissions is roblematic and should not be allowed by DAQ (Comment made by UPHE). DAQ Response - DAQ disagreed, and continues to believe that the efforts made as part of the 1994 PM10 SIP have resulted in attainment and continued maintenance of the NAAQS. The form of the 24-hr PM10 standard does allow for, on a 3-year average, one exceedance per year. Exceedances monitored beyond that have been due to what DAQ characterizes as exceptional events, meaning that exceedances would have been monitored irrespective of our anthropogenic (man-made) emissions. Typically, these are very windy days, often in spring when melt/freeze conditions have rendered surface soils in surrounding desert areas available for transport. Add to those conditions a turbulent frontal passage and there will be a monitored exceedance of 150 microgram/m3. DAQ acknowledges that EPA has not always agreed with its interpretation of these events, nevertheless, for the reasons described above, DAQ does not feel that the exchange of these credits will add to the number of PM10 exceedances. C. Overlap between 2005 SIP and Intent to Approve UDAQE-IN0105710028-11 (dated 02/02/2011) and Associated New Source Plan Review. Comment No. III.C.1: In Section 4.2.5 of the TSD, Kennecott states that it follows DAQ's policy (Permitting Branch Memo from R. Olsen, 03/10/2008) of using 75% control efficiency on fugitive emissions from unpaved roads. However, the calculations shown in Table A1-18 show the application of 85 and 95% control, reflecting differences in seasonality. These emissions should be re-calculated using 75% control (Comment made by UPHE). DAQ Response - DAQ disagreed. A control efficiency of 95% was used for calculating the fugitive emissions from the haul roads when the 1994 and 2005 PM10 SIPs were developed. To remain consistent, these same control efficiencies were used when the TSD was written. Table A1-18, and all other calculations shown in Appendix A1of the TSD, are consistent with the calculations used in the 1994 attainment SIP. The NOI follows a different regulatory process which has different requirements. Therefore, the emissions that were calculated for the NOI process followed the guidelines outlined in the memo developed for the NOI process. That memo recommends that a 75% control efficiency be used for calculating the haul road fugitive emissions used in the NOI

process. Comment No. III.C.2: Table 1-1 of the TSD reports the "most representative" PTE calculations for 260 Mtpy. However, the PTE summary presented in the companion" NOI document does not agree with the summary given in Table 1-1. This discrepancy casts doubt as to the accuracy of both sets of numbers (Comment made by UPHE). DAQ Response - DAQ disagreed. Both documents were modified since they were originally submitted to DAQ in August 2010. The TSD and NOI were reviewed by different individuals, which resulted in the documents being updated at different times. The most current versions were posted on the DEQ/DAQ web site in January 2010. Comment No. III.D.1 - DAQ's 2008 emissions inventory, representing activities constrained by a 197 Mtpy operational limit, reports 2,915 tons of PM10 from the mine/concentrator. Kennecott's TSD states that with a proposed operational increase of 32% the total PM10 emissions will only be 1,513 tpy, a 48% decrease. The record does not support such a claim. There are no new methods of pollution control. It is perhaps more reasonable to assume that a 32% increase in operational mining will lead to a commensurate increase in actual emissions (Comment made by UPHE). DAQ Response - The action before the Board is whether to revise section IX.H.2.h of the 2005 PM10 Maintenance Plan by changing the amount of material KUC may move at the mine from 197 Mtpy to 260. In order that such action be taken, 40 CFR Section 51.112(a) requires a demonstration of adequacy with respect to the PM10 NAAQS. This demonstration was made using CALPUFF, in conjunction with the UAM-AERO demonstration underlying the 2005 PM10 Maintenance Plan. The analysis has been documented in section 3 of the TSD. The emissions inventories used to make this demonstration show that there will be an increase in emissions from what had been relied upon in the 2005 Plan. Some discussion concerning these numbers is necessary. The 2005 PM10 Maintenance SIP inventories show a comparison between the Post-SIP allowable emissions estimate used in the 2005 maintenance SIP and the calculation appearing in Appendix A-2 of the TSD. The 2005 SIP calculation was based on an annual limit of 197 Mtpy of material moved. The TSD calculation uses methods and assumptions that are consistent with the inventory supporting the 2005 maintenance SIP, but assumes a limit of 260 Mtpy. The difference in emissions between these two estimates is what was modeled using CALPUFF and then added to the UAM result. Neither of these inventories assumes any pit retention. The assumption to use calculation methodologies that are consistent with those in practice when the maintenance demonstration was made is sound. The (2005) UAM16 AERO model was calibrated using base-year inventories for KUC and every other source that were calculated using these practices. This assumption makes comparisons with post-SIP inventories used in the respective demonstrations acceptable. With regard to the question as to whether there should be an emissions increase that is proportional to the increase in material moved, there are several improvements in the operation of the mine that can be expected with this proposal. Most notable is the new requirement to apply chemical dust suppressant to those portions of the haul roads outside of the pit where the waste rock is to be hauled. In 1999, engines used in the haul trucks used what is referred to as a pre-tier 0 engine. Since then EPA has required all new engines that are being developed to use cleaner burn technologies. Kennecott uses engines now that are equipped with tier 1, tier 2, tier 3 and tier 4 technologies. These new engines have reduced the NOx emissions from the engine exhaust. When the SIPs were developed, the sulfur content of the diesel fuels were 500 ppm and with the new federal requirements the sulfur content of the sulfur has been reduced to 15 ppm. When the SIP emission calculations were performed the roads were dustier due to the silt loading in the haul roads. Now Kennecott has installed a road base crusher and places a road base mix on the haul roads which has reduced the silt content of the road surface. This has reduced the fugitive dust emissions from the haul roads. All of the technologies outlined above have reduced the PM10, SO2 and NOx emissions from the Bingham Canyon Mine. E. Air Flow Patterns and Pit Retention of Fugitive Dust for the Bingham Canyon Mine (Bhaskar and Tandon, 1996). Comment No. IV.1: Many commenters expressed their opposition to the proposed increase in activity at the Bingham Canyon Mine (BCM.) DAQ lists the comments point by point, then responds to these comments below. DAQ Response: As an initial matter, some questions have been raised about the specific responsibilities of DAQ and the Utah Air Quality Board. The policy and purpose of the Air Conservation Act is set out below: Section 19-2-101. Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program. (1) This chapter is known as the "Air Conservation Act." (2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. (3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality. (4) The purpose of this chapter is to: (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control; (b) provide for an appropriate distribution of responsibilities among the state and local units of government; (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and (d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state. Comment IV.1.a: The role of the DAQ and its Board is to protect the health of Utah's citizenry and to bring the State into compliance with Federal health standards. Economic consequences are not to be considered. DAQ Response: Economic consequences or concerns played no role in DAQ's review. As noted in DAQ's response to Comment II.1. above, DAQ proposes to modify a PM10 SIP maintenance plan. To do so, a maintenance plan requires a demonstration of adequacy. Under EPA regulations such a

plan "must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements." 40 CFR Section 51.112(a). The Clean Air Act, its implementing regulations and the Utah Air Conservation Act all presume that business activity that impacts air quality will occur. The proposal for the Board's consideration has made the necessary demonstration of adequacy, and therefore is consistent with the requirements of applicable law to protect the health of Utah's citizenry. Comment IV.1.b: Parallel processing of the AO and the SIP imply that the proposed SIP revision is a forgone conclusion. DAQ Response: Please see responses to Comments No. II.4 and V.A.1. Comment IV.1.c: Particular hardship imposed upon those suffering from asthma, developing children, and nearby residents of Hi-Country Estates, described as dusty already. DAQ Response: The Clean Air Act, its implementing regulations and the Utah Air Conservation Act all presume that business activity that impacts air quality will occur. The proposal for the Board's consideration has made the necessary demonstration of adequacy, and therefore is consistent with the requirements of applicable law to protect the health of Utah's citizenry. Comment IV.1.d: Any perceived benefit to the economy should be tempered by a discussion of the associated increase in health care costs. Additionally, Kennecott's gain may result in additional constraints on other existing businesses as we attempt to solve our problems with PM2.5 and ozone. DAQ Response: Please see response to Comment IV.1.a, above. In addition, PM2.5 and ozone will be reviewed during SIP revision actions for those specific pollutants. Please see response to Comment No. IV.3, below. Comment IV.1.e: Kennecott provides relatively few jobs while greatly contributing to industrial air pollution. Breathable air is more important than economic gain. DAQ Response: Please see response to Comment IV.1.a, above. Comment IV.1.f: A company that shows a profit of $14 billion should be investing in technologies to pollute less. If Kennecott could reduce an equal amount of particulate emissions from other sources they could proceed with their plans. DAQ Response: The question for the Air Quality Board is whether the appropriate demonstration has been made with regard to the effect the proposed increase in total material moved would have on the 2005 PM10 Maintenance Plan. DAQ has reviewed the proposal and believes that the demonstration of adequacy has been made. Accordingly, KUC has met the necessary requirement for the amendment to the 2005 plan. Considerations of lower-polluting technologies beyond KUC's current regulatory obligations are not a subject of this action. Comment IV.1.g: Approval for the Cornerstone Project to move forward should be reserved until the EPA takes action (by 12/01/2011) on the States proposed maintenance plan for PM10. DAQ Response: Please see responses to Comments No. II.2 and V.A.2. Comment IV.1.h: Air quality along the Wasatch Front is already not meeting the federal health standards for PM10, PM2.5 and ozone. This is especially true during wintertime when Utah's air quality is often characterized as "worst in the nation." These episodes coincide with incidences of poor health. We should therefore be looking for ways to reduce our emissions rather than allowing for projects such as this which would make the current situation worse. DAQ Response: Please see response to Comment IV.1.a, above. Comment IV.1.i: Despite the PM10 SIP that is in place, Salt Lake County has still exceeded the 24-hr standard for PM10 based on monitored values that DAQ considers exceptional events. This indicates that the current SIP is not protective enough. DAQ Response: Please see response to Comment No. III.B.i.5. Comment IV.1.j: Kennecott claims that the Cornerstone Project will actually reduce air pollution along the Wasatch Front. However the company has projected no credible documentation to support the assertion that their increased hauling of ore and waste will not yield a proportionate increase in particulate pollution. DAQ Response: Please see response to Comment No. III.D.1. Comment IV.1.k: Kennecott's assertion that 80% of the emissions never leave the pit are based on a paper written by a University of Utah graduate student that has never been verified or field tested, even as its author advised it should be. DAQ Response: Please see Editorial Note in section III.E. Comment No. IV.2: Many commenters expressed their support for the proposed increase in activity at the Bingham Canyon Mine (BCM.) Reasons given for this support included: jobs, economic development, and Kennecott's charitable contributions and community development. DAQ Response: These commenters were all in favor of the Kennecott BCM expansion and did not present a technical reason for their support. Since the comments are editorial and not technical in nature, DAQ acknowledges the comments but does not change its recommendation that the Board approve the proposed revision to the 2005 Maintenance Plan. Comment No. IV.3: The Utah Air Quality Board should reserve its decision and require further analysis of the impacts on air quality with respect to PM2.5 due to current and future mine operations. Kennecott's proposal would seemingly result in an increase of NOx emissions. NOx is a precursor to both PM10 and PM2.5 (Comment made by Ralph Becker, Mayor, Salt Lake City and Peter Corroon, Mayor, Salt Lake County). DAQ Response: As required by the Clean Air Act, air quality standards are in a constant state of review and have become more stringent over time. Each time EPA revises a standard, a timeline is established to allow states to develop the tools and evaluations necessary to draft a SIP to address that pollutant. The development of the PM2.5 SIP is well underway but is not required to be complete until the end of 2012. The SIP process contains the authority to require controls adequate to provide for the timely attainment and maintenance of the PM2.5 NAAQS. The action before the Board does not impede the development of a future PM 2.5 SIP. The contribution to fine particulate made by NOx emissions will be part of the PM2.5 evaluation. KENNECOTT'S COMMENTS. A. LEGAL AND PROCESS RELATED COMMENTS. Comment No. V.A.1: Kennecott submitted a request to modify the current material movement limitation in both the state 2005 PM10 SIP and the Bingham Canyon Mine Approval Order to ensure the public has sight of the entire proposal. Both requests were submitted to the DAQ for a

parallel but staggered review (Comment made by KUC). DAQ Response - See Introduction and Responses in Section II above. DAQ sent the revision to the 2005 SIP and a modification of the existing Approval Order out for public comment at the same time with the view that it would enhance the public's understanding of all the regulatory actions that needed to be taken to approve Kennecott's request. In order for Kennecott to proceed with its project, both actions need approval, but, importantly, an Intent to Approve document does not pre-suppose approval of the proposed SIP revision. (See also Comments grouped under section III.C.) Comment No. V.A.2 - The 2005 SIP rulemaking does not need to wait for EPA approval because it is a matter of Utah state law. The rulemaking pertains only to the state 2005 PM10 SIP (Comment made by KUC). Response - The 2005 maintenance plan was approved by the AQB and is enforceable as a matter of state law. Accordingly, promulgated by the Board as state law, the mechanism to amend the PM10 Maintenance Plan is also by state law. The PM10 SIP was submitted to EPA in 2005, but EPA has not yet taken final action. The Air Quality Board approved the PM10 Maintenance plan in 2005, which shows that the Board was satisfied that the PM10 standard would not be violated. The proposed amendment to the plan would change one limitation in the Board-approved plan, which is supported by an adequacy demonstration that with the amendment complies with the attainment demonstration approved in 2005. Should the Board approve Kennecott's proposal as a matter of state law, it too would need to be submitted to EPA for the agency's consideration. EPA proposed (in 2010) to disapprove the 2005 SIP revision. Given that several years often pass between Utah's SIP submissions and EPA's final actions, DAQ does not consider it prudent to delay this rulemaking in order to resolve broader disagreements with EPA. Comment No. V.A.3: The TSD submitted to DAQ is intended to demonstrate continued compliance with the PM10 NAAQS in accordance with the respective technical analyses that formed the bases for the attainment and maintenance demonstrations contained in the l994 PM10 SIP and the 2005 PM10 Maintenance plan. Because the SIP rulemaking is limited to modifying the 2005 PM10 SIP, only PM10 and its precursors (SO2 and NOx) were included in the analysis. Additionally, to support the 1994 SIP modification, KUC is proposing to offset its PM10 and NOx increases from all emission sources on a voluntary basis in a manner consistent with the offsetting provisions of the 1994 SIP and the Utah Administrative Code. - The Chemical Mass Balance (CMB) receptor model, in conjunction with emissions control and offset requirements, was used in support of the federal 1994 SIP attainment. To offset the emissions increase associated with the BCM expansion 5,485 tons of banked stack-level SO2 emission credits will be relinquished in addition to the 1,105 tons of banked PM10 and SO2 credits already relinquished in 1999 (when the limitation on material moved was revised from 150.5 Mtpy to 197.) The analysis shows that the increase in the material-moved limitation is consistent with and satisfies the 1994 attainment and maintenance demonstration. - The UAM-AERO model was used in support of the 2005 maintenance demonstration. Added to that result was a CALPUFF analysis that assumed no pit retention and conservatively assumed a 100% conversion rate of NOx to nitrates (secondary particulate matter). The analysis shows that increases to the UAM-AERO-modeled NOx and primary PM10 will not cause any grid cell to exceed the total PM10 NAAQS of 150 microgram/m3. - Additionally, Kennecott has made a third technical demonstration related to ambient air quality in the immediate vicinity of the mine using the AERMOD model. Despite some conservative assumptions that resulted in the modeling of 30,986 vehicle miles traveled (vmt) per day, despite a daily limit of 30,000 vmt, the analysis demonstrates that the proposed modification will not result in a violation of the 24-hr PM10 NAAQS in the near field. The three technical demonstrations show that the proposed increase in the materialmoved limitation will not adversely affect attainment and maintenance of the PM10 NAAQS (Comment made by KUC). DAQ Response - Kennecott has looked at the PM10 NAAQS from several different standpoints, each in an effort to show that its proposal would not interfere with attainment or maintenance thereof. From the standpoint of the federally approved 1994 attainment SIP, KUC has used emissions calculation methods consistent with those used to support the underlying demonstration of attainment in order to evaluate the increase in material moved at the mine (see TSD Section 2 and Appendix A-1.). The increase in emissions calculated thereby was offset in a manner consistent with the rule adopted as part of that SIP which required, for sources or modifications resulting in an increase of (PM10 + SO2 + NOx) totaling at least 50 tpy, offsets at a ratio of 1.2:1. The offsets were applied to insure that KUC's proposed emissions, including tailpipe and fugitives, would not compromise the attainment demonstration underlying the 1994 SIP. The banked credits used to make this offset were generated by exceeding the emission reductions required by that 1994 demonstration. From the standpoint of the state-approved 2005 maintenance SIP, KUC has used the emissions calculation methods consistent with those used to support the underlying demonstration of maintenance in order to evaluate the increase in material moved at the mine (see TSD Section 3 and Appendix A-2.). The increase in emissions calculated thereby was modeled using CALPUFF and added to the concentrations predicted by the underlying maintenance demonstration. Given the impossibility of re-running UAM-AERO, DAQ endorses this approach. The AERMOD demonstration is not required to satisfy the demonstration of adequacy requirement of 40 CFR Section 51.112(a). With respect to the AERMOD demonstration, neither the 1994 attainment demonstration nor the 2005 maintenance demonstration includes any analysis such as this, which might be termed a "hot spot" analysis. As such, AERMOD is a supplemental analysis intended to address any questions concerning near field impact from primary PM10. See also the Editorial Note at section III.E. Comment No. V.A.4: Regarding other NAAQS: The Bingham Canyon Mine is located in Salt Lake County. The airshed has been designated as nonattainment for PM2.5. DAQ is in the process of developing a SIP for PM2.5. At this time direct source contributions to ambient PM2.5 concentrations are not

known. Particulate emissions from the BCM operations settle in the pit and only a very small fraction escape the pit influence boundary into the atmosphere. During inversions, when there are no winds, there have been observed cases of pit settling approaching 100 percent and retention of gaseous pollutants, as well as primary particulates is believed to occur. As the SIP is developed and an attainment strategy is developed, KUC understands that additional controls may be necessary under the SIP. KUC will meet the requirements of the applicable SIP as mandated in Section 110(I) of the CAA, but cannot commit to control strategies that have not yet been developed or shown to be effective. With regard to ozone, a SIP has not been developed for the 8-hour ozone standard so specific control strategies have not been developed. As with PM2.5, KUC will meet the requirements of the applicable SIP. Changes to the BCM emissions profile will be included in the development of the ozone SIP and appropriate control strategies will be implemented when they are developed. In the meantime, KUC and the BCM expansion are in compliance with developed PM10 control strategies and approved regulations. With regard to NO2, the area is expected to be in attainment of the 1-hour standard. At this time, there is no indication that additional control strategies are required to maintain the NAAQS. As previously stated, if future additional control strategies are required to maintain the 1-hour NO2 standard, KUC will implement the applicable requirements (Comment made by KUC). DAQ Response - (see response to Comment II.1) B. 2005 PM10 Maintenance SIP. Comment No. V.B.1: Because the previous UAM modeling files are unavailable, the use of the CALPUFF modeling system combined with the previous UAM modeling was used to evaluate the impact of the increase in material moved at the BCM. This approach was required by DAQ. CALPUFF is a multi-layer, multi-species, non-steady-state Gaussian puff dispersion model that can simulate the effects of time-and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF can use the 3-dimensional meteorological fields developed by the CALMET model or simple, single station winds. CALPUFF is well suited for this application as it handles very low wind speeds during inversion events and also has the ability to handle complex terrain. The results of the CALPUFF model were added to the predicted UAM concentrations to account for the total impacts after the increase in production (Comment made by KUC). DAQ Response - See Comment No. III.A.2 - Section a). This response addresses the fact that it is not the UAM modeling files that are unavailable from DAQ, but rather the executable code and programs of the UAM-AERO computer model itself that are unavailable. Comment No. V.B.2: EPA has identified several deficiencies in the modeling performed as part of the 2005 Maintenance SIP, specifically the modeling of banked emissions as though they will be emitted from Kennecott's 1,200 foot stack and the reliance on RRFs based only on total mass. The modeling presented in the TSD is consistent with the 2005 Maintenance SIP that has been adopted into State law. It is not an attempt to resolve more fundamental issues that EPA has raised regarding the type of modeling demonstration that will be necessary for EPA to approve a future plan. KUC used the current 2005 UAM modeling and the modeling of the banked emissions as it was completed for the 2005 Maintenance SIP. The RRFs were kept consistent with the state-approved DAQ modeling. The maintenance demonstration approved by the AQB remains valid notwithstanding the proposed increase in material moved (Comment made by KUC). DAQ Response - See response to Comment No. III.A.1. Comment No. V.B.3 - Regarding EPA's assessment that the combination of CALPUFF simulations with UAM-AERO is insufficient and their recommendation that the impacts of the BCM expansion be evaluated using the new CMAQ model simulations currently being developed by the State for the PM2.5 attainment plan, KUC offers the following: The PM10 Maintenance plan was approved by the Utah Air Quality Board in 2005 as a matter of State law. Therefore, DAQ considers the limitations established by the SIP to be enforceable notwithstanding that EPA has yet to take final action on the 2005 Maintenance plan. Accordingly, the material moved limitation must be changed in accordance with state law and in a manner that is consistent with the Board's approval in 2005. It is KUC's understanding that any changes to the BCM operations will be included in the CMAQ model simulations currently being developed by DAQ (Comment made by KUC). DAQ Response - See response to Comment No. III.A.1. DAQ Response - See response to Comment No. III.A.1. C. 1994 PM10 Attainment SIP Comment No. V.C.1: EPA has raised concerns about KUC's proposed use of stacklevel SO2 credits to offset ground level PM10 and NOx emissions at the BCM which lies a considerable distance from the 1,200 foot stack. EPA asserts that additional modeling would be required to show non-interference under the CAA section 110(l), and even raises the question of whether the banked credits are valid. To these concerns, KUC offers the following: KUC says offsets are being provided for the sole purpose of demonstrating that the 1994 attainment demonstration is not adversely affected by the increase in material moved. The offsets being relinquished are entirely consistent with the 1994 PM10 SIP offset provisions. These provisions, as approved by EPA, allow the use of PM10 precursors to offset direct PM10 emissions. KUC also says, the1994 PM10 SIP attainment demonstration was based on receptor modeling which does not specify source emission heights but does include the relative impacts from sources as measured by the ambient air monitors. Therefore, the offsetting program established in the l994 PM10 SIP does not distinguish between release heights. The receptor modeling does account for impacts from the 1,200 foot stack so the impacts from these emissions were included in the attainment demonstration and are creditable. According to KUC, the 1994 federally-approved SIP and 2005 State Maintenance plan requirements have been met. Concerning the validity of the banked credits, KUC has submitted written confirmation to DAQ that the emission reduction credits being relinquished meet the requirements of the offsetting program and are valid offsets. The SO2 credits were generated in 1996 - 1998 during the Smelter modernization project. The Smelter modernization project was completed in 1996 and reduced SO2 emissions by 99.9%. The KUC Smelter continues to be

one of the most advanced and cleanest smelters in the world (Comment made by KUC). DAQ Response - DAQ agreed with Kennecott concerning the use of these banked credits, and also pointed out that the elevation of "ground level" at the pit exceeds the elevation at the top of the 1,200 foot stack by at least 800 feet (See also response to Comment No. III.B.i.1.).

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Clean Air Act Section 110(a)(1) (42 USC 7410(a)(1)) requires that each state adopt and submit to EPA a plan providing for implementation, maintenance, and enforcement of each health standard promulgated by EPA. If a state fails to do so, EPA is to issue a federal implementation plan in its place, and other federal sanctions also would apply. Rule R307-110 incorporates by reference the state implementation plan (SIP) allowed under Subsection 19-2-104(3)(e). Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-120
General Requirements: Tax Exemption for Air Pollution Control Equipment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35775
FILED: 02/01/2012

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 19-2-124 through 19-2-127 allow sales tax exemptions for pollution control equipment meeting certain requirements set forth in the statute. Rule R307-120 sets forth conditions for eligibility for the tax exemption and identifies the process to apply for certification of the exemption. It also identifies items for which exemptions are not allowed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-120 was last amended on 08/29/2011 (DAR No. 34689). No public comments were received at that time. DAQ has not received any other comments about this rule since its last review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-120 sets forth conditions for eligibility for the tax exemption allowed in Sections 19-2-124 through 19-2-127 and identifies the process to apply for certification of the exemption. It also identifies items for which exemptions are not allowed. Therefore, this rule should be continued.

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195 N 1950 W
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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-121
General Requirements: Clean Air and Efficient Vehicle Tax Credit

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35716
FILED: 01/23/2012

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 59-7-605 and 59-10-1009 authorize an income tax credit for those purchasing a new vehicle that uses clean fuels and for those who retrofit a vehicle to use clean fuels. Rule R307-121 sets forth conditions for eligibility and the process of application for corporate and individual income tax credits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-121 has been amended once since the last five-year review, DAR No. 35222. No comments were received. Since the last five-year review, a request for agency action was filed to challenge the DAQ's denial of a tax credit application. The Board upheld the denial, but during the proceedings the Board requested that DAQ clarify Rule R307-121. Those clarifications were made in the most recent amendment to the rule, DAR No. 35222. No other comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-121 should be continued because the tax credit program remains in place. As authorized by Sections 59-7-605 and 59-10-1009, Rule R307-121 provides necessary guidance in the administration of that program.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 01/23/2012

Environmental Quality, Air Quality
R307-130
General Penalty Policy

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35776
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-2-115 authorizes penalties for those found in a civil proceeding to have violated Title 19, Chapter 2, or any rule, order, or permit issued under that chapter. Rule R307-130 guides the executive secretary of the Air Quality Board in determining a reasonable and appropriate penalty based on the nature and extent of the violation, the economic benefit to the sources of noncompliance, and adjustments for specific circumstances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-130 was last amended on 07/13/2007. No comments were received at that time, and no comments have been received about this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Under Section 19-2-115, a person is subject in a civil proceeding to a penalty not to exceed $10,000 per day for each violation. Rule R307-130 implements Section 19-2-115. Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-135
Enforcement Response Policy for Asbestos Hazard Emergency Response Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35777
FILED: 02/01/2012

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 19-2-115(2)(b) and (c) authorize penalties for violations of rules adopted under Section 19-2-104 for implementation of 15 USC 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response. Rule R307-135 sets forth the conditions for issuance of a notice of violation and the penalties to be assessed.

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 on this rule since its 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: Rule R307-135 sets forth the conditions for issuance of a notice of violation and the penalties to be assessed, as set forth in 15 USC 2601 et seq. Therefore, this rule should be continued.

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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-301
Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35778
FILED: 02/01/2012

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 211(m)(1) of the Clean Air Act required Utah County to implement an oxygenated gasoline program to bring it into attainment of the carbon monoxide National Ambient Air Quality Standards. Clean Air Act Section 175A(d) requires that maintenance plans assure prompt action to correct any violation of the standard that occurs after an area is redesignated to attainment, and mandatory Clean Air Act requirements such as an oxygenated fuels program must be included as contingency measures. Rule R307-301 remains in place in case the carbon monoxide health standard is violated in Provo or Ogden; in which case, an oxygenated gasoline program could be reinstated based on the trigger measures in State Implementation Plan (SIP) Subparts IX.C.6.e(5)(a) and IX.C.8.f.

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 on this rule since its 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: Section 211(m)(1) of the Clean Air Act required Utah County to implement an oxygenated gasoline program to bring it into attainment of the carbon monoxide National Ambient Air Quality Standards. Clean Air Act Section 175A(d) requires that maintenance plans assure prompt action to correct any violation of the standard that occurs after an area is redesignated to attainment, and mandatory Clean Air Act requirements must be included as contingency measures. The oxygenated gasoline program is a contingency measure in case the carbon monoxide National Ambient Air Quality Standards (NAAQS) is violated in Provo or Ogden. Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-320
Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35779
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-320 is authorized by Subsections 19-2-104(1)(h) and (2) which authorize and set forth criteria for consideration in implementing an employer-based trip reduction program for businesses and government agencies that have 100 employees or more at a single site in any ozone nonattainment or maintenance area. The statute requires approval of the governor before implementation and requires that the Air Quality Board consider the impact of the business on overall air quality and the need of the business to use automobiles in order to carry out its business purposes before implementing the program. Rule R307-320, however, applies only to federal, state, and local agencies of government that have 100 or more employees at a single site. Rule R307-320 does not apply to businesses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received on this rule since its 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: Subsections 19-2-104(1)(h) and (2) authorize a trip reduction program for businesses and federal, state, and local governments having more than 100 employees at a single location to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements. The rule is required by the state implementation plan for ozone, incorporated by reference under Section R307-110-13. That plan applies in Salt Lake and Davis Counties. In addition, the rule could be implemented as a contingency measure in Ogden City and Utah County if health standards are violated. Though the statute authorizes the Air Quality Board to require a trip reduction program for businesses, Rule R307-320 applies only to federal, state, and local agencies of government that have 100 or more employees at a single site. The purpose of the rule is to reduce the number of miles driven by employees commuting to and from work. Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-325
Ozone Nonattainment and Maintenance Areas: General Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35780
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-325 establishes general requirements for control of volatile organic compounds, a precursor to ozone, in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air

pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: There have been no comments received on this rule 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-326
Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35781
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-326 establishes Reasonably Available Control Technology (RACT), as required by section 182(b)(2)(A) of the Clean Air Act, for the control of hydrocarbon emissions from petroleum refineries that are located in any ozone nonattainment and maintenance areas. The rule is based on federal control technique guidance documents. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: There have been no comments received on this rule 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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FOURTH FLOOR
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SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-327
Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35782
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-327 requires that petroleum refineries have measures in place to reduce emissions of volatile organic compounds, a precursor to ozone, from their large storage tanks in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: There have been no comments received on this rule 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-328
Gasoline Transfer and Storage

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35783
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-328 establishes Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline transport vehicles and storage tanks in any ozone nonattainment or maintenance areas and Utah and Weber Counties. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: R307-328 was amended once since its last five-year review (effective 06/07/2011, DAR No. 34349). No comments have been received on this rule since its 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a Federal Implementation Plan. Therefore, this rule should be continued.

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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-335
Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35784
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-335 establishes Reasonably Available Control Technology (RACT) for degreasing and solvent cleaning operations that are located in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: There have been no comments received on this rule since its 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-340
Ozone Nonattainment and Maintenance Areas: Surface Coating Processes

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35785
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-340 establishes

Reasonably Available Control Technology (RACT) for surface coating operations that are located in any ozone nonattainment or maintenance area. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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 comments have been received on this rule 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-341
Ozone Nonattainment and Maintenance Areas: Cutback Asphalt

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35786
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-341 establishes reasonably achievable control technology (RACT) requirements for the use or application of cutback asphalt in any ozone nonattainment or maintenance areas. The rule is required under the state implementation plan for ozone that is incorporated by reference under Section R307-110-13. The plan is required by the Clean Air Act, 42 USC 7410, to maintain the federal health standard for ozone. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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 comments have been received on this rule since its 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: The rule is required under the state implementation plan for ozone, incorporated by reference under Section R307-110-13. The plan is required under the Clean Air Act, 42 USC 7410; without the state plan, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Air Quality
R307-343
Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35787
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R307-343 regulates wood furniture manufacturers that have the potential to emit 25 tons or more of volatile organic compounds each year in any ozone nonattainment or maintenance area. Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules ". . . regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminants source. . ." Subsection 19-2-101(2) states "It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and 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: There have been no comments received on this rule 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: Rule R307-343 limits the emissions of volatile organic compounds, a precursor to ozone, from wood furniture manufacturers in ozone nonattainment and maintenance areas. This rule is needed to ensure that emissions of air pollution do not harm public health. This rule outlines emissions standards for wood furniture manufacturing operations and should be continued. This rule is part of a proactive strategy to ensure that Salt Lake and Davis counties continue to meet the ozone standard. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 02/01/2012

Environmental Quality, Water Quality
R317-12
General Requirements: Tax Exemption for Water Pollution Control Equipment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35726
FILED: 01/25/2012

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 statutory provisions under which the rule is enacted are Sections 19-2-123, 19-2-124, 19-2-125, 19-2-126, and 19-2-127. These provisions require the rule because they allow for tax relief to industries that have obtained a certification for a pollution control facility from a state agency. Rule R317-12 is the mechanism for how the Utah Division of Water Quality determines whether a pollution control facility is eligible for certification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the Utah Division of Water Quality since Rule R317-12 was enacted five years ago. However, the agency did have a meeting with one applicant that resulted in a statutory change to Section 19-2-124. The statutory change is as follows: Previous statute: 19-2-124. Application for certification of pollution control facility -- Refunds -- Interest.... (2)(a)(i) A person who applies under Subsection (1) shall be: (A) the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution; or (B) a person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property. (ii) For purposes of this Subsection (2), "owner" includes a contract purchaser.... New statute: 19-2-124. Application for certification of

pollution control facility -- Refunds -- Interest.… (2)(a)(i) A person who applies under Subsection (1) shall be: (A) the owner of a trade or business that uses property in the state requiring a pollution control facility to prevent or minimize pollution; (B) a person that, as a lessee or pursuant to an agreement, conducts the trade or business that operates or uses the property; or (C) a person that operates a pollution control facility pursuant to an agreement with an owner described in Subsection (2)(a)(i)(A) or a person described in Subsection (2)(a)(i)(B). (ii) For purposes of this Subsection (2), "owner" includes a contract purchaser....

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 should be continued because it provides clear guidance to companies as to whether their pollution control facility is eligible for certification from the Utah Division of Water Quality. Rule R317-12 will be revised to incorporate the Utah Code revision after the five-year review is completed.

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:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 01/25/2012

Financial Institutions, Credit Unions
R337-10
Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35700
FILED: 01/20/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule designates which one or more federal laws are applicable to a credit union subject to the jurisdiction of the department. The rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department."

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 supporting or opposing written comments have been received since the last notice of continuation.

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 establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department." Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CREDIT UNIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-100
Food Service Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35715
FILED: 01/20/2012

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 Subsection 26-1-30(2)(u), and Section 26-15-2. Subsection 26-1-30(2)(u) authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of restaurants and all other places where food is handled for commercial purposes, sold, or served to the public. Section 26-15-2 outlines the minimum rules of sanitation to be established by the Department of Health, including restaurants and all places where food or drink is handled, sold, or served to the public.

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 Environmental Sanitation Program has not received comments opposing the rule, but has received comments from Local Health Departments, Local Environmental Health Directors, Industry representatives, and the food code revision work group regarding different aspects of the rule. The Agency has responded to these comments as part of our process to develop modifications to the rule. In November of 2009, the US Food and Drug Administration (FDA) released the update of their model code as the 2009 FDA Food Code. Comments received from stakeholders indicate a desire for the state rule to be updated to include provisions now included in the 2009 model FDA Food Code.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R392-100 is the statewide rule which establishes the guidelines for industry in regards to food service sanitation, and the rule that local health departments rely on to enforce food sanitation. The rule is the basis for consistent and uniform enforcement of food service sanitation (Section 26-15-2) across all areas of the state. The FDA has concluded that food borne illness in the United States is a major cause of personal distress, preventable death, and avoidable economic burden. The main purpose of Rule R392-100 is to prevent food borne illness, hospitalizations that occur due to food borne illness, and in rare instances, serious disease and death. The Environmental Sanitation Program has not received comments in opposition to the rule, but the Agency has received comments from local health departments, local Environmental Health Directors, the food safety task force, and the Food Code Advisory Committee. Based on the comments received, this rule is necessary as: 1) the standard established by which industry serves food to the public; 2) the standard by which regulatory authorities enforce sanitation; and 3) the standard to which the public looks for protection from disease when they are served food at a food service establishment. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-200
Design, Construction, Operation, Sanitation, and Safety of Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35710
FILED: 01/20/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-15-2 which authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of schools.

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 Bureau of Epidemiology has not received any written comments opposing the rule, but CLEHA, the organization comprised of local Environmental Health Directors has given UDOH their support of continuation of the rule. An ongoing committee (the School Advisory Committee) composed of local regulators and school district personnel has met to discuss school sanitation issues, and has made recommendations to the Department to amend the rule. Additionally, UDOH has worked with the State Office of Education as a partner to submit proposed changes to the rule. Some of the most significant issues under review include emphasis on the requirement of local health department approval of plans before building or remodeling of schools commence, the addition of diaper changing requirements, and a revision of the safe room temperature levels schools should maintain. The requirement of the installation of "juvenile" toilets in new or remodeled schools has been discussed, as well as a requirement of a minimum of two privacy showers in new or remodeled schools. Other issues discussed include illumination requirements, playground equipment maintenance, and inspection frequency. A revision of this rule is in the review process.

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 a very important aspect of public health and safety protection for school age children statewide. Additionally, the Department of Health is required by statute to establish minimum sanitation standards for schools. This rule is the sanitation rule established by the Department and enforced by the local health departments. Proper sanitation regulation of public schools is an important part of protecting public health and a key aspect in reducing adverse health risks of children attending school in the state. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-300
Recreation Camp Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35709
FILED: 01/20/2012

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 Subsection 26-15-2(6) which authorizes the Department to adopt rules and enforce minimum standards of sanitation to protect public health in regards to recreational camps.

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 Bureau of Epidemiology has not received any written comments which would indicate a need to modify this rule, but has received supporting comments from local health departments indicating the importance of continuing to enforce this rule statewide.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Health is required by statute to establish minimum sanitation standards for recreational camps. Additionally, the Environmental Health Directors at all 12 local health departments have indicated to the Department that there is need for this rule to remain in effect. This rule is currently being enforced by the local health departments statewide. Proper sanitation regulation of recreational camps remain important to protect the campers who use these types of facilities. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-301
Recreational Vehicle Park Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35708
FILED: 01/20/2012

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 Subsection 26-15-2(6) which authorizes the Department to adopt rules and enforce minimum standards of sanitation to protect public health in regards to recreational vehicle parks.

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 Bureau of Epidemiology has not received any written comments indicating a need for modification of this rule, but has received comments from local health departments indicating the need to continue enforcing this rule statewide.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Health is required by statute to establish minimum sanitation standards for recreational vehicle parks. Additionally, the Environmental Health Directors at all 12 local health departments have indicated to the Department that there is need for this rule to remain in effect. This rule is currently being enforced by the local health departments statewide. Proper sanitation regulation of recreational vehicle parks remains important to protect the visitors of these types of facilities. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-302
Design, Construction and Operation of Public Pools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35707
FILED: 01/20/2012

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 Subsection 26-1-30(2). Subsection 26-1-30(2)(u) authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of swimming pools, public baths, and bathing beaches.

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 Office of Epidemiology has not received any written comments either supporting or opposing the entire rule. An ongoing committee (the Pool Advisory Committee) composed of local regulators, pool service and construction people, and pool operators meets regularly to discuss any issue about pools that may come from any source. The committee provides the Environmental Sanitation Program recommendations for changes to the rule in response to those issues. Other sources of comments about particular parts of the rule have come from the local health department directors and from local environmental health directors. Some of the most significant issues reviewed include: the allowance of gravity drain systems, interactive water features, private pools and swim lessons, standards for non-cementitious pool shells, bather loads, underwater ledges and seats, deck obstructions, pool entrance latch height, turnover in multi-type pools, handrails on stairs inside the pool perimeter, anti-entrapment outlets and systems, first aid kit contents, LED underwater lighting,

total dissolved solids in pool water, lifeguard procedures, diapers in public pools, and cryptosporidiosis watches and warnings.

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 a very important aspect of public health and safety protection. Even those who have argued about aspects of the rule have never said the rule wasn't needed. As highlighted in the 12/22/2006 MMWR publication of the Centers for Disease Control, public pools have a high potential for transmission of disease. The U.S. Consumer Product Safety Commission has also highlighted many safety issues with public pools. Proper regulation of public pools is a key aspect to reducing those risks. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-400
Temporary Mass Gatherings Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35711
FILED: 01/20/2012

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 Subsection 26-1-30(2)(u), which authorizes the Department to adopt rules and enforce minimum sanitary standards for the operation and maintenance of places used for public gatherings.

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 Office of Epidemiology has not received any written comments indicating a need to revise the rule, but has received supporting comments from the local health departments indicating a need to continue enforcement statewide 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: Temporary mass gatherings continue to increase. Most events occur at sites that have very limited resources for restrooms, drinking water, and safety. Because of their cost, provisions for sanitation and safety would probably be very limited at those events without this rule that requires them. Even if an organizer were willing to spend the needed money, they need the guidance provided by the rule as to what would be needed for public health and safety. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-401
Roadway Rest Stop Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35714
FILED: 01/20/2012

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 Subsection 26-15-2(8) which authorizes the Department to adopt rules and enforce minimum standards of sanitation to protect public health for roadway rest stops.

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 Bureau of Epidemiology has not received any written comments indicating a need to revise the rule, but has received comments from the local health departments indicating a need to continue statewide enforcement of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Health is required by statute to establish minimum sanitation standards for roadway rest stops. Additionally, the Environmental Health Directors at all 12 local health departments have indicated to the Department that there is need for this rule to remain in effect. This rule is currently being enforced by the local health departments statewide. Proper sanitation regulation of roadway rest stops remains important to protect the traveling public in Utah. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services

R392-402

Mobile Home Park Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35712
FILED: 01/20/2012

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 Subsection 26-15-2(8) which authorizes the Department to adopt rules and enforce minimum standards of sanitation to protect public health in regards to mobile home parks.

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 Bureau of Epidemiology has not received any written comments indicating a need to revise this rule, but has received comments from local health departments indicating the need to continue statewide enforcement of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Health is required by statute to establish minimum sanitation standards for mobile home parks. Additionally, the Environmental Health Directors at all 12 local health departments have indicated to the Department that there is need for this rule to remain in effect. This rule is currently being enforced by the local health departments statewide. Proper sanitation regulation of mobile home parks remains important to protect the residents who live in mobile home parks and the public who live near or visit. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Disease Control and Prevention, Environmental Services
R392-501
Labor Camp Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35713
FILED: 01/20/2012

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 Subsection 26-15-2(9) which authorizes the Department to adopt rules and enforce minimum standards of sanitation to protect public health in regards to labor camps.

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 Bureau of Epidemiology has not received any written comments indicating a need to revise this rule, but has received comments from the local health departments indicating a need to continue statewide enforcement of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Department of Health is required by statute to establish minimum sanitation standards for labor camps. Additionally, the Environmental Health Directors at all 12 local health departments have indicated to the Department that there is need for this rule to remain in effect. This rule is currently being enforced by the local health departments statewide. Proper sanitation regulation of labor camps remains important to protect the laborers who use these types of facilities. Therefore, this rule should be continued.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 01/20/2012

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-7C
Alternative Remedies for Nursing Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35719
FILED: 01/24/2012

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 allows the Department to adopt administrative rules which ensure that facilities and providers comply with Medicaid standards. Further, 42 U.S.C. 1396r(h) specifies the remedies available to the Department when skilled nursing facilities or nursing facilities do not comply with requirements for participation in the Medicaid program.

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 establishes criteria for imposing remedies on nursing facilities that do not comply with Medicaid standards. These standards allow the Department to provide safe, efficient, and cost effective care for Medicaid recipients. 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: 01/24/2012

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-10
Physician Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35720
FILED: 01/24/2012

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 allows the Department to adopt administrative rules that provide services to Medicaid clients. Further, 42 CFR 440.50 allows the Department to provide physician services for Medicaid clients that fall within a physician's scope of practice.

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 sets forth eligibility requirements for Medicaid clients to receive physician services, sets forth program access requirements for physicians, specifies service coverage criteria, and directs Medicaid clients to the Department's copayment policy. 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: 01/24/2012

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-10A
Transplant Services Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35722
FILED: 01/24/2012

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 authorizes the Department to adopt administrative rules to provide services to Medicaid recipients. Further, 42 CFR 440, Subpart A authorizes medically necessary inpatient hospital 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 establishes

standards and criteria for tissue and organ transplantation services. The criteria in this rule provide safe and cost effective services for Medicaid recipients who meet the standards of care. 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: 01/24/2012

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-45

Personal Supervision by a Physician

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35721
FILED: 01/24/2012

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 authorizes the Department to adopt administrative rules to provide services to Medicaid recipients. Further, 42 CFR 440.50 authorizes a nurse practitioner or a physician assistant to perform services under the supervision of a physician.

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 written comments that either support or oppose 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 should continue this rule because it increases access to physician services by allowing a nurse practitioner or a physician assistant to perform services under the supervision of a physician.

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: 01/24/2012

Health, Disease Control and Prevention, Laboratory Services

R438-12

Rule for Law Enforcement Blood Draws

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35706
FILED: 01/20/2012

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 26-1-30(2)(s) indicates that the Department of Health (DOH) has and can exercise power to establish qualifications for individuals to withdraw blood pursuant to Subsection 41-6-44.10(5). Subsection 41-6-44.10(5) gives DOH the right to establish criteria to authorize individuals other than physicians and nurses to withdraw blood for this specific purpose.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: A law firm claims that the

Department is certifying unqualified persons under this rule. A group is looking into allowing all paramedics and properly trained EMT personnel to per se be qualified to draw blood for DUI purposes and not need to get a permit under the rule. A letter from a law firm that appears to argue that the Department is misapplying Rule R438-12 because it is issuing permits to persons who have received "training in blood withdrawal procedures obtained as a defined part of a successfully completed training course which prepares individuals to function in routine clinical or emergency medical situations," but who are not actually working in clinical or emergency medical situations. The rule establishes a training requirement for quality control purposes. It does not establish an employment requirement.

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 establishes requirements for individuals, other than a physician or nurse, permitted to collect blood at the direction of a peace officer for the determination of alcohol or drug content. Therefore, this rule should be continued.

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: 01/20/2012

Health, Disease Control and Prevention, Laboratory Improvement
R444-11
Rules for Approval to Perform Blood Alcohol Examinations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35701
FILED: 01/20/2012

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 26-1-30(2)(m) charges the Department of Health to set and enforce standards for laboratory 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: 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: The purpose of this rule is to provide standards for the approval of laboratories desiring to be approved to conduct examinations for the determination of blood alcohol levels. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
LABORATORY IMPROVEMENT
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:
♦ 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: 01/20/2012

Human Services, Administration
R495-878
Americans with Disabilities Act Grievance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35717
FILED: 01/23/2012

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 purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

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

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 28 CFR 35.107, the Utah Department of Human Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended. Therefore, this rule should be continued.

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

HUMAN SERVICES
ADMINISTRATION
DHS ADMINISTRATIVE OFFICE
MULTI STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jodi Patterson by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at jpatters@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

AUTHORIZED BY: Palmer DePaulis, Executive Director

EFFECTIVE: 01/23/2012

Human Services, Public Guardian (Office of)

R549-1

Eligibility and Services Priority

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35759
FILED: 02/01/2012

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: To provide procedures and standards for the determination of eligibility and establish services as required by Title 62A, Chapter 14, Part-1.

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

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 needs to be continued in order to provide the public and the agency clear eligibility and service priority information regarding potential wards of the Office of Public Guardian.

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

HUMAN SERVICES
PUBLIC GUARDIAN (OFFICE OF)
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Donna Russell by phone at 801-538-4564, by FAX at 801-538-8243, or by Internet E-mail at dlrussell@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

AUTHORIZED BY: Donna Russell, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Administration

R642-100

Records of the Division and Board of Oil, Gas and Mining

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35791
FILED: 02/01/2012

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 concerning handling of records is authorized under the rulemaking authority granted in Sections 40-6-5, 40-8-6, and 40-10-6, and is specifically authorized by the Government Records and Management Act (GRAMA), Section 63G-2-101 et seq.

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 should be continued so that a process remains in place for managing the records of the Division and Board of Oil, Gas and Mining.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; ADMINISTRATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-870
Abandoned Mine Reclamation Regulation Definitions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35792
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Definitions in this rule are necessary for consistent usage in regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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: Definitions for Abandoned Mine Reclamation in this rule are necessary to avoid inconsistent use of terminology by the board, division, and affected parties. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-872
Abandoned Mine Reclamation Fund

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35793
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25.1 specifically creates the Abandoned Mine Reclamation Fund.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 establishes how the Abandoned Mine Reclamation Fund will be managed. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-874
General Reclamation Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35794
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25 specifically establishes eligible land and water resource restoration priorities.

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 establishes reclamation eligibility requirements and priorities in the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-875
Noncoal Reclamation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35795
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-25 specifically establishes eligible land and water resource restoration priorities and requirements for use of funds.

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 establishes land and water eligibility requirements for noncoal reclamation in the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35796
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-27 specifically establishes provisions for entry upon land adversely affected by past mining.

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 establishes procedures that are necessary for entry upon land for reclamation purposes by the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-877
Rights of Entry

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-879
Acquisition, Management, and Disposition of Lands and Water

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35797
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-27 specifically establishes provisions when the state may acquire land adversely affected by past mining and later disposition.

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 establishes procedures that are necessary for acquisition of eligible land and water resources for emergency and reclamation purposes and also the disposition of lands so acquired. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-882
Reclamation on Private Land

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35798
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-28 specifically establishes provisions for potential recovery of reclamation costs.

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 establishes procedures that are necessary for recovery of the cost of reclamation activities conducted on private land by the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-884
State Reclamation Plan

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35799
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-26 specifically establishes provisions for submittal of the state reclamation plan and application for support of the state program to the federal Secretary of the Interior.

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 establishes procedures that are necessary for the preparation, submission, and approval of the state reclamation plan to the Office of Surface Mining which is critical to funding of the Abandoned Mine Reclamation Program. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation
R643-886
State Reclamation Grants

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35800
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-10-6 provides for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-26 specifically establishes provisions for submittal of the state reclamation plan and application for support of the state program to the federal Secretary of the Interior.

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 establishes procedures that are necessary for receipt of grants by the Abandoned Mine Reclamation Program for the reclamation of eligible lands and water in the reclamation plan. This rule should be continued so the Abandoned Mine Reclamation Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING;
ABANDONED MINE RECLAMATION
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Coal
R645-100
Administrative: Introduction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35801
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. The definitions and other administrative components in this rule are utilized for consistent regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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: The definitions applicable to the Coal Program in this rule are necessary to avoid inconsistent use of terminology by the board, division, and affected parties. The other administrative items in this rule include the description of the applicability of these rules, petitions for rulemaking, citizen suits, availability of records, and computation of time frames. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Coal
R645-103
Areas Unsuitable for Coal Mining and Reclamation Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35802
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-24 specifically establishes provisions for a planning process enabling objective decisions for land areas unsuitable for coal mining operations.

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 establishes procedures that are

necessary for the designation of lands unsuitable for coal mining and reclamation operations. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Coal
R645-200
Coal Exploration: Introduction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35803
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 establishes categories of coal exploration based upon tons of coal to be removed and the general responsibility of the division and any person seeking to conduct coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Oil, Gas and Mining; Coal
R645-201
Coal Exploration: Requirements for Exploration Approval

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35804
FILED: 02/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 establishes requirements that are necessary for coal exploration permit approval within Utah.

This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/01/2012

Natural Resources; Forestry, Fire and State Lands
R652-140
Utah Forest Practices Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35698
FILED: 01/19/2012

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 adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8a-101 et seq., to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct forest practices. Also, pursuant to the authority of Subsection 65A-8a-106(3), which requires the Division to promulgate rules, to clarify the procedure for application, approval, implementation, and monitoring of Forest Stewardship Plans.

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 supporting or opposing written comments have been received since the last notice of continuation.

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 complies with statute by clarifying the procedure through which operators must register and notify the Division of the intent to conduct forest practices. The provisions in this rule are effective in providing the requirements, procedures, and standards for managing forest practices. The rule also clarifies that the Division is responsible for accepting application, evaluating for approval, implementing, and monitoring Forest Stewardship Plans. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov

AUTHORIZED BY: Richard Buehler, Director

EFFECTIVE: 01/19/2012

Pardons (Board of), Administration
R671-101
Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35730
FILED: 01/26/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 77-27-9 and the Rulemaking Act, Title 63G, Chapter 3. This rule states that the Board of Pardons will make its rules in accordance with rulemaking procedures and will make and abide by rules in a manner consistent with maintaining public safety keeping in mind that the rights of a party should not be substantially affected.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 indicates how all rules are to be processed, how they are distributed, and how they are interpreted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/26/2012

Pardons (Board of), Administration
R671-102
Americans with Disabilities Act Complaint Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35731
FILED: 01/26/2012

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 made under authority of Section 67-19-32; Title 63G, Chapter 2; and Subsection 63G-3-201(3). The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule ensures compliance with the Americans with Disabilities Act procedures. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/26/2012

Pardons (Board of), Administration
R671-201
Original Parole Grant Hearing Schedule and Notice.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35732
FILED: 01/26/2012

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 77-27-7 establishes that the Board must promptly notify offenders of upcoming hearings. Rule R671-202 is is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 establishes when hearings will be conducted in accordance with due process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/26/2012

Pardons (Board of), Administration
R671-202
Notification of Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35737
FILED: 01/31/2012

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 77-27-7 establishes that the Board must promptly notify offenders of upcoming hearings; and Section 77-27-9 establishes that the Board may enact rules to conduct its business. Rule R671-202 is is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 establishes when hearings will be conducted in accordance with due process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-203
Victim Input and Notification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35738
FILED: 01/31/2012

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 77-27-9.5 establishes that victims may attend hearings; Section 77-27-13 establishes that relevant victim impact information must be taken into account; and Section 64-13-20 establishes that the pre-sentence investigation reports shall include a victim impact statement in all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the victim. Rule R671-203 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 follows statute and due process, and provides victims with notice of hearings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-205
Credit for Time Served

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35739
FILED: 01/31/2012

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 77-27-7 establishes that the Board may determine rehearing and release dates; Section 77-27-9 establishes eligibility timelines for parole proceedings; and Section77-19-7 establishes that the judge of a court where a judgment of death was had shall, immediately after the conviction, transmit to the chair of the Board of Pardons and Parole a statement of the conviction and judgment and a summary of the evidence given at trial. Rule R671-205 is enacted under those provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 provides situations when offenders receive credit for time served. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-206
Competency of Offenders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35758
FILED: 02/01/2012

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 77-15-3, 77-15-5, 77-27-2, and 77-27-7 require that offender competency be determined and competency hearings may be held. Rule R671-206 is enacted under those provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 establishes guidelines for determining competency or incompetency to ensure due process to all offenders. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300

448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 02/01/2012

Pardons (Board of), Administration
R671-207
Mentally Ill and Deteriorated Offender Custody Transfer

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35740
FILED: 01/31/2012

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 77-16a-204 establishes that accommodations should be made to transfer mentally ill offenders. Rule R671-207 is enacted under this provision.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills statutory requirement for custody transfer of offenders with mental illness. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-301
Personal Appearance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35741
FILED: 01/31/2012

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 77-27-2 establishes that the Board conducts offender hearings; Section 77-27-7 establishes that offenders will appear before an officer of the Board for a hearing; Section 77-27-9 establishes criteria for parole or rehearing proceedings; and Section 77-27-29 establishes the rights of probationers and parolees. Rule R671-301 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills statutory and due process requirement for an offender to receive a personal appearance hearing. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-302
News Media and Public Access to Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35742
FILED: 01/31/2012

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 77-27-9 establishes that the Board can conduct hearings and determine how they are accessed. Rule R671-302 is enacted under this provision.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 list requirements for public access to Board hearings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-303
Information Received, Maintained or Used by the Board

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35743
FILED: 01/31/2012

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 63G, Chapter 2, establishes the Government Records Access and Management Act. Rule R671-303 is enacted under those provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills Supreme Court and statutory requirements regarding processing of information for hearings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-304
Hearing Record

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35744
FILED: 01/31/2012

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 77-27-8 requires that the Board maintain verbatim records of hearings, and Section 77-27-9 establishes that the Board can determine its procedures to do so. Rule R671-304 is enacted under those provisions.

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

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 complies with statutory requirement to keep records of hearings. Therefore, this rule should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-305
Notification of Board Decision

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35745
FILED: 01/31/2012

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 77-27-9.7 requires that notification prior to release be sent to victims and offenders. Rule R671-305 is enacted under this provision.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills notice of hearing decisions to offenders. Therefore, this rule should be continued.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-308
Offender Hearing Assistance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35746
FILED: 01/31/2012

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 77-27-5, 77-27-9, 77-27-11, 77-27-29, and 78A-9-103 dictate that offenders must be given due process and have the opportunity to be represented by counsel during certain proceedings. Rule R671-308 is enacted under those provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills due process requirement for assisting offenders at hearings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-309
Impartial Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35747
FILED: 01/31/2012

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 77-27-7 states that the Board can establish hearing dates and cause the offender to appear before the Board; and Section 77-27-9 establishes criteria for parole proceedings. Rule R671-309 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills due process requirements for fair hearings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-310
Rescission Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35748
FILED: 01/31/2012

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 77-27-5 establishes that the Board has authority over offenders under the jurisdiction of the Utah Department of Corrections; Section 77-27-6 establishes that the Board can order that offenders pay restitution in applicable cases; and Section 77-27-11 establishes that the Board can revoke parole. Rule R671-310 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills due process requirement for changing release dates. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION

ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-311
Special Attention Hearings and Reviews

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35749
FILED: 01/31/2012

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 77-27-7 establishes criteria for parole hearings and dates; Section77-27-5 establishes that the Board has the authority to review and hear offenders under the jurisdiction of the Utah Department of Corrections; Section 77-27-6 establishes that the Board may order an offender to pay restitution; Section 77-27-10 establishes conditions of parole, inmate agreement to warrant, rulemaking, and the intensive early release parole program; and Section 77-27-11 establishes that the Board can revoke parole. Rule R671-311 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 outlines the process of administrative requests for modifications of an offender's status. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-315
Pardons

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35750
FILED: 01/31/2012

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 77-27-2 establishes that the Board functions to assess offenders for parole eligibility and can issue pardons in accordance with Utah Law; Section 77-27-5 establishes that the Board has authority over offenders under the jurisdiction of the Utah Department of Corrections; Section 77-27-9 establishes criteria for parole proceedings; and Art VII, Sec 12, of the Utah Constitution establishes the separation of the functions of the Governor and the Board. Rule R671-315 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills the constitutional mandate regarding pardons requests. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-316
Redetermination

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35751
FILED: 01/31/2012

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 77-27-5 establishes that the Board has the power to process offender status changes, including redetermination. Rule R671-316 is enacted under those provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills the statutory requirement for the processing of offender status. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-402
Special Conditions of Parole

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35752
FILED: 01/31/2012

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 77-27-5 establishes that in any case filed in state or federal court in which a prisoner submits a claim that the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons and Parole and any county jail administrator may consider that finding in any early release decisions concerning the prisoner; Section 77-27-6 establishes that payment of restitution can be a condition of parole in applicable cases; Section 77-27-10 establishes criteria for the conditions of parole; and Section 77-27-11 establishes the criteria for the revocation of parole. Rule R671-402 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 allows for modification of offender special conditions of parole. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Pardons (Board of), Administration
R671-405
Parole Termination

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35753
FILED: 01/31/2012

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 76-3-202 establishes that the Board can terminate parole; Section 77-27-9 establishes that the Board can determine termination of any sentence that falls under the jurisdiction of the Department of Corrections; and Section 77-27-12 establishes that parole termination is limited to the criteria established in Section 76-3-202. Rule R671-405 is enacted under these provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

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 fulfills the statutory requirement for processing of offender termination of sentence. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

AUTHORIZED BY: Clark Harms, Chairman

EFFECTIVE: 01/31/2012

Public Safety, Driver License
R708-2
Commercial Driver Training Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35702
FILED: 01/20/2012

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 53-3-504 and 53-3-505 outline the requirements for the Driver License Division to license Commercial Driver Training Schools and Instructors. Section 53-3-505 requires the commissioner of Public Safety outline requirements for individuals licensed to provide driver education to the public. Section 53-3-204 requires that drivers complete an approved driver education course prior to licensing.

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 public comment was received in reference 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 is very effective in outlining rules and requirements for operating a Private Commercial Driver education school. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
THIRD FLOOR
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/20/2012

Public Safety, Driver License
R708-21
Third-Party Testing

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35703
FILED: 01/20/2012

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 53-3-213 allows for the division to accept skills tests from third-party testers. Section 53-3-407 outlines requirements for the Division to accept tests given by third-party testers. 49 CFR Part 383.75 authorizes the state of Utah to license third-party testers according to Federal Motor Carrier Safety Administration (FMCSA) guidelines and details requirements for audit, regulating, and remedial action against the testers.

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 public comment was received in reference 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 is used to meet federal guidelines for regulation CDL third-party testers. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
THIRD FLOOR
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/20/2012

Public Safety, Driver License
R708-25
Commercial Driver License Applicant Fitness Certification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 35704
FILED: 01/20/2012

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 53-3-304 outlines requirements for the Division to review physical, mental, and emotional ability of drivers based on information submitted by a health care professional, and to issue restricted driving privileges when appropriate. 49 CFR Part 391.41 outlines physical qualifications for Commercial Driver License (CDL) drivers, detailing what medical conditions may not allow a driver to apply for a CDL.

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 public comment was received in reference 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 outlines additional guidelines to comply with Utah statute and federal guidelines. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
THIRD FLOOR
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/20/2012

Public Safety, Driver License
R708-27
Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35705
FILED: 01/20/2012

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 53A-13-208 outlines that Public School teachers are authorized to give written and driving tests to students that completed driver education at that school. It also outlines that the division outlines standards for the tests administered by public school teachers.

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 public comment was received in reference 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 outlines requirements for high school driver education teachers to administer written and skills testing. Therefore, this rule should be continued.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
THIRD FLOOR
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 01/20/2012

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).

Corrections, Administration
R251-305
Visiting at Community Correctional Centers

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35754
FILED: 01/31/2012

EXTENSION REASON AND NEW DEADLINE: Due to extenuating circumstances with the department's rules monitor, the department respectfully requests an extension for this rule. New deadline: 05/30/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 01/31/2012

Corrections, Administration
R251-306
Sponsors in Community Correctional Centers

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35755
FILED: 01/31/2012

EXTENSION REASON AND NEW DEADLINE: Due to extenuating circumstances with the department's rules monitor, the department respectfully requests an extension for this rule. New deadline: 05/30/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 01/31/2012

Corrections, Administration
R251-707
Legal Access

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35756
FILED: 01/31/2012

EXTENSION REASON AND NEW DEADLINE: Due to extenuating circumstances with the department's rules monitor, the department respectfully requests an extension for this rule. New deadline: 05/30/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 01/31/2012

Corrections, Administration
R251-710
Search

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 35757
FILED: 01/31/2012

EXTENSION REASON AND NEW DEADLINE: Due to extenuating circumstances with the department's rules monitor, the department respectfully requests an extension for this rule. New deadline: 05/30/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 01/31/2012

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
FIVE-YEAR EXPIRATIONS

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 (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires.

Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Corrections, Administration
R251-106
Media Relations

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35760
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-106 is under DAR No. 35767 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-106 is under DAR No. 35805 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-107
Executions

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35761
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-107 is under DAR No. 35768 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-107 is under DAR No. 35806 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-108
Adjudicative Proceedings

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35762
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-108 is under DAR No. 35769 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-108 is

under DAR No. 35807 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-703
Vehicle Direction Station

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35763
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-703 is under DAR No. 35770 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-703 is under DAR No. 35808 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-704
North Gate

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35764
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-704 is under DAR No. 35771 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-704 is under DAR No. 35809 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-705
Inmate Mail Procedures

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35765
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-705 is under DAR No. 35772 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-705 is under DAR No. 35810 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

Corrections, Administration
R251-706
Inmate Visiting

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 35766
FILED: 02/01/2012

SUMMARY: The department asked for an extension for the five-year review on the original due date of 09/19/2011. The new deadline was 01/17/2012. Due to extenuating circumstances with the department's rules monitor, this rule expired on 01/18/2012 because a five-year review was not filed by 01/17/2012 so the rule is removed from the Administrative Code. (DAR NOTE: A 120-day (emergency) rule filing that is effective as of 02/01/2012 for Rule R251-706 is under DAR No. 35773 in this issue, February 15, 2012, of the Bulletin. A proposed new rule filing for Rule R251-706 is under DAR No. 35811 and will be published in the March 1, 2012, Bulletin.)

EFFECTIVE: 01/18/2012

End of the Notices of Notices of Five Year Expirations 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

Administrative Services
Archives
No. 35304 (NEW): R17-9. Electronic Participation at Meetings
Published: 10/15/2011
Effective: 01/30/2012

Commerce
Occupational and Professional Licensing
No. 35498 (AMD): R156-47b-102. Definitions
Published: 12/15/2011
Effective: 01/26/2012

Environmental Quality
Water Quality
No. 35238 (AMD): R317-8. Utah Pollutant Discharge Elimination System (UPDES)
Published: 10/01/2011
Effective: 01/25/2012

Health
Disease Control and Prevention, Environmental Services
No. 35445 (AMD): R392-100. Food Service Sanitation
Published: 12/01/2011
Effective: 01/26/2012

Health Care Financing, Coverage and Reimbursement Policy
No. 35503 (AMD): R414-14A. Hospice Care
Published: 12/15/2011
Effective: 02/01/2012

No. 35504 (AMD): R414-61-2. Incorporation by Reference
Published: 12/15/2011
Effective: 01/24/2012

Center for Health Data, Health Care Statistics
No. 35492 (REP): R428-20. Health Data Authority Request for Health Data Information
Published: 12/15/2011
Effective: 01/24/2012

Insurance
Administration
No. 35483 (AMD): R590-263-3. Most Commonly Selected
Published: 12/15/2011
Effective: 01/25/2012

Public Safety
Criminal Investigations and Technical Services, Criminal Identification
No. 35487 (AMD): R722-350-3. Application for a Certificate of Eligibility
Published: 12/15/2011
Effective: 01/24/2012

Workforce Services
Employment Development
No. 35501 (AMD): R986-200-247. Utah Back to Work Pilot Program (BWP)
Published: 12/15/2011
Effective: 02/01/2012

Unemployment Insurance
No. 35455 (AMD): R994-508. Appeal Procedures
Published: 12/01/2011
Effective: 02/01/2012

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, 2012 through February 01, 2012. 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).

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 (5110 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
ADMINISTRATIVE SERVICES					
Archives					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
Child Welfare Parental Defense (Office of)					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
Finance					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
Fleet Operations					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
AGRICULTURE AND FOOD					
Administration					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
Animal Industry					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	Not Printed
R58-6	Poultry	35692	5YR	01/18/2012	Not Printed
R58-18	Elk Farming	35695	5YR	01/18/2012	Not Printed
R58-19	Compliance Procedures	35696	5YR	01/18/2012	Not Printed
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	Not Printed
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	Not Printed
Plant Industry					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	Not Printed
Regulatory Services					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110

R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105

COMMERCE

Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	35624	5YR	01/05/2012	2012-3/112
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	Not Printed
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	Not Printed

COMMUNITY AND CULTURE

Arts and Museums

R207-1	Utah Arts Council General Program Rules	35723	5YR	01/24/2012	Not Printed
R207-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collection	35724	5YR	01/24/2012	Not Printed

CORRECTIONS

Administration

R251-106	Media Relations	35760	EXD	01/18/2012	Not Printed
R251-106	Media Relations	35767	EMR	02/01/2012	Not Printed
R251-107	Executions	35761	EXD	01/18/2012	Not Printed
R251-107	Executions	35768	EMR	02/01/2012	Not Printed
R251-108	Adjudicative Proceedings	35762	EXD	01/18/2012	Not Printed
R251-108	Adjudicative Proceedings	35769	EMR	02/01/2012	Not Printed
R251-305	Visiting at Community Correctional Centers	35754	EXT	01/31/2012	Not Printed
R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	Not Printed
R251-703	Vehicle Direction Station	35763	EXD	01/18/2012	Not Printed
R251-703	Vehicle Direction Station	35770	EMR	02/01/2012	Not Printed
R251-704	North Gate	35764	EXD	01/18/2012	Not Printed
R251-704	North Gate	35771	EMR	02/01/2012	Not Printed
R251-705	Inmate Mail Procedures	35765	EXD	01/18/2012	Not Printed
R251-705	Inmate Mail Procedures	35772	EMR	02/01/2012	Not Printed
R251-706	Inmate Visiting	35766	EXD	01/18/2012	Not Printed
R251-706	Inmate Visiting	35773	EMR	02/01/2012	Not Printed
R251-707	Legal Access	35756	EXT	01/31/2012	Not Printed
R251-710	Search	35757	EXT	01/31/2012	Not Printed

EDUCATION

Administration

R277-100	Rulemaking Policy	35449	AMD	01/10/2012	2011-23/21
R277-470	Charter Schools	35451	AMD	01/10/2012	2011-23/28
R277-480-1	Definitions	35582	NSC	01/31/2012	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	35452	NEW	01/10/2012	2011-23/34
R277-482	Charter School Timelines and Approval Processes	35453	NEW	01/10/2012	2011-23/38
R277-511	Highly Qualified Teacher Grants	35671	5YR	01/17/2012	2012-3/113
R277-512	Online Licensure	35673	5YR	01/17/2012	2012-3/114
R277-608	Prohibition of Corporal Punishment in Utah's Public Schools	35454	AMD	01/10/2012	2011-23/41

ENVIRONMENTAL QUALITY

Air Quality					
R307-110	General Requirements: State Implementation Plan	35774	5YR	02/01/2012	Not Printed
R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	35775	5YR	02/01/2012	Not Printed
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	35716	5YR	01/23/2012	Not Printed
R307-130	General Penalty Policy	35776	5YR	02/01/2012	Not Printed
R307-135	Enforcement Response Policy for Asbestos Hazard Emergency Response Act	35777	5YR	02/01/2012	Not Printed
R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	35778	5YR	02/01/2012	Not Printed
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	35779	5YR	02/01/2012	Not Printed
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	35780	5YR	02/01/2012	Not Printed
R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	35781	5YR	02/01/2012	Not Printed
R307-327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage	35782	5YR	02/01/2012	Not Printed
R307-328	Gasoline Transfer and Storage	35783	5YR	02/01/2012	Not Printed
R307-335	Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations	35784	5YR	02/01/2012	Not Printed
R307-340	Ozone Nonattainment and Maintenance Areas: Surface Coating Processes	35785	5YR	02/01/2012	Not Printed
R307-341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt	35786	5YR	02/01/2012	Not Printed
R307-343	Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations	35787	5YR	02/01/2012	Not Printed
Environmental Response and Remediation					
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	35447	AMD	01/13/2012	2011-23/45
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R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	35417	AMD	01/16/2012	2011-23/51
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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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