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

Utah state bulletin.
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SPECIAL NOTICES

Commerce
Occupational and Professional Licensing

Notice of Public Hearing on the State Construction Code Amendments under Utah State Construction Code Administration Act

Pursuant to the requirements of the State Construction Code Administration Act, a public hearing regarding proposed construction code amendments will be held Wednesday, August 22, 2012, at 9:00 a.m. at the Sandy City Fire Station located at 9010 South 150 East, Lower Level, Sandy, Utah.

A two-part document providing full details and summary of proposed building codes and amendments is available at this web address: http://dopl.utah.gov/programs/ubc/proposed_building_codes/STATECONSTRUCTIONCODEAMENDMENTS.pdf

The two parts of the document are: Part 1 - Proposed Building Code and Amendments under Utah Uniform Building Standards Act; and Part 2 - Summary of Recommended Codes and Amendment Changes. The second part is a summary and explanation of the changes proposed in the first part. It should be noted that the proposed changes are made with strikethrough and underline as if making changes to existing statute, which have adopted the current building codes. This format is used for easier identification of items that are recommended for changes.

Building codes are adopted by the Legislature after receiving a recommendation from the Uniform Building Code Commission. The Uniform Building Code Commission is obligated under the Uniform Building Standards Act to have a public hearing regarding the proposed changes to the building codes. This public notice and scheduled public hearing are for the Uniform Building Code Commission to receive public comments on the proposed building codes and amendments prior to making its recommendation to the legislative Business and Labor Interim Committee.

Questions can be directed to: Dan Jones, by phone at 801-530-6720, by FAX at 801-530-6511, or email at dansjones@utah.gov

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Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for September 2012 Medicaid Rate Changes

Effective September 1, 2012, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. 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

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 July 17, 2012, 12:00 a.m., and August 01, 2012, 11:59 p.m. are included in this, the August 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 September 14, 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 December 13, 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

Commerce, Occupational and Professional Licensing
R156-1
General Rule of the Division of Occupational and Professional Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36551
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is first, to change the renewal date for burglar alarm agents to better manage workload through the two-year renewal cycle for all professions and the professions assigned to the licensing bureau responsible for this profession; second, to change Section R156-1-308l to make the timeframe in it consistent with the timeframe amended in Subsection R156-1-308c(7) by a recent rule filing that became final on 06/07/2012; and third, to clarify and establish the requirements for service of an administrative subpoena.

SUMMARY OF THE RULE OR CHANGE: In Section R156-1-110, subsections (2) through (5) were added to address the process for service of subpoenas. This was recently challenged in a Motion to Quash to the Administrative Subpoena Authority that made it apparent that more guidance was necessary. The existing Subsection (2) is renumbered as (6). In Section R156-1-308a, the renewal date for burglar alarm security licensure is moved from November 30 of even years to March 31 of odd years. In Section R156-1-308l, the 4-month time frame in this section is changed to a 12-month time frame consistent with the changes made to Subsection R156-1-308c(7) by a recent rule filing that became final on 06/07/2012.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1)(a) and Subsection 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will impact government the cost for affected licensees of an extra renewal fee, which varies by profession. There will also be a small savings to the Division because it will have slightly fewer renewal applications to process. These impacts cannot be quantified. The change in the renewal date for the burglar alarm security profession will result in a cost savings to licensees who will receive a one-time additional four months of licensure at no charge as the two-year renewal date is changed. There will be an equivalent one-time loss of revenue to the Commerce Service Fund. Renewal fees for the burglar alarm profession are $203 for a company and $42 for an agent. The number of licensees is approximately 180 companies and 8,964 agents.
♦ LOCAL GOVERNMENTS: The proposed amendments will have no impact on local governments as the changes only apply to the licensed professions noted herein.
♦ SMALL BUSINESSES: The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession. There will also be a small savings to the Division because it will have slightly fewer renewal applications to process. This impact cannot be quantified. The change in the renewal date for the burglar alarm security profession will result in a cost savings to licensees who will receive a one-time additional four months of licensure at no charge as the two-year renewal date is changed. There will be an equivalent one-time loss of revenue to the Commerce Service Fund. Renewal fees for the burglar alarm profession are $203 for a company and $42 for an agent. The number of licensees is approximately 180 companies and 8,964 agents.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession. The change in the renewal date for the burglar alarm security profession will result in a cost savings to licensees who will receive a one-time additional four months of licensure at no charge as the two-year renewal date is changed. There will be an equivalent one-time loss of revenue to the Commerce Service Fund. Renewal fees for the burglar alarm profession are $203 for a company and $42 for an agent. The number of licensees is approximately 180 companies and 8,964 agents.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to the length of time for which an initial license is issued from a full renewal cycle plus four months for applicants who apply at four months prior to the next renewal date, to a full renewal cycle plus one year for applicants who apply one year prior to the next renewal date, will save affected licensees the cost of an extra renewal fee, which varies by profession. The change in the renewal date for the burglar alarm security profession will result in a cost savings to licensees who will receive a one-time additional four months of licensure at no charge as the two-year renewal

date is changed. There will be an equivalent one-time loss of revenue to the Commerce Service Fund. Renewal fees for the burglar alarm profession are $203 for a company and $42 for an agent. The number of licensees is approximately 180 companies and 8,964 agents.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing adjusts licensing renewal dates that will result in savings for licensees. The Division could potentially have some resulting loss, but the amendment is designed to allow the Division to more efficiently manage its workload. The changes regarding service of subpoenas are clarifying in nature and should not result in additional costs to the Division.

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:
♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The person who requests an investigative subpoena is responsible for service of the subpoena.

(3)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(4)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(5) There shall appear on all investigative subpoenas a certificate of service.

([~~2~~]6) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Architect	May 31	even years
(4)	Athlete Agent	September 30	even years
(5)	Athletic Trainer	May 31	odd years
(6)	Audiologist	May 31	odd years
(7)	Barber	September 30	odd years
(8)	Barber School	September 30	odd years
(9)	Building Inspector	November 30	odd years
(10)	Burglar Alarm Security	[~~November 30 even~~]March 31 odd	years
(11)	C.P.A. Firm	September 30	even years
(12)	Certified Court Reporter	May 31	even years
(13)	Certified Dietitian	September 30	even years
(14)	Certified Medical Language Interpreter	March 31	odd years
(15)	Certified Nurse Midwife	January 31	even years
(16)	Certified Public Accountant	September 30	even years
(17)	Certified Registered Nurse Anesthetist	January 31	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Mental Health Counselor	September 30	even years
(21)	Clinical Social Worker	September 30	even years
(22)	Construction Trades Instructor	November 30	odd years
(23)	Contractor	November 30	odd years
(24)	Controlled Substance License	Attached to primary license renewal	
(25)	Controlled Substance Precursor	May 31	odd years
(26)	Controlled Substance Handler	May 31	odd years
(27)	Cosmetologist/Barber	September 30	odd years
(28)	Cosmetology/Barber School	September 30	odd years
(29)	Deception Detection	November 30	even years
(30)	Dental Hygienist	May 31	even years
(31)	Dentist	May 31	even years
(32)	Direct-entry Midwife	September 30	odd years
(33)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(34)	Electrologist	September 30	odd years

(35)	Electrology School	September 30 odd years
(36)	Elevator Mechanic	November 30 even years
(37)	Environmental Health Scientist	May 31 odd years
(38)	Esthetician	September 30 odd years
(39)	Esthetics School	September 30 odd years
(40)	Factory Built Housing Dealer	September 30 even years
(41)	Funeral Service Director	May 31 even years
(42)	Funeral Service Establishment	May 31 even years
(43)	Genetic Counselor	September 30 even years
(44)	Health Facility Administrator	May 31 odd years
(45)	Hearing Instrument Specialist	September 30 even years
(46)	Internet Facilitator	September 30 odd years
(47)	Landscape Architect	May 31 even years
(48)	Licensed Advanced Substance Use Disorder Counselor	May 31 odd years
(49)	Licensed Practical Nurse	January 31 even years
(50)	Licensed Substance Use Disorder Counselor	May 31 odd years
(51)	Marriage and Family Therapist	September 30 even years
(52)	Massage Apprentice, Therapist	May 31 odd years
(53)	Master Esthetician	September 30 odd years
(54)	Medication Aide Certified	March 31 odd years
(55)	Nail Technologist	September 30 odd years
(56)	Nail Technology School	September 30 odd years
(57)	Naturopath/Naturopathic Physician	May 31 even years
(58)	Occupational Therapist	May 31 odd years
(59)	Occupational Therapy Assistant	May 31 odd years
(60)	Optometrist	September 30 even years
(61)	Osteopathic Physician and Surgeon, Online Prescriber	May 31 even years
(62)	Outfitter/Hunting Guide	May 31 even years
(63)	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30 odd years
(64)	Pharmacist	September 30 odd years
(65)	Pharmacy Technician	September 30 odd years
(66)	Physical Therapist	May 31 odd years
(67)	Physical Therapist Assistant	May 31 odd years
(68)	Physician Assistant	May 31 even years
(69)	Physician and Surgeon, Online Prescriber	January 31 even years
(70)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30 even years
(71)	Podiatric Physician	September 30 even years
(72)	Pre Need Funeral Arrangement Sales Agent	May 31 even years
(73)	Private Probation Provider	May 31 odd years
(74)	Professional Engineer	March 31 odd years
(75)	Professional Geologist	March 31 odd years
(76)	Professional Land Surveyor	March 31 odd years
(77)	Professional Structural Engineer	March 31 odd years
(78)	Psychologist	September 30 even years
(79)	Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31 odd years
(80)	Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31 odd years
(81)	Registered Nurse	January 31 odd years
(82)	Respiratory Care Practitioner	September 30 even years
(83)	Security Personnel	November 30 even years
(84)	Social Service Worker	September 30 even years
(85)	Speech-Language Pathologist	May 31 odd years
(86)	Veterinarian	September 30 even years
(87)	Vocational Rehabilitation Counselor	March 31 odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(f) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(g) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(h) Dental Educator licenses shall be issued for a two year renewable term, until the date of termination of employment with the dental school as an employee, or until the failure to maintain any of the requirements of Section 58-69-302.5, whichever occurs first.

(i) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(l) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(m) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last [~~four~~]12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

KEY: diversion programs, licensing, occupational licensing, supervision
Date of Enactment or Last Substantive Amendment: [~~June 7,~~] 2012
Notice of Continuation: January 5, 2012
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)

Commerce, Occupational and Professional Licensing

R156-15A

State Construction Code Administration and Adoption of Approved State Construction Code Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36552
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule filing clarifies rules required by H.B. 260 passed during the 2011 General Session and enacts rules addressing funding grants from the Factory Built Housing Fees Account.

SUMMARY OF THE RULE OR CHANGE: In Sections R156-15A-220 and R156-15A-221, H.B. 260 which passed during the 2012 General Session, made some modifications to Section 15A-1-209 (formerly Section 58-56-20) which had slightly different wording than specified by the existing rule. After a review of the revised statute, every requirement that is in the existing rule is already required by statute. Therefore, there is no need to put those requirements in rule and they are being deleted in this filing. Subsection 15A-1-209(3)(a) provides the Division shall by rule adopt a standardized permit form. Because a rule is required by statute, the Division must have the rule for clarification, even if it simply states no additional requirements are needed beyond those stated in the statute. In Sections R156-15A-201 and Subsection R156-15A-231, upon review of our rules the Division found it did not have a rule that specified the criteria to be applied for education funding grants from the Factory Built Housing Fees Account. The Division has previously applied criteria in the rule for the Building Codes Training Fund for grants from the Factory Built Housing Fee Account. This proposed rule change provides that the criteria specified in Section R156-15A-231 will be used in administering both of these funds. This proposed rule change also adds a factory built housing dealer to the education committee which reviews these funding grants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 15A-1-205 and Subsection 15A-1-204(6) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Since these proposed amendments do not involve substantive changes in application, there is no fiscal impact to the Division other than a minimal cost of approximately $50 to republish the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: Since these proposed amendments do not involve substantive changes in application, the Division has determined there is no fiscal impact to local governments.
♦ SMALL BUSINESSES: Since these proposed amendments do not involve substantive changes in application, the Division has determined there is no fiscal impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Since these proposed amendments do not involve substantive changes in application, the Division has determined there is no fiscal impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since these proposed amendments do not involve substantive changes in application, the Division has determined there is no fiscal impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the summary, this filing removes provisions that are duplicative to newly adopted statutes, adds criteria for education funding grants from the factory built housing fee account, and appoints a factory built housing dealer to the education committee. No fiscal impact to businesses is anticipated from these changes.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 08/22/2012 09:00 AM, Sandy Fire Station, 9010 S 150 E, Lower Level, Sandy, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.
R156-15A-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsections 58-1-203(1)(f) and 15A-1-203(10)(d), the following advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of [~~nine~~]ten members, which shall include a factory built housing dealer, a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board, or as directed by the Uniform Building Code Commission, or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act as chair and another to act as vice chair. The chair and vice chair shall serve for one-year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Subsection 15A-1-203(10)(d). The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) reviewing codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) reviewing requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission; and

(c) submitting recommendations concerning the reviews made under Subsection (a) and (b).

(4) The duties and responsibilities of the Education Advisory Committee shall include:

(a) reviewing and making recommendations regarding funding requests that are submitted; and

(b) reviewing and making recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 15A-1-209(5).

R156-15A-220. Standardized Building Permit Number.

As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system in a form adopted by rule. There are no additional requirements to those specified in Subsection 15A-1-209.[~~The standardized building permit numbering system described under Subsection 15A-1-209(2)(b) shall include a combination of alpha or numeric characters arranged in a format acceptable to the issuing agency.~~]

[~~**R156-15A-221. Standardized Building Permit Content.**~~

~~As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use a permit form that incorporates standardized building permit content as follows:~~

~~(1) the permit number, as set forth in Section R156-15A-220, shall be printed by typewriter, computer printer or rubber stamp in the upper right-hand corner of the building permit in at least 12-point type;~~

~~(2) the name of the owner of the project;~~

~~(3) the name of the original contractor or owner-builder for the project;~~

~~(4) whether the permit applicant is an original contractor or owner-builder; and~~

~~(5) the street address of the project or a general description of the project.~~

]

R156-15A-231. Administration of Building Code Training Fund and Factory Built Housing Fees Account.

In accordance with Subsection 15A-1-209(5)(c), the Division shall use monies received under Subsection 15A-1-209(5)(a) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. In accordance with Subsection 58-56-17.5(2)(c), the Division shall use a portion of the monies received under Subsection 58-56-17.5(1) to provide education for factory built housing. The following procedures, standards, and policies are established to apply to the administration of these separate funds:

(1) The Division shall not approve or deny [~~expenditure~~]education grant requests from the Building Code Training Fund [~~("the fund")~~]or from the Factory Built Housing Fees Account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations that administer code related or factory built housing educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational events, seminars, or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" or a "Factory Built Housing Education Grant Application" a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment, if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) the prior record of the program sponsor in providing codes training including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(c) costs of the facility including:

(i) the location of a facility or venue, or the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(d) the estimated cost for instructor fees including:

(i) the experience or expertise of the instructor in the proposed training area;

(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(iv) travel expenses; and

(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars, or classes;

(e) the estimated cost of advertising materials, brochures, registration and agenda materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;

(f) other reasonable and comparable cost alternatives for each proposed expense item; and

(g) any other information the Committee reasonably believes may assist in evaluating a proposed expenditure.

(5) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code related or factory built housing education and education or activities in other areas.

(b) Only the prorated portions of a joint function that are code and code related or factory built housing education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment or factory built housing education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(6) Advertising materials, brochures and agenda or training materials for a Building Code Training funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

(7) Advertising materials, brochures and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

KEY: contractors, building codes, building inspections, licensing
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2012
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205

Education, Administration
R277-101
Utah State Board of Education Procedures

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36591
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated terminology to make the rule consistent with other Utah State Board of Education (Board) rules.

SUMMARY OF THE RULE OR CHANGE: A new definition is added to the rule and terminology is changed throughout the rule consistent with the new definition.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The changes are terminology changes only which do not result in a cost or savings.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. This rule applies specifically to Board procedures and does not affect local government.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies specifically to Board procedures and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to the rule are terminology changes only which do not result in a cost or savings to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to the rule are terminology changes only which do not affect compliance costs.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-101. Utah State Board of Education Procedures.
R277-101-1. Definitions.

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

B. "Board leadership" means the duly elected Utah State Board of Education Chair and Vice-chair.

C. "Chair" means duly elected Chair[~~man~~]person of the Board, Vice-chair, or Chair of a Board standing committee.

D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.

E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.

F. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[~~F~~]G. "Official action" taken by local [~~school~~]education agency (LEA) boards [~~or charter school governing boards~~]means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.

[~~G~~]H. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools, the Individuals with Disability Education Act (IDEA), including federal and state implementing regulations and state administrative rules.

[~~H~~]I. "USOE" means the Utah State Office of Education.

R277-101-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1) hear from those who desire to be heard on public education matters in the state;

(2) effectively and efficiently utilize the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

R277-101-3. Public Participation.

A. Citizens may attend meetings of the Board. The Board welcomes public participation during Board meetings.

B. Citizens may speak to the Board when acknowledged and recognized by the Board Chair:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Following any presentation to the Board or one of its committees, individuals and groups may remain as spectators to the meeting.

E. Additional comments to the Board or committees may only be made as recognized and invited by the Board Chair during a meeting.

R277-101-4. Reconsideration on Previous Board Action.

A. The Board has discretion to reconsider any decision it has made.

B. A motion to reconsider shall be made in a meeting of the Board that satisfies requirements of Section 52-4 by a Board member who voted on the prevailing side of the previous Board vote.

C. A motion to reconsider requires a second.

D. A motion to reconsider a previous Board decision shall be ruled in order by the Board Chair only with adequate time for Board members to receive information and discuss the issue, as determined by the presiding Board officer.

E. The Board Chair shall determine the procedures for the reconsideration discussion; for instance:

(1) The Board Chair shall determine if the Board shall accept public testimony and how long the discussion shall continue;

(2) The Board Chair shall determine if the reconsideration vote may take place at the next regularly scheduled Board meeting if such meeting allows time for adequately providing information to Board members;

(3) The Board Chair shall determine if more information is necessary prior to a vote, even if the Board vote is to be held at the same Board meeting.

F. The Board shall consider and hear available evidence, including documentation of detrimental or positive consequences specifically to [~~school districts, schools~~]LEAs or other entities, that may occur if the Board reverses a previous decision.

G. The motion to reconsider shall pass if two-thirds of the total membership of the Board votes in favor of the motion.

H. If a motion to reconsider fails, the Board shall not consider a motion on the same or substantially similar motion to reconsider in the same meeting.

I. A Board vote taken upon reconsideration of the same or substantially similar issue is the [~~final~~]administrative decision by the Board.

R277-101-5. Board Waiver of Administrative Rules.

A. Criteria for waiver of Board Rules:

(1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.

(2) Prior to waiver, the Board shall consider whether a local board's or local charter governing board's request could be accomplished through means other than waiver of Board rules.

(3) The Board shall waive rules only following a thorough review of available data and shall make data driven decisions.

(4) The Board shall not waive rules:

(a) that are required by and adopt criteria from federal or state law or regulations;

(b) that negatively affect the health, safety or welfare of public education students;

(c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;

(d) that benefit one element or segment of the public education system to the detriment of another.

(5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.

(6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State Charter School Board. Information and documentation of this action shall be available to the Board.

(7) All Board evaluations, considerations, and decisions shall be made in the Board's sole discretion.

B. Procedures for waiver of Board rules:

(1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.

(2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.

(3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.

(4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules; Board leadership may consolidate consideration of duplicate or similar requests.

(5) At a minimum, the following shall be required from [~~local boards of education or local charter governing boards~~]LEAs seeking a waiver of Board rules:

(a) student achievement data that support the requested waiver;

(b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;

(c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.

(6) Upon direction by the Board, an [~~local board or charter governing board~~]LEA shall make a presentation to an assigned Board Committee.

(7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.

C. Public process and documents:

(1) Materials presented to the Board by the local board shall be public documents.

(2) Materials and draft agreements between the Board and the local board shall be protected draft documents.

(3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.

(4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.

KEY: school boards, open government
Date of Enactment or Last Substantive Amendment: [~~February 24, 2009~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 52-4-1; 53A-1-401(3)

Education, Administration
R277-103
USOE Government Records and Management Act

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36592
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated terminology to make the rule consistent with other Utah State Board of Education (Board) rules.

SUMMARY OF THE RULE OR CHANGE: A new definition is added to the rule and terminology is changed throughout the rule consistent with the new definition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-204 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The changes are terminology changes only which do not result in a cost or savings.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. This rule applies specifically to Utah State Office of Education procedures for requests for government records and does not affect local government.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies specifically to Utah State Office of Education procedures for requests for government records and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to the rule are terminology changes only which do not result in a cost or savings to individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to the rule are terminology changes only which do not affect compliance costs.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-103. USOE Government Records and Management Act.
R277-103-1. Definitions.

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

B. "GRAMA" means the Government Records and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-201 through 6G-2-310.

C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[~~C~~]D. "Superintendent" means the State Superintendent of Public Instruction.

[~~D~~]E. "USOE" means the Utah State Office of Education.

R277-103-2. Authority and Purpose.

A. This rule is authorized by Section 63G-2-204 which allows a governmental entity to make rules regarding the entity's records and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures for appropriate public access to government records.

R277-103-3. Allocation of Responsibilities Within the USOE.

Both the USOE and the Board shall be considered a single governmental entity for the purposes of this rule and the Superintendent shall be considered the head of the entity.

R277-103-4. Requests for Access.

A. Requests for access to USOE government records should be written and directed to the USOE Records Officer, 250 East 500 South, P.O Box 144200, Salt Lake City, Utah 84111-4200.

B. Response to a request submitted to persons other than the designee or not made in writing may be delayed.

C. Appeals to access determinations shall be directed to the Deputy Superintendent of Public Instruction according to time limits and provisions of Section 63G-2-401.

R277-103-5. Fees.

A. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the USOE by contacting the designated Records Officer located at 250 East 500 South, Salt Lake City, Utah 84111.

B. Payment of past fees or future estimated fees expected to exceed $50.00 or both may be required before the USOE Records Officer begins to process a request.

C. There shall be no charge made by the Board or the USOE for:

(1) inspection of records;

(2) a reasonable request that requires the segregation of records; or

(3) an inspection of the requested records to determine the requester's right to access.

D. Waiver of Fees

(1) Fees for duplication and compilation of a record may be waived under the circumstances described in Section 63G-2-203(4) or other circumstances as determined by the USOE on a case by case basis, including [~~ae~~]cumulative costs of less than $2.00, for use by [~~school districts~~]LEAs or other entities under the general control[~~led by~~] of the Board, or an[~~y~~] affidavit from the requester claiming impecuniosity.

(2) Requests for waivers shall be made to the designated USOE Records Officer.

R277-103-6. The USOE as Custodian of District Records.

A. When the USOE acts as the custodian of [~~local school district~~]LEA records and does not regularly use or access that

[~~school district's~~]LEA's data or information, the USOE may refer requests for that information to the [~~local school district~~]LEA.

B. If the USOE acts as a custodian of records, information or data for [~~local school districts~~]LEAs, the USOE shall request from those [~~districts~~]LEAs the following:

(1) Designation of what data may be provided to whom upon request;

(2) Notice of classification(s) if the data are classified; and

(3) The name and title of an [~~school district~~]LEA records officer or contact person to whom the USOE shall direct requests for access to the information or records.

R277-103-7. Other Requests.

A. For Research Purposes

(1) Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8).

(2) Such requests shall be made to the designated Records Officer.

B. To Amend a Record

(1) An individual may contest the accuracy or completeness of a document pertaining to him owned by the USOE pursuant to Section 63G-2-603.

(2) The request to amend shall be made in writing to the designated Records Officer.

(3) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act, Section 63G-4.

KEY: [~~student~~]government records[~~, public schools~~]
Date of Enactment or Last Substantive Amendment: [~~1992~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: 63G-2-101 through 310; 63G-2-204; 63G-4; 53A-1-401(3)

Education, Administration
R277-110
Legislative Supplemental Salary Adjustment

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36594
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes to reflect accurate Utah Code references, conforming school district and charter school references to LEAs, and additional clarifying language.

SUMMARY OF THE RULE OR CHANGE: A new definition is added to the rule to make the rule consistent with other Utah State Board of Education rules. Wording changes are provided for clarification purposes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-17a-153(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Terminology and other wording changes for clarification purposes do not result in a cost or savings.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Terminology and other wording changes for clarification purposes do not result in a cost or savings.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule and the changes apply to public education and do not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Terminology and other wording changes for clarification purposes do not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Terminology and other wording changes do not result in compliance costs.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-110. Legislative Supplemental Salary Adjustment.
R277-110-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

[~~C. "District or charter school" means a public school funded by the Utah State Legislature through the Minimum School Program.~~

] [~~D~~]C. "Educator" means a teacher or other individual as defined by the Utah State Legislature in 53A-17a-153.

[~~E~~]D. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1) and specified in R277-110-3C and D.[~~The adjustment amount for 2007-08 was $2500. The adjustment amount for 2008-09 is $1700.~~]

E. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

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

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

R277-110-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.

B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments.

R277-110-3. Procedures.

A. Each [~~school district, charter school and USDB~~]LEA shall:

(1) have employee evaluation procedures consistent with Title 53A, Chapter [~~10~~]8a; schools exempt from Title 53A, Chapter [~~10~~]8a shall have employee evaluation procedures in place to participate in the Program and receive funds under Section 53A-17a-153.

(2) put the Educator Salary Adjustment appropriation into the [~~school district's, charter school's or USDB's~~]LEA's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;

(3) ensure the amount of the Educator Salary Adjustment is the same for each eligible full-time-equivalent educator position in the [~~school district, charter school, or the USDB~~]LEA;

(4) ensure that each [~~person~~]eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the [~~person~~]employee works in his current assignment as an educator;

(5) ensure that each educator who receives a salary adjustment [~~for school year 2007-08 or 2008-09 or both~~]has received a satisfactory or above job performance rating in his most recent evaluation concluded in the school year prior to the year for which the adjustment is made; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.

B. Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

C. [~~The e~~]Educators in the following assignments shall [~~be~~]receive salary adjustments of $2500 and $1700 and benefits as designated annually:

(1) a classroom teacher[~~(2007-08 and 2008-09)~~];

(2) speech pathologist[~~(2007-08 and 2008-09)~~];

(3) librarian or media specialist[~~(2007-08 and 2008-09)~~];

(4) preschool teacher[~~(2007-08 and 2008-09)~~];

[~~(5) school building level administrator (2007-08);~~

] ([~~6~~]5) mentor teacher[~~(2007-08 and 2008-09)~~];

([~~7~~]6) teacher specialist[~~(2007-08 and 2008-09)~~];

([~~8~~]7) teacher leader[~~(2007-08 and 2008-09)~~];

([~~9~~]8) guidance counselor[~~(2007-08 and 2008-09)~~];

([~~10~~]9) audiologist[~~(2007-08 and 2008-09)~~];

(1[~~1~~]0) psychologist[~~(2007-08 and 2008-09)~~]; or

(1[~~2~~]1) social worker as defined in 53A-17a-153(1) [~~(2007-08 and 2008-09)~~].

D. School building level administrators shall receive salary adjustments of $2500 and benefits as designated annually.

[~~D~~]E. The educator shall be licensed, employed by an [~~school district, charter school, or the Utah Schools for the Deaf and the Blind~~]LEA and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

[~~E~~]F. Each [~~school district, charter school, and the USDB~~]LEA shall annually note on the appropriate salary schedule:

(1) the amount of the Educator Salary Adjustment;

(2) the positions qualifying for the adjustment;

(3) that an educator or administrator received a satisfactory or better performance rating [~~is~~]required to receive the adjustment; and

[~~F~~]G. [~~For the 2008-09 school year, school districts, charter schools and the USDB~~]Each LEA shall [~~note~~]document satisfactory performance ratings annually.

[~~G~~]H. The USOE shall remit to [~~school districts, charter schools and USDB~~]LEAs, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

[~~H~~]I. Adjustments to CACTUS after November 15 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

[~~I~~]J. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. [~~School districts, charter schools and USDB~~]LEAs shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by November 1 on USOE-designated forms.

(1) [~~School districts, charter schools and USDB,~~]LEAs shall:

(a) [~~M~~]maintain the information by program and;

(b) [~~C~~]carry over any unused balances within the program for use in the following year.

(2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).

(3) Failure to submit the required reports on a timely basis may result in withholding of [~~school district, charter school or USDB~~]LEA funds until the report is submitted in an acceptable format and is complete, or may render the [~~school district, charter school or USDB,~~]LEA ineligible for participation in the Educator Salary Adjustment program the following year.

(4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of [~~school district, charter school or USDB~~]LEA funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

KEY: educators, salary adjustments
Date of Enactment or Last Substantive Amendment: [~~January 7, 2009~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-153(6)

Education, Administration
R277-115-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36595
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to revise a definition to make the rule consistent with other Utah State Board of Education (Board) rules.

SUMMARY OF THE RULE OR CHANGE: A definition is revised.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Changing this definition to make the rule consistent with the definition in other Board rules does not result in a cost or savings.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Changing this definition to make the rule consistent with the definition in other Board rules does not result in a cost or savings.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule and the change to the rule apply to public education and do not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Changing this definition to make the rule consistent with the definition in other Board rules does not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This definition change does not affect compliance costs.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-115. Material Developed with State Public Education Funds.
R277-115-1. Definitions.

A. "Board" means the Utah State board of Education.

B. "LEA" means a local education agency[~~, directly responsible for the public education of Utah students, including traditional local school boards and charter school boards~~]including

local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

C. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

D. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.

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

KEY: copyright, materials
Date of Enactment or Last Substantive Amendment: [~~November 8, 2011~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Administration
R277-116
Utah State Board of Education Internal Audit Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36598
FILED: 08/01/2012

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

SUMMARY OF THE RULE OR CHANGE: Updated terminology is provided in the rule and an outdated citation is removed.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Updated terminology and removing an outdated citation do not result in a cost or savings.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Updated terminology and removing an outdated citation do not result in a cost or savings.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Updated terminology and removing an outdated citation does not result in cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Terminology changes and removing a statute do not result in compliance costs.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-116. Utah State Board of Education Internal Audit Procedure.
R277-116-1. Definitions.

A. "Appointing authority" means the Board.

B. "Audit" means internal reviews or analyses or a combination of both of Utah State Board of Education programs, activities and functions that may address one or more of the following objectives:

(1) to verify the accuracy and reliability of USOE or Board records;

(2) to assess compliance with management policies, plans, procedures, and regulations;

(3) to assess compliance with applicable laws, rules and regulations;

(4) to evaluate the efficient and effective use and protection of Board, state, or federal resources; or

(5) to verify the appropriate protection of USOE assets;

(6) to review and evaluate internal controls over LEA and USOE accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of LEAs and the USOE.

C. "Audit Committee" means a standing committee appointed by the Board which shall consist of all members of the Finance Committee. The Chair of the Audit Committee shall be either the Board Chair or Board Vice Chair.

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

E. "Internal Auditor" means person or persons appointed by the Superintendent with the consent of the Audit Committee and the full Board to direct the internal audit function for the Board and USOE.

F. "LEA," for purposes of this rule, means any local education agency under the supervision of the Board including any sub unit of school districts, Utah Schools for the Deaf and the Blind, Utah State Office of Rehabilitation, charter schools, regional service centers, area technology centers and vocational programs.

G. "Superintendent" means the State Superintendent of Public Instruction, who is the Agency Head within the meaning of the Utah Internal Audit Act.

H. "Survey work" means an internal review of Board rules, statutes, federal requirements and a limited sample of an LEA's programs, activities or documentation that may give rise to or refute the need for a more comprehensive audit. The preliminary or limited information derived from survey work is a part of the ongoing audit process and may be provided as a draft to the Audit Committee, to the Board or to the Superintendent upon request.

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

R277-116-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, [~~Section 53A-1-401(4) which directs the Board to adopt rules to promote quality, efficiency and productivity and to eliminate unnecessary duplication in the public education system,~~]Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts, Section 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding cost effectiveness measures, school budget formats and financial accounting requirements for the local school districts, Section 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of local school districts and programs funded under the Minimum School Program and report its findings to the Legislature, and by Section 63I-5-101 through 401 which provides standards and procedures for the Board, as the appointing authority for the USOE, to establish an internal audit program.

B. The purpose of this rule is to outline the Board's criteria and procedures for internal audits of programs under its supervision.

KEY: educational administration
Date of Enactment or Last Substantive Amendment: [~~August 7, 2009~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3);[~~53A-1-401(4);~~] 53A-1-405; 53A-1-402(1)(e); 53A-17a-147(2); 63I-5-101 through 401

Education, Administration
R277-400
School Emergency Response Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36599
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to reflect changes in Rule R710-4, Buildings Under the Jurisdiction of the State Fire Board, as in effect on 05/01/2012 which allows for certain monthly required emergency evacuation (fire) drills for elementary schools to be substituted with specific other emergency drills, and reduces the timeframe in which the first fire drill must be conducted each school year for both elementary and secondary schools. The changes also provide updated terminology to make the definition in this rule consistent with the definition in other Utah State Board of Education rules.

SUMMARY OF THE RULE OR CHANGE: New language is provided in Section R277-400-6 for emergency preparedness training consistent with Rule R710-4 and updated terminology is provided throughout the rule.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. New language allowing for greater flexibility for emergency preparedness training and updated terminology do not result in a cost or savings.
♦ LOCAL GOVERNMENTS: Because the timeframe for the first fire drill in both elementary and secondary schools is reduced from two weeks to 10 days, it is possible that the local fire authority may need to employ temporary staff to accommodate the needs of all schools within its jurisdiction and costs for additional staff could be assessed to schools. It is too speculative at this time to determine if that will happen. Additionally, costs may vary with each fire authority.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule and the amendments apply to public education and do not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Costs, if any, would be assessed to schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be compliance costs for affected persons. If a school does not notify the local fire authority prior to a required fire

drill and the alarm is sounded, a local fire authority may assess the cost of responding to the school.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
R277-400. School Emergency Response Plans.
R277-400-1. Definitions.

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

B. "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance which could reasonably endanger the safety of school children or disrupt the operation of the school.

C. "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within a school district or a school.

D. "Emergency Response Plan" means a plan developed by a school district or school to prepare and protect students and staff in the event of school violence emergencies.

E. "LEA" means local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

R277-400-2. Authority and Purpose.

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

B. The purpose of this rule is to establish general criteria for both Emergency Preparedness and Emergency Response plans required of schools and school districts in the event of natural disasters or school violence emergencies. This rule also directs [~~school districts and charter schools~~]LEAs to develop prevention, intervention, and response measures and to prepare staff and students to respond promptly and appropriately to school violence emergencies.

R277-400-3. Establishing School District Emergency Preparedness and Emergency Response Plans.

A. By July 1 of each year, each [~~local board of education/local charter school board~~]LEA shall certify to the Board that the LEA emergency preparedness and emergency response[~~its~~] plan has been practiced at the school level, presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Section 53A-3-402(18).

B. As a part of an [~~local board of education's/local charter school board's~~]LEA's annual application for state or federal Safe and Drug Free School funds, the [~~local board of education/local charter school board~~]LEA shall reference its Emergency Response plan.

C. The plan(s) shall be designed to meet individual school needs and features. A school district may direct schools within the school district to develop and implement individual plans.

D. The [~~local board of education/local charter school board~~]LEA shall appoint a committee to prepare plan(s) or modify existing plan(s) to satisfy this rule. The committee shall consist of appropriate school and community representatives which may include school and school district administrators, teachers, parents, community and municipal governmental officers, and fire and law enforcement personnel. Governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels shall be included on the committee.

E. The [~~local board of education/local charter school board~~]LEA shall appoint appropriate persons at least once every three years to review the plan(s).

F. The Board shall develop Emergency Response plan models under Section 53A-3-402(18)(d).

R277-400-4. Notice and Preparation.

A. A copy of the plan(s) for each school within a school district shall be filed in the [~~school district~~]LEA superintendent's or charter school director's office.[~~A charter school plan shall be maintained by the local charter school board.~~]

B. At the beginning of each school year, parents and staff shall receive a written notice of relevant sections of school district and school plans which are applicable to that school.

C. Each school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year. Community, student, teacher awareness, or training, such as those outlined in R277-400-7 and 8, would be appropriate activities offered during the week.

R277-400-5. Plan(s) Content--Educational Services and Student Supervision.

The plan shall contain measures which assure that, during an emergency, school children receive reasonably adequate educational services and supervision during school hours.

A. Evacuation procedures shall assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

B. Release of a child below ninth grade at other than regularly scheduled hours is prohibited unless the parent or another responsible person has been notified and has assumed responsibility for the child. An older child may be released without such notification if a school official determines that the child is reasonably responsible and notification is not practicable.

C. [~~School districts and charter schools~~]LEAs shall, to the extent reasonably possible, provide educational services to school children whose regular school program has been disrupted by an extended emergency.

R277-400-6. Emergency Preparedness Training.

The plan shall contain measures which assure that school children receive emergency preparedness training.

A. School children shall be provided with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

B. Fire drills:

(1) During each school year, elementary schools shall conduct fire drills at least once each month during school sessions.

(2) A fire drill in secondary schools shall be conducted at least every two months, for a total of four fire drills during the nine month school year.

(3) The first fire drill shall be conducted within the first [~~two weeks~~]10 days of the school year for both elementary and secondary schools.[~~An exception may be made, subject to the approval of the local fire chief, to postpone a fire drill due to severe weather conditions.~~]

(4) Required emergency evacuation drills may be substituted every other time by a security or safety drill to include:

(a) shelter in place;

(b) earthquake drill; or

(c) lock down for violence.

(5) The routine emergency evacuation drill, for fire, shall be conducted at least every other evacuation drill.

([~~2~~]6) Fire drills shall include the complete evacuation of all persons from the school building or portion thereof used for educational purposes. An exception may be made for the staff member responsible for notifying the local fire department and handling emergency communications.

([~~3~~]7) When required by the local fire chief, the local fire department shall be notified prior to each drill.

([~~4~~]8) When a fire alarm system is provided, fire drills shall be initiated by activation of the fire alarm system.

C. Schools shall hold at least one drill for other emergencies during the school year.

D. Schools that include both elementary and secondary grades in the school shall comply, at a minimum, with the elementary emergency drill requirements.

[~~D~~]E. Resources and materials available for training shall be identified in the plan.

R277-400-7. Emergency Response Training.

A. Each [~~school district and local charter school board~~]LEA shall provide an annual training for school district and school building staff on employees roles, responsibilities and priorities in the emergency response plan.

B. [~~School districts and local charter school boards~~]LEAs shall require schools to conduct at least one annual drill for school violence emergencies.

C. [~~School districts and local charter school boards~~]LEAs shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

D. [~~School districts and local charter school boards~~]LEAs shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

E. School districts and schools shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

A. [~~School districts and local charter school boards~~]LEAs shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

B. As part of the violence prevention and intervention strategies, schools may provide age-appropriate instruction on firearm safety (not use) including appropriate steps to take if a student sees a firearm or facsimile in school.

C. [~~School districts and local charter school boards~~]LEAs shall also develop, to the extent resources permit, student assistance programs such as care teams, school intervention programs, and interagency case management teams.

D. In developing student assistance programs, [~~school districts and local charter school boards~~]LEAs are encouraged to coordinate with and seek support from other state agencies and the Utah State Office of Education.

R277-400-9. Cooperation With Governmental Entities.

A. As appropriate, an [~~local board of education or local charter school board~~]LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

B. [~~School districts and local charter school boards~~]LEAs shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services. The plan(s) shall contain procedures for assessing and providing school facilities, equipment, and personnel to meet public emergency needs.

C. The plan(s) developed under R277-400-5 shall delineate communication channels and lines of authority within the [~~school district, charter school~~]LEA, city, county, and state.

(1) the Board, through its superintendent, is the chief officer for emergencies involving more than one [~~school district, charter school~~]LEA, or for state or federal [~~aid~~]assistance;

(2) the local board, through its superintendent, is the chief officer for school district emergencies;

(3) the local charter school board through its director is the chief officer for local charter school emergencies;

[~~(4) direction and control of emergency operations shall be exercised by the executive heads of government and school districts and charter schools. Local governments, school districts, and~~

~~charter schools retain their autonomy and identity throughout all levels of emergency operations;~~

~~(5) personnel and resources received from outside sources shall be incorporated into the structure of the local government, school district, and charter school.~~

~~]~~ (4) In the event of an emergency, school personnel shall maintain control of public school students and facilities during the regular school day or until students are released to a parent or legal guardian.

R277-400-10. Fiscal Procedures.

The plan(s) under R277-400-5 shall address procedures for recording [~~school district or charter school~~]LEA funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

KEY: emergency preparedness, disasters, safety, safety education
Date of Enactment or Last Substantive Amendment: [~~February 22, 2011~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b)

Education, Administration
R277-410
Accreditation of Schools

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36600
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide new language regarding accreditation services. The member states of the Northwest Accreditation Commission have contracted with AdvancED to provide accreditation services to the member states. Additionally, language in three existing accreditation rules, R277-411, R277-412, and R277-413, has been incorporated into this rule. Rules R277-411, R277-412, and R277-413 will be repealed. (DAR NOTE: The proposed repeal of Rule R277-411 is under DAR No. 36601, the proposed repeal of Rule R277-412 is under DAR No. 36602, and the proposed repeal of Rule R277-413 is under DAR No. 36603 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule include adding and changing definitions, adding AdvancED throughout the rule as appropriate, and adding new sections to the rule from existing accreditation rules which are being repealed.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Fees for accreditation services are assessed to individual schools.
♦ LOCAL GOVERNMENTS: There will be costs and savings to local government. Under Northwest, individual schools paid a minimum annual membership fee plus an additional amount based on student numbers for accreditation and related reviews and services. Small schools paid less; large schools paid more. AdvancED Northwest has is a flat annual membership fee for all schools. Small schools will now pay more; large schools will now pay less than previously. Specific information about costs is not available at this time.
♦ SMALL BUSINESSES: There will be some cost to nonpublic schools that are also small businesses. Nonpublic private schools that seek accreditation will now pay the higher flat fee under AdvancED Northwest.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This rule and the amendments apply to schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Although AdvancED Northwest accredited schools are subject to compliance requirements, accreditation status, not cost is a consequence of noncompliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and agree that there will be as yet unknown costs to small businesses seeking AdvancED Northwest accreditation due to the changes in the accreditation process.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for [~~evaluation~~]internal and external review and approval under the Standards for [~~Accreditation of~~]the Northwest Accreditation Commission[~~, or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist~~], a division of Advance Education Inc., (AdvancED).

B. "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder involvement and is a nonprofit resource offering school improvement and accreditation services to education providers.

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

[~~C~~]D. "Elementary school" for the purpose of this rule means grades [~~K-6 in whatever kind of school the grade levels exists~~]no higher than grade 6.

E. "Junior high school" for purposes of this rule means grades 7 through 9.

[~~D~~]F. "Middle school" for the purpose of this rule means grades [~~7-8 in whatever kind of school the grade levels exist~~]no lower than grade 5 and no higher than grade 8 in any combination.

[~~E~~]G. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member. Northwest is an accreditation division of AdvancED.

[~~F~~]H. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

I. "State Council" means the State Accreditation Council, which is composed of 15- 20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service.

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

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c)(i) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The USOE has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. Utah public secondary schools, as defined in R277-410-1[~~F~~]H, [~~including~~]and all charter schools, consistent with R277-481-3A(2), shall be members of AdvancED Northwest and be accredited by AdvancED Northwest[~~, except as exempted by R277-412-3C and R277-413-3K~~].

C. Utah public elementary and middle schools[~~, as defined in R277-410-1C and D, including charter schools,~~] that desire accreditation shall be members of AdvancED Northwest and meet the requirements of R277-[~~413~~]410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools.

D. All AdvancED Northwest accredited schools shall complete [~~the annual accreditation report~~]and file[~~ the~~] reports in accordance with [~~USOE procedures~~]AdvancED Northwest protocols.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Accreditation Status; Reports.

A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.

B. The Board requires Utah public schools seeking accreditation to satisfy additional specific Utah assurances in addition to required AdvancED Northwest standards.

C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.

D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.

E. The USOE may require on-site visits as often as necessary when it receives notice of accreditation problems, as determined by the USOE, AdvancED Northwest, or its State Council.

F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

R277-410-5. Accreditation Procedures.

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED State Director.

(1) Following a visit by at least two qualified educators verifying a school's compliance with accreditation standards and approval by the AdvancED Commission, the school shall then receive accreditation.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, consult with the State Council and the AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

R277-410-6. Elementary School Accreditation.

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

R277-410-7. Junior High and Middle School Accreditation.

A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by Advanced Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to junior high and middle schools in their entirety if the schools include grade 9 consistent with R277-410-6C.

R277-410-8. Board Accreditation Standards.

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. AdvancED Standards for Quality Schools.

(1) Purpose and Direction

(2) Governance and Leadership

(3) Teaching and Assessing for Learning

(4) Resources and Support Systems

(5) Using Results for Continuous Improvement

C. Utah-specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section.

R277-410-[4]9. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
Date of Enactment or Last Substantive Amendment: [~~August 8, 2006~~]2012
Notice of Continuation: August 1, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c); 53A-1-401(3)

Education, Administration
R277-411
Elementary School Accreditation

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 36601
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the standards and procedures for school accreditation are being incorporated into one rule, R277-410. (DAR NOTE: The proposed amendment to Rule R277-410 is under DAR No. 36600 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Standards and procedures for school accreditation are being incorporated into one rule.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Standards and procedures for school accreditation are being incorporated into one rule.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. Standards and procedures for school accreditation are being incorporated into one rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Standards and procedures for school accreditation are being incorporated into one rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Standards and procedures are being incorporated into one rule.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
[~~R277-411. Elementary School Accreditation.~~
~~R277-411-1. Definitions.~~

~~A. "Accreditation" means formal Northwest and Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.~~

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

~~C. "Elementary school" for the purpose of this rule means grades K-6 in whatever kind of school the grade levels exists.~~

~~D. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.~~

~~E. "USOE" means the Utah State Office of Education.~~

~~R277-411-2. Authority and Purpose.~~

~~A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to:~~

~~(1) specify the standards and procedures by which elementary schools may become accredited by Northwest, the USOE, and the Board; and~~

~~(2) establish an accreditation program of appropriate and high standards of attainment to assist schools in maintaining and improving education programs.~~

~~R277-411-3. Elementary School Accreditation.~~

~~A. Elementary schools desiring accreditation shall be members of Northwest and meet the standards required for such accreditation as outlined in R277-413.~~

~~B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to Northwest for accreditation.~~

~~C. Accreditation shall take place under the direction of the USOE acting as an agent for Northwest.~~

~~D. The accreditation status and date of most recent accreditation of the school shall be available from the USOE upon request.~~

~~KEY: accreditation~~
~~Date of Enactment or Last Substantive Amendment: April 1, 2005~~
~~Notice of Continuation: August 1, 2012~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c); 53A-1-401(3)~~]

Education, Administration
R277-412
Junior High and Middle School Accreditation

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 36602
FILED: 08/01/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the standards and procedures for school accreditation are being incorporated into one rule, R277-410. (DAR NOTE: The proposed amendment to Rule R277-410 is under DAR No. 36600 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Standards and procedures for school accreditation are being incorporated into one rule.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Standards and procedures for school accreditation are being incorporated into one rule.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. Standards and procedures for school accreditation are being incorporated into one rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Standards and procedures for school accreditation are being incorporated into one rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons. Standards and procedures for school accreditation are being incorporated into one rule.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
[**~~R277-412. Junior High and Middle School Accreditation.~~**
~~R277-412-1. Definitions.~~
~~A. "Accreditation" means formal Northwest and Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.~~
~~B. "Board" means the Utah State Board of Education.~~
~~C. "Junior high school" for the purpose of this rule means any combination of grades 7-9.~~
~~D. "Middle school" for the purpose of this rule means grades 7-8 in whatever kind of school the grade levels exist.~~
~~E. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.~~
~~F. "USOE" means the Utah State Office of Education.~~

~~R277-412-2. Authority and Purpose.~~
~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~
~~B. The purpose of this rule is to specify the standards and procedures by which junior high and middle schools may choose to become accredited by Northwest with facilitation by the Board.~~

~~R277-412-3. Middle School Accreditation.~~
~~A. The accreditation process for junior high and middle schools shall take place under the direction of the USOE acting as an agent for Northwest.~~
~~B. Middle schools, which desire accreditation, shall be members of Northwest and meet all the requirements and standards outlined in R277-413. They may apply for accreditation through Northwest.~~
~~C. Public junior high and middle schools that include 9th grade shall be visited and assigned status by the USOE using the Northwest accreditation standards. The schools are not required, however, to be members of Northwest or file annual reports.~~
~~D. The Northwest accreditation standards provided in R277-413 are applicable to junior high and middle schools in their entirety if the schools include 9th grade consistent with R277-412-3C.~~
~~E. The accreditation status and date of most recent accreditation of the school shall be available from the USOE upon request.~~

~~KEY: accreditation~~
~~Date of Enactment or Last Substantive Amendment: April 1, 2005~~
~~Notice of Continuation: August 1, 2012~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(c); 53A-1-401(3)~~]

Education, Administration
R277-413
Accreditation of Secondary Schools

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 36603
FILED: 08/01/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the standards and procedures for school accreditation are being incorporatred into one rule, R277-410. (DAR NOTE: The proposed amendment to Rule R277-410 is under DAR No. 36600 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Standards and procedures for school accreditation are being incorporated into one rule.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Standards and procedures for school accreditation are being incorporated into one rule.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. Standards and procedures for school accreditation are being incorporated into one rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Standards and procedures for school accreditation are being incorporated into one rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Standards and procedures for school accreditation are being incorporated into one rule.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

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

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R277. Education, Administration.
[**~~R277-413. Accreditation of Secondary Schools.~~**
~~R277-413-1. Definitions.~~
~~A. "Accreditation" means formal Northwest and Board approval of a school that has met standards considered by the Board to be essential for the operation of a quality school program.~~
~~B. "Annual Report" means a document that explains a school's compliance with educational standards and progress provided by the school in its school improvement plan. The school improvement plan is a dynamic document that reflects changes and progress made by the school community. The Annual Report also provides definitions and criteria required by the Northwest Accreditation Commission for accreditation.~~
~~C. "Board" means the Utah State Board of Education.~~
~~D. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.~~
~~E. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 including public, private, parochial, alternative, and special purpose schools offering credits toward high school graduation or diplomas or both.~~
~~F. "State Committee" means the State Accreditation Committee, which is composed of public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel.~~
~~G. "USOE" means the Utah State Office of Education.~~
~~H. "Visiting team" means a team composed of three to eight active educators, as determined by the size of the school, trained by the USOE in accreditation procedures and standards.~~

~~R277-413-2. Authority and Purpose.~~
~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules for school accreditation, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~
~~B. The purpose of this rule is to:~~
~~(1) specify the standards and procedures by which secondary schools shall become accredited by the Board; and~~
~~(2) provide for additional requirements, which are unique to the state of Utah to be added to the Northwest Annual Report.~~

~~R277-413-3. Accreditation Classifications; Reports.~~
~~A. The Board accepts the Northwest standards as the basis for its accreditation standards for school accreditation.~~
~~B. The Board requires the satisfaction of additional specific Utah standards in addition to required Northwest standards, to satisfy Utah accreditation for Utah public schools.~~
~~C. A school shall complete the Annual Report provided by Northwest and submit the report to the USOE.~~
~~D. A school shall have a complete school evaluation and site visit at least once every six years to maintain its accreditation.~~
~~E. The USOE may require on-site visits as often as necessary when it receives notice of accreditation problems, as determined by Northwest, the USOE, or the State Committee.~~
~~F. The school's accreditation rating is recommended by the State Committee following a review of a school's Annual Report. Final approval of the rating is determined by the Board.~~
~~G. The classification ratings for accredited schools as designated by Northwest shall be:~~
~~(1) Approved: a school is classified as approved when it equals or exceeds the standards approved by Northwest and the Board.~~

~~(2) Approved with comment: a school is classified as Northwest/Board approved with comment when it has only minor deviations from specific standards.~~

~~(3) Advised: a school is classified as advised when there are deviations from one or more standard(s). Schools shall also be classified as advised when no observable effort has been made, by the second year, to correct deviations from a standard upon which comment was made in the previous year.~~

~~(4) Warned: a school is classified as warned when there are substantial deviations from one or more standard(s). A warned classification is usually given after a school has been advised and the deviation persists in the next Annual Report. A school may be dropped after two consecutive warned classifications, as recommended by the State Committee to the Board.~~

~~H. An accredited school may not be dropped to a non-accredited status without first receiving a warned classification. Exceptions to this procedure may be made due to discrepancies between information provided on the Annual Report and data received or by observations of the State Committee.~~

~~I. If a school disagrees with the recommendation of the State Committee, it may appeal as outlined in the USOE accreditation policies and procedures, maintained at the USOE.~~

~~J. All Northwest schools shall submit their Annual Report to the USOE by October 15 of each year.~~

~~K. Public junior high and middle schools that include 9th grade shall be visited and assigned status at least every six years by the USOE using Northwest accreditation standards. The schools are not required, however, to be members of Northwest or file annual reports.~~

~~R277-413-4. Accreditation Procedures.~~

~~A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the USOE, and Northwest share responsibilities. A school's self-evaluation, development, and implementation of a school improvement plan are the crucial primary steps toward accreditation.~~

~~B. A school seeking Northwest accreditation for the first time shall submit a membership application to Northwest. The accepted application shall be forwarded to the USOE.~~

~~(1) Upon a visit by USOE staff verifying a school's compliance with accreditation standards, the school shall then receive provisional accreditation.~~

~~(2) Within three years of receiving provisional, accreditation, a candidate school shall complete a self-evaluation utilizing materials and protocols recommended and/or provided by the USOE.~~

~~(3) Provisional schools shall be visited annually until they have completed their first self-evaluation and full-team visit.~~

~~C. Northwest accredited schools shall be subject to:~~

~~(1) compliance with Northwest membership requirements;~~

~~(2) receipt and review of annual reports by the State Committee;~~

~~(3) satisfactory review by the State Committee, Northwest, and final Board approval;~~

~~(4) a new self-evaluation and site visit at least every six years by a visiting team assigned by the USOE to review the self-evaluation materials, visit classes, and talk with staff and students as follows:~~

~~(a) The visiting team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, USOE staff, and the Board.~~

~~(b) USOE staff shall review the visiting team report, consult with the State Committee and Northwest and recommend appropriate accreditation status to the Board.~~

~~D. Following review and acceptance, accreditation visiting team reports are public information and are available online.~~

~~E. The Board is the final accrediting authority.~~

~~R277-413-5. Board Accreditation Standards.~~

~~A. Board accreditation standards include Northwest standards and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.~~

~~B. Northwest Core Standards for Accreditation.~~

~~(1) Teaching and Learning Standards~~

~~(a) Mission, Beliefs and Desired Results for Student Learning.~~

~~(b) Curriculum~~

~~(c) Instruction~~

~~(d) Assessment~~

~~(2) Support Standards~~

~~(a) Leadership and Organization~~

~~(b) School Services~~

~~(i) Student Support Service~~

~~(ii) Guidance Services~~

~~(iii) Health Services~~

~~(iv) Library Information Services~~

~~(v) Special Education Services~~

~~(vi) Family and Community Services~~

~~(c) Facilities and Finance~~

~~(3) School Improvement Standard~~

~~(a) Culture of Continual Improvement~~

~~C. Utah-specific indicators have been added to the Northwest standard indicators which include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific indicators are available from the USOE Curriculum Section.~~

~~KEY: accreditation~~

~~Date of Enactment or Last Substantive Amendment: August 7, 2007~~

~~Notice of Continuation: February 13, 2009~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1); 53A-1-401(3)~~]

Environmental Quality, Administration
R305-6
Administrative Procedures

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 36554
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being repealed, following the enactment of S.B. 11 (2012 General Session), and will be replaced by Rule R305-7. (DAR NOTE: The proposed new Rule R305-7 is under DAR No. 36553 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The entire rule will be repealed and will be replaced by Rule R305-7.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301.5

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No changes as a result of the repeal. The changes resulting from the enactment of Rule R305-7 are described in that rulemaking.
♦ LOCAL GOVERNMENTS: No impact as a result of the repeal. The changes resulting from the enactment of Rule R305-7 are described in that rulemaking.
♦ SMALL BUSINESSES: No impact as a result of the repeal. The changes resulting from the enactment of Rule R305-7 are described in that rulemaking.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact as a result of the repeal. The changes resulting from the enactment of Rule R305-7 are described in that rulemaking.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the rule is being proposed for repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact because the rule is being proposed for repeal.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Beverly Rasmussen by phone at 801-536-4405, by FAX at 801-536-0061, or by Internet E-mail at bjrasmussen@utah.gov
♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/20/2012 03:30 PM, DEQ Boardroom, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2012

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.
[~~R305-6. Administrative Procedures.~~
~~R305-6-101. Purpose of Parts.~~
~~Part 1 of this Rule (R305-6-101 through 118) addresses general and preliminary matters.~~
~~Part 2 of this Rule (R305-6-201 through 219) addresses procedures for adjudication.~~
~~Part 3 of this Rule (R305-6-301 through 303) addresses declaratory orders and emergency adjudication.~~
~~Part 4 of this Rule (R305-6-401 through 423) addresses matters relevant to specific statutes.~~

~~R305-6-102. Scope of Rule.~~
~~This rule governing administrative procedures applies to proceedings under:~~
~~(1) the Environmental Quality Code, Utah Code Ann. Title 19, Chapter 1;~~
~~(2) the Air Conservation Act, Utah Code Ann. Title 19, Chapter 2;~~
~~(3) the Radiation Control Act, Utah Code Ann. Title 19, Chapter 3;~~
~~(4) the Safe Drinking Water Act, Utah Code Ann. Title 19, Chapter 4;~~
~~(5) the Water Quality Act, Utah Code Ann. Title 19, Chapter 5;~~
~~(6) the Solid and Hazardous Waste Act, Utah Code Ann. Title 19, Chapter 6, Part 1;~~
~~(7) the Hazardous Substances Mitigation Act, Utah Code Ann. Title 19, Chapter 6, Part 3;~~
~~(8) the Underground Storage Tank Act, Utah Code Ann. Title 19, Chapter 6, Part 4;~~
~~(9) the Used Oil Management Act, Utah Code Ann. Title 19, Chapter 6, Part 7;~~
~~(10) the Waste Tire Recycling Act, Utah Code Ann. Title 19, Chapter 6, Part 8;~~
~~(11) the Illegal Drug Operations Site Reporting and Decontamination Act, Utah Code Ann. Title 19, Chapter 6, Part 9;~~

(12) the Mercury Switch Removal Act, Utah Code Ann. Title 19, Chapter 6, Part 10;

(13) the Industrial Byproduct Reuse provisions, Title 19, Chapter 6, Part 10;

(14) the Voluntary Cleanup Program provisions, Title 19, Chapter 8; and

(15) the Environmental Covenants Act, Title 57, Chapter 25.

R305-6-103. Definitions.

The following definitions apply to this Rule. The definitions in Part 4 of this Rule, e.g., definitions of "Board" and "Executive Secretary," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 4 differs from the definition in Part 1, the definition in Part 4 controls.

(1) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301 to conduct an adjudicatory proceeding.

(2) "Administrative Proceedings Records Officer" means the person who receives the record copies of submissions on behalf of the agency, as specified in R305-6-109.

(3) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(4) "Initial Order" means an Order, as defined in R305-6-103(6), that is issued by the Executive Secretary and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k). "Initial Orders" are further described in Part 4 of this Rule.

(5) "Notice of Violation" means a notice of violation issued by the Executive Secretary that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(6) "Order" means any determination by a person or entity within the Department of Environmental Quality that affects the legal rights of a person or group of persons, but not including a rule made under the Utah Administrative Rulemaking Act, Title 63G, Chapter 3. Orders include but are not limited to:

(a) compliance orders and administrative settlement orders;

(b) cease and desist orders (but not including emergency orders issued under Section 63G-4-502);

(c) approvals, denials, terminations, modifications, revocations, reissuances or renewals of a permit, plan approval or license;

(d) approvals, denials, or modifications of financial assurance;

(e) approvals, denials, or modifications of requests for a variance or exemption from regulatory requirements;

(f) approvals, denials, or modifications of requests for application of alternative standards or requirements, or of an experimental program;

(g) certifications or denials of certifications;

(h) assessments of fees or penalties;

(i) declaratory orders under Section 63G-4-503 and R305-6-302;

(j) preliminary approvals preceding issuance of a permit, plan approval or license if the approval is identified and issued as an order; and

(k) all other orders described as Initial Orders in Part 4 of this Rule.

(7) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-6-401 through 423 are Part 4 of this Rule.

(8) "Party" is defined in R-305-6-204.

(9) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in R305-6-102 and in rules promulgated thereunder.

(10) "Presiding Officer" shall mean, as appropriate:

(a) The ALJ for proceedings conducted under Section 19-1-301;

(b) The members of a Board, for proceedings associated with determinations to be made by the Board, including determinations under Section 19-1-301(6)(b);

(c) The Board Chair as specified in R305-6-110(3), R305-6-215(3), and R305-6-216; or

(d) Any other Presiding Officer specified in Part 4.

(11) "RFAA" means a Request for Agency Action. See R305-6-202.

(12) "Rule" means this Rule R305-6, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(13) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

R305-6-104. Applicability of UAPA.

(1) Proceedings that result in Initial Orders and Notices of Violation issued by the Executive Secretary are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(2) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA as provided in this Rule.

(3) Proceedings other than those described in R305-6-104(1) are subject to the requirements of UAPA as provided in this Rule.

(4) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-6-105. Notice and Comment, and Exhaustion of Remedies.

(1) Public notice and an opportunity for comment is provided before some orders are issued. An agency may choose to provide opportunity for comment even if one is not required.

(2)(a) If an opportunity to comment is provided, a prospective challenger must provide comments in order to preserve the challenger's right to contest an Initial Order. Comments are sufficient to preserve the right to contest an order, for each issue raised, if the comments provide sufficient information to give notice to the agency to allow the agency to fully consider the issue before making a determination.

(b) The requirements of R305-6-105(2)(a) are in addition to other requirements in the Rule, such as compliance with R305-6-205.

(3) For purposes of this Section R305-6-105, notice of an opportunity to comment is sufficient if it meets statutory requirements. If there are no statutory requirements, notice of an opportunity to comment is sufficient if it is posted on DEQ's website, and if at least 30 days' notice is provided.

R305-6-106. Effectiveness and Finality of Initial Orders and Notices of Violation.

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation within the period provided in R305-6-202(8) and (9) waives any right of administrative contest, reconsideration, review or judicial appeal.

R305-6-107. Designation of Proceedings as Formal or Informal.

(1) All proceedings to contest an Initial Order or a Notice of Violation and all other proceedings identified in Part 4 of this Rule shall be conducted as formal proceedings except as specifically provided in Part 4.

(2) The Presiding Officer in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. In the event the Presiding Officer is an ALJ, a decision to use informal procedures must be approved by the Board.

R305-6-108. Form of Submissions.

(1) Hard copy versions of documents submitted under this Rule shall ordinarily be printed on white paper that is 8-1/2 by 11 inches, with 1 inch margins and 12 point font. Double-sided printing is encouraged but not required. Electronic documents shall also be prepared for 8-1/2 by 11 inch paper, using 1 inch margins and 12 point font.

(2) Requests for agency action, notices of agency action, and responses shall include numbered paragraphs.

(3) Every filing shall contain the filing date in the upper right hand corner or in the right hand box of a caption.

R305-6-109. Service and Filing of Notices, Orders and Other Papers.

(1)(a) Unless otherwise directed by the ALJ or other Presiding Officer, and except as otherwise provided in this Section R305-6-109, filing and service of all papers shall be done solely by email. Filing and service under these proceedings will be governed by R305-6-109(3).

(b) In the event the ALJ or other Presiding Officer determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-6-109(4) will govern. Those requirements may be modified by the ALJ or other Presiding Officer.

(c) The provisions of R305-6-109(2) will also apply regardless of whether filing and service are done by email (R305-6-109(3)) or by traditional (R305-6-109(4)) service methods.

(d) A party or prospective intervenor seeking to have filing and service requirements governed by R305-6-109(2), such as a person who does not have access to email, shall file and serve the request as provided in R305-6-109(4). Once a request to proceed under R305-6-109(4) is filed, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ or other Presiding Officer.

(2) General Provisions Governing Filing and Service.

(a) Unless otherwise directed by the ALJ or other Presiding Officer, every filing shall be filed with the ALJ or other Presiding Officer. If no ALJ or other Presiding Officer has been appointed or otherwise identified in this Rule, every filing shall be filed with the Administrative Proceedings Records Officer.

(b) All papers that are required to be served shall also be served on the Administrative Proceedings Records Officer.

(c) Every filing shall be served upon, as applicable:

(i) the Executive Secretary;

(ii) the attorney representing the Executive Secretary;

(iii) the person who was the recipient of the notice of violation or order being challenged;

(iv) each person who has been granted intervention or who has filed a Petition to Intervene that has not been denied; and

(v) the Administrative Proceedings Records Officer, as provided in R305-6-109(3)(a) and (4)(b).

(d) A person, other than the Executive Secretary, who is represented by an attorney or other representative, as provided in R305-6-111, shall be served through the attorney or other representative.

(e) Every filing shall include a certificate of service that shows the date and manner of service on the persons identified in R305-5-109(2).

(f) Regardless of whether a proceeding is governed by R305-6-109(3) or R305-6-109(4), documents that are filed expressly for the consideration of the Board, such as a party's comments on a draft decision, shall be provided to the Executive Secretary in hard copy for distribution to the Board. The person filing the document shall provide to the Executive Secretary one copy for each member of the Board.

(g) The ALJ or other Presiding Officer shall determine which parts of the Initial Record and the Adjudicative Record shall be provided to the Board by hard copy and which shall be provided by electronic copy.

(h) Service on a regulated entity at the entity's last known address in the agency's file shall be deemed service on that entity.

(i) A party shall not file requests for discovery, responses to requests to discovery, deposition notices or other discovery-related papers with the ALJ or other Presiding Officer or the Administrative Proceedings Records Officer unless they are included as exhibits to motions, briefs, testimony or similar submissions, or unless otherwise ordered by the ALJ or other Presiding Officer.

(3) Provisions governing electronic filing and service.

(a) Documents shall be filed with the Administrative Proceedings Records Officer at DEQAPRO@utah.gov. All submissions to that address will be automatically acknowledged. It

is the submitter's responsibility to ensure that the submitter receives the acknowledgment and, if no such acknowledgment is received, to contact the Administrative Proceedings Records Officer at (801) 366-0290 within one business day to ensure that the filing was received.

(b) Service on all other parties and on persons who have filed a Petition to Intervene that has not been denied shall be on email addresses provided by those persons. If a submitter is unable, after due diligence, to determine an email address for a party or a person who has filed a Petition to Intervene, the submitter shall provide service by traditional means, as provided in R305-6-109(4).

(c) A text document served by email shall be submitted as a searchable PDF document. If a signed document cannot be scanned in a searchable format so that the scanned document includes the signature, the submitter shall file the signature page separately. The signature page may be submitted as a scanned, non-searchable page, or the submitter may file and serve a hard copy of the signature page as described in R305-6-109(4).

(d) If a document served by email is one that has been created by the person serving the document in the course of the adjudicative proceeding, it shall be provided in a searchable format. If a single document cannot include both searchable text and a scanned signature (as required by R305-6-109(3)(d)), the server may submit two PDF documents: one with the scanned signature, and one unsigned but searchable and otherwise identical to the signed document.

(e) The ALJ or other Presiding Officer may order any submission to be provided in a searchable format.

(f) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email.

(g) Photographic or other illustration documents served by email shall be submitted as:

(i) a PDF document; or

(ii) a "JPEG" document.

(h) Documents that are difficult to file or serve by email because of their size or form may be filed or served on a CD, DVD, flash drive, or other commonly used digital storage medium. A document may also be provided in hard copy form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-6-109(4).

(i) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ or other presiding officer.

(j) A document is searchable if words in the document can be found using the "Find" or similar function on the software that is routinely used to display the document.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 160 East 300 South, 5th Floor, Salt Lake City Utah 84111.

(c)(i) A document that is filed or served by U.S Mail shall be considered filed or served on the date it is mailed. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(ii) R305-6-109(4)(c)(i) does not apply to a Request for Agency Action or a Petition to Intervene in an agency action. To be timely, those documents must be received for filing within 30 calendar days of the issuance of the Initial Order or a Notice of Violation. See R305-6-202.

R305-6-110. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal holiday.

(2) Computing time.

(a) If a period is stated in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(b) If a period is stated in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not served by email, any time for responding to the document shall be extended by three business days.

(3) Extensions of Time.

(a) Except as otherwise provided by statute or this Rule, the ALJ or other Presiding Officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-6-207.

(b) R305-6-202(9) governs extensions of time associated with filing Requests for Agency Action and R305-6-205(7) governs extensions of time associated with filing Petitions to Intervene.

(c) The ALJ or other Presiding Officer may also postpone hearings upon motion from the parties, or upon the ALJ's or Presiding Officer's own motion. For matters before a board, the Board Chair may act as Presiding Officer for purposes of this paragraph. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer for purposes of this paragraph.

R305-6-111. Appearances and Representation.

(1) A party or a prospective intervenor to a proceeding may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-6-112. Proceeding Conducted by Teleconference or Other Electronic Means.

(1) If approved by the ALJ or other Presiding Officer, a party or prospective intervenor may participate in any hearing or other proceeding by teleconference or other electronic means if the ALJ or other Presiding Officer determines that it will not unfairly prejudice the rights of the other participants.

(2) Notwithstanding R305-6-112(1), participation by teleconference or other electronic means is not permitted for an evidentiary hearing or dispositive motion hearing.

R305-6-113. Settlement.

The parties may settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Executive Secretary that there is a proposed settlement that will be subject to a public comment period, the ALJ or other presiding officer shall stay an administrative proceeding, in whole or in part, until the end of that comment period and for an additional 30 calendar days in order to allow the Executive Secretary to make a final settlement determination.

R305-6-114. Modifying Requirements of Rules.

(1) Except as provided in R305-6-114(2), the requirements of these rules may be modified by order of the ALJ or other Presiding Officer for good cause.

(2) The requirements for timely filing a Request for Agency Action under R305-6-202(8) and (9), and a Petition to Intervene under R305-6-205(3), (4) and (7) may not be modified.

R305-6-115. Disqualification of an ALJ, a Board Member or Other Presiding Officer.

(1) An ALJ, Board member or other Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

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

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

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

(d) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A board member who attends an evidentiary or other hearing in a matter shall be recused from participating in any proceeding of the board as a whole regarding the same matter.

(3) An ALJ, Board member or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(4) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann., Title 67, Chapter 16.

(5) Motions for Disqualification. Any motion for disqualification of an ALJ, Board member or other Presiding Officer shall be made first to the ALJ, Board or other Presiding Officer. If the Presiding Officer is not the final decisionmaker, a party may seek review of the determination of the ALJ or other Presiding Officer under R305-6-217.

R305-6-116. Limitation on Authority Under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-6-117. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502 or the Department of Environmental Quality Code, Utah Code Ann. Title 19, or of the administrative procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

R305-6-118. Procedures Not Addressed.

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ or other Presiding Officer shall, for a specific case, identify analogous procedures or other procedures that will apply. Such proceedings shall be conducted formally under UAPA.

R305-6-201. Purpose of Part.

Part 2 of this Rule (R305-6-201 through 219) specifies procedures to be used in adjudicative proceedings.

R305-6-202. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.

(1) Procedure. Initial Orders and Notices of Violation may be contested by filing a written Request for Agency Action with the Executive Secretary or the Executive Director, as specified in Part 4 of this Rule and at the address specified in that Part. The Request for Agency Action shall also be served as provided in R305-6-109.

(2) A Request for Agency Action may also be filed to initiate agency action as provided in Part 4.

(3) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(4) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the request for agency action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(5) In addition to the information required by 63G-4-201(3)(a) and R305-6-202(4), a Request for Agency Action shall include the requestor's name, address and email address, if any.

(6) It is not sufficient under Section 63G-4-201(3)(a) to file a request for a hearing or a general statement of disagreement.

(7) If a Request for Agency Action is made by a person other than the recipient of an order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-6-205.

(8) To be timely, a Request for Agency Action made to contest an Initial Order or a Notice of Violation shall be received for filing, by email or at the address specified in Part 4 of this Rule, within 30 calendar days of the issuance of the Initial Order or a Notice of Violation.

(9) Extension of Time to File Request for Agency Action.

(a) The time for filing a Request for Agency Action may be extended by stipulation of the parties. Any such stipulation shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, before the expiration of the 30 days specified in R305-6-202(8).

(b) The time for filing a Request for Agency Action may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed before the expiration of the 30 days specified in R305-6-202(8).

(c) A person that is not a party and that is seeking extensions for filing a Request for Agency Action and a Petition to Intervene may file a single stipulation or motion that complies with this R305-6-202(9) and with R305-6-205(7).

(d) Parties are encouraged to use extensions to resolve disputes through informal settlement.

R305-6-203. Notice of Further Proceedings and Response to Request for Agency Action.

(1) In actions initiated by the agency, the agency shall issue a Notice of Agency Action in accordance with Section 63G-4-201(2).

(2)(a) In actions initiated by a Request for Agency Action, the ALJ or other Presiding Officer shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

(b) If a matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(3) In responding to a Request for Agency Action challenging a Notice of Violation and Order, the Executive Secretary may, as appropriate, simply reassert information contained in the challenged Notice of Violation and Order.

R305-6-204. Parties.

(1) For a proceeding that follows an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding:

(a) the person to whom the Initial Order or Notice of Violation was directed, such as a person who submitted a permit, license or plan approval application that was approved or disapproved by an Initial Order;

(b) The Executive Secretary of the Board who issued an Initial Order or Notice of Violation; and

(c) All persons to whom the Board or other final decisionmaker has granted intervention under R305-6-205; and

(2) For a proceeding that does not follow an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding, as appropriate:

(a) the person to whom a Notice of Agency Action or other Order was directed;

(b) All persons for whom intervention has been granted under R305-6-205; and

(c) If the Executive Secretary is the Presiding Officer, other persons within DEQ as designated by the Presiding Officer.

(3) A person may be permitted by the ALJ or other Presiding Officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the ALJ or other Presiding Officer.

R305-6-205. Intervention.

(1) A Petition to Intervene shall meet the requirements of Section 63G-4-207.

(2) Except as provided in R305-6-205(4), the timeliness of a Petition to Intervene under Section 63G-4-207 shall be determined by the ALJ or other Presiding Officer under the facts and circumstances of each case.

(3) If an ALJ or other Presiding Officer has been appointed to make a recommended decision to the Board or other final decisionmaker, a recommended decision denying intervention shall be forwarded to the Board or other final decisionmaker for a final determination. A decision by the ALJ or other Presiding Officer to grant intervention may be considered by the Board or other final decisionmaker under R305-6-217 (Interlocutory Review) if the standards specified in that provision are met.

(4) A person who is not a party to a proceeding but who seeks to challenge an Initial Order of the Executive Secretary that has not been challenged by a party shall file a Petition for Intervention with a Request for Agency Action. To be timely, any such Petition to Intervene shall be received for filing, by email or at the address specified in Part 4 of this Rule, within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(5) Any response to a Petition to Intervene shall be filed within 20 calendar days of the date the Petition was filed.

(6) Petitions to Intervene shall be filed at the same address as provided for Requests for Agency Action in Part 4 of this Rule. Service shall be as provided in R305-6-109, except that the Petition must be received for filing by the deadline.

(7) Extension of Time to File Petition to Intervene.

(a) The 30 day deadline for filing a Petition to Intervene under R305-6-205(4) may be extended by stipulation of the parties and the prospective intervenor. Any such stipulation shall be filed within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(b) The 30 day deadline for filing a Petition to Intervene under R305-6-205(4) may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(c) A person that is not a party and that is seeking extensions for filing a Request for Agency Action and a Petition to Intervene may file a single stipulation or motion that complies with R305-6-202(9) and with this R305-6-205(7).

(d) Parties are encouraged to use extensions to resolve disputes through informal settlement.

R305-6-206. Procedures for Informal Proceedings.

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The presiding officer may issue a subpoena or other order to compel the production of necessary evidence.

R305-6-207. Pre-hearing Conferences, Proceedings and Order.

(1) The ALJ or other Presiding Officer may hold one or more pre-hearing conferences for the purposes of: identifying and, if possible, narrowing the issues that will be considered at a hearing; determining whether an issue will be considered at an evidentiary hearing or a hearing to rule on a dispositive motion; establishing schedules for disclosures and the filing of motions, testimony and pre-hearing memoranda; determining the status of the litigation; considering stipulations of fact or law; and considering any other pre-hearing matters. The ALJ or other Presiding Officer shall issue pre-hearing orders memorializing the determinations made about these matters.

(2) The ALJ or other Presiding Officer may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing. The ALJ or other Presiding Officer may also order a party to respond to questions about those issues for the purpose of clarifying the issues. The other parties to the proceeding may, within 10 business days of the date a response to the order is served, file and serve comments on the response.

(3) The ALJ or other Presiding Officer may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(4) The parties may request the ALJ or other presiding officer hold a conference for the purpose of addressing the matters described in R305-6-207(1).

R305-6-208. Agency Record.

(1) The final agency record shall consist of:

(a) An Initial Record relating to Initial Orders and Notices of Violation, further described in R305-6-208(2);

(b) An Adjudicative Record consisting of:

(i) All documents filed with the ALJ or other Presiding Officer, and with the Administrative Records Officer;

(ii) All orders and other written communications from the ALJ or other Presiding Officer;

(iii) All transcripts of hearings and exhibits proffered or received into evidence during a hearing; and

(iv) Other documents as determined by the ALJ or other Presiding Officer.

(2)(a) The Executive Secretary shall prepare an Initial Record, which shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A hard copy and an electronic copy of the Initial Record shall be filed with the ALJ or other Presiding Officer. An electronic copy of the Initial Record shall be served as provided in R305-6-109(3). Electronic records shall meet the requirements for electronic filing and service in R305-6-109(3).

(c) The Initial Record document index shall include the Initial Order or Notice of Violation being challenged, any Request for Agency Action, any responsive pleading, and any relevant:

(i) permit, plan approval or license; application;

(ii) draft order (such as a permit) that was released for public comment;

(iii) public comments received;

(iv) comment response document; and

(v) final permit.

(d) Documents other than those specified in R305-6-208(2)(c) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(e) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Executive Secretary may propose a more limited Initial Record that does not include the documents specified in R305-6-208(2)(c). If a matter involves a multi-volume permit, for example, the Executive Secretary may propose to exclude the parts of the permit that relate to emergency response if the dispute is about waste sampling.

(f) Analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 calendar days before the date the Executive Secretary's preliminary witness lists are due.

(3) Procedure for preparing Initial Record.

(a) Unless the ALJ or Presiding Officer directs otherwise, within 40 calendar days after the date of a Notice of Further Proceedings, the Executive Secretary shall compile a draft index of documents in the Initial Record as described in paragraph (2)(c), and shall provide the list to all other parties. Each party may, within fifteen calendar days of the date the draft index was served, propose to add documents to or delete documents from the index.

(b) The Executive Secretary shall consider the other parties' submissions and shall, within ten calendar days of the date the submissions were served, file an Initial Record.

(c) Parties may file objections to the Initial Record within 10 business days of the date of the Initial Record. The Executive Secretary may respond to objections within 10 business days of service of the objections.

(d) The ALJ or other Presiding Officer shall consider objections filed and may order changes in the Initial Record.

R305-6-209. Discovery and Disclosure.

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 2, as modified by Section 19-1-306 of the Utah Environmental Quality Code.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ or other Presiding Officer in a formal proceeding. The ALJ or other Presiding Officer may order formal discovery when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less burdensome;

(c) the formal discovery proposed is not unduly burdensome;

(d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;

(e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment; and

(f) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-6-209, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ or other Presiding Officer after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-6-212(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

R305-6-210. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ or other Presiding Officer. Each administrative subpoena form shall have the following statement prominently displayed on the form: "This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Utah Rules of Civil Procedure, Rule 45, will be used to determine whether a subpoena is appropriate. File any objection with (requestor to insert title and address of ALJ or other Presiding Officer). See also Utah Admin. Code R305-6-210."

(2) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure, Rule 45(b).

(3) Objection. A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ or other Presiding Officer shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-6-211. Motions.

(1) Ruling on Motions. Motions may be made by written motion at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be filed and served in accordance with R305-6-109.

(2) Responses to motions shall be filed within 15 business days of service of the Motion.

(3) Memoranda in support of or opposition to a dispositive motion may not exceed 25 pages. Memoranda in support of or in opposition to other motions may not exceed 15 pages. This limit shall not include face sheet, table of contents, statements of issues and facts, or exhibits.

(4) A reply to a memorandum in opposition to a motion may be filed within seven business days of service of the memorandum in opposition, and is limited to eight pages. A reply memorandum shall be limited to responding to matters raised in the memorandum in opposition.

(5) Deadlines and page limits may be modified by order of the ALJ or other Presiding Officer.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Summary Judgment, a Motion to Dismiss or a Motion for Judgment on the Pleadings. Parties are encouraged to file dispositive motions no later than 45 calendar days prior to the scheduled hearing.

R305-6-212. Pre-Hearing Briefs and Other Pre-Hearing Submissions.

(1) At least 25 business days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 13 business days before a scheduled hearing, the parties shall jointly file and serve any stipulation regarding admission of exhibits and shall file and serve copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-6-109(3), shall be filed with the ALJ or other Presiding Officer, and served on other parties. Electronic

and hard copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ or other Presiding Officer, each party may, but is not required to file, at least 10 business days before a scheduled hearing:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-6-208(2)(f).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ or other Presiding Officer.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ or other Presiding Officer.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-6-213. Hearings.

(1) The ALJ or other Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ or other Presiding Officer shall also establish the order of presentation at the hearing.

(2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.

(b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ or other Presiding Officer. Unless otherwise ordered by the ALJ or other Presiding Officer, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ or other Presiding Officer at least eight business days before the scheduled hearing.

(3) Evidence.

(a) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence.

(b) Every party to an adjudicative proceeding has the right to introduce evidence, subject to the Utah Rules of Evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ or other Presiding Officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ or other Presiding Officer may admit hearsay evidence. However, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(c)(i) Except as provided in R305-6-213(3)(c)(ii), all witnesses who have provided pre-filed testimony shall be present at the hearing unless the parties agree that the witness may be excused. A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(ii) The pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in 63G-4-206(1)(c) and 63G-4-208(3).

(d) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter, the ALJ or other Presiding Officer. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-6-214. Post-Hearing Submissions.

Unless otherwise ordered by the ALJ or other Presiding Officer, not later than 13 business days after a hearing, each party may, but is not required to submit:

(1) A post-hearing brief, limited to 10 pages, not including exhibits; and

(2) Proposed findings of fact and conclusions of law.

R305-6-215. Recommended Decisions and Orders.

(1) If the ALJ or other Presiding Officer is not the final decisionmaker for a matter, the ALJ or other Presiding Officer shall prepare a recommended decision that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208. At the time the ALJ or other Presiding Officer sends the recommended decision to the final decisionmaker, it shall be served on the parties.

(2)(a) Any party may provide comments to the final decisionmaker on the recommended decision.

(b) Unless otherwise ordered by the final decisionmaker, comments shall be filed with the final decisionmaker within 10 business days of the date the recommended order is issued. Comments shall cite to the specific parts of the record which support the comments and shall be limited to 20 pages unless an enlargement of pages is approved by the presiding officer responsible for the final decision.

(3) The Board Chair may act as Presiding Officer for purposes of R305-6-215(2)(b). In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

(4)(a) The final decisionmaker shall issue an order that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208.

(b) If the proceeding is subject to the requirements of Section 19-1-301(6)(a), the Board may approve, approve with modifications, or disapprove a proposed dispositive action, including findings of facts and conclusions of law, submitted by the ALJ.

R305-6-216. Consideration by the Board or Other Final Decisionmaker.

(1) If an ALJ or other Presiding Officer submits a recommended decision to the Board or other final decisionmaker, the Parties shall be granted time before the Board or other final decisionmaker to present oral argument regarding the recommended decision.

(2) The final decisionmaker will establish the time allowed for each party.

(3) If the final decisionmaker is a board, the Board Chair may act as the Presiding Officer for purposes of issuing an order establishing the amount and division of time and the order of presentation. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

R305-6-217. Interlocutory Review.

(1) This provision applies to proceedings where an ALJ or other Presiding Officer has responsibility for the evidentiary proceedings, but the Board or a different Presiding Officer has responsibility for the final determination.

(2) Ordinarily, a party may challenge an order issued by the ALJ or other Presiding Officer only after the ALJ or other Presiding Officer has made a final recommended decision. However, a party may request interlocutory consideration of an order before that time if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or in other situations where it may materially advance the termination of the proceeding. The final decisionmaker's determination to hear an interlocutory request to overturn an order is discretionary.

(3) A determination that a document is not privileged, and any determination relative to a motion for stay under R305-6-218 will ordinarily be considered to meet the requirements of R305-6-217(2), but are not exhaustive of the determinations that may be considered to meet the requirements of R305-6-217(2).

R305-6-218. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ or other Presiding Officer.

(b) An ALJ or other Presiding Officer shall grant a stay if the party seeking the stay demonstrates the following:

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

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

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

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

(2) The standards specified in R305-6-218(1) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Board or other final decisionmaker shall file a motion with the Board or other final decisionmaker.

(b) The standards specified in R305-6-218(1)(b) shall apply to any such request.

(4) If granted, a stay suspends the challenged order for the period as directed by the ALJ or other Presiding Officer.

R305-6-219. Default.

(1) A party may be found in default in accordance with Section 63G-4-209. The default order shall include a statement of the grounds for default and shall be filed and served on all parties.

(2) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

R305-6-301. Purpose of Part.

Part 3 of this Rule (R305-6-301 through 303) governs requests for declaratory and emergency actions.

R305-6-302. Declaratory Orders.

(1) For all matters over which the Executive Secretary has Initial Order authority as described in Part 4 of this Rule, any Request for a Declaratory Order shall be addressed first to the Executive Secretary. For all other matters, a Request for Declaratory Order shall be filed with the Presiding Officer specified in Part 4 of this Rule.

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;

(e) Set out a proposed order;

(f) As appropriate, address with specificity each of the circumstances described in R305-6-302(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):

(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;

(b) Circumstances in which the person requesting the declaratory order does not have standing;

(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;

(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;

(e) Circumstances that raise questions that are clear and do not warrant an order;

(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;

(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;

(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and

(j) Circumstances involving use of the agency's emergency authority.

(5) If no declaratory order or order setting the matter for hearing is issued within 60 calendar days of the Request, the Request shall be deemed denied.

(6) An Initial Order of the Executive Secretary on a Request for Declaratory Action may be challenged as described in R305-6-202. The matter may be resolved using the procedures specified in Part 2 of this Rule, or other procedures specified by the Presiding Officer.

R305-6-303. Emergency Actions.

Emergency orders may be issued as provided in Section 63G-4-502. See R305-6-117.

R305-6-401. Purpose of Part.

Part 4 of this Rule (R305-6-401 through 423) provides definitions and other provisions that will govern the way the procedures specified in Part 3 of this Rule will apply to adjudication brought under specific statutes. The following matters are addressed:

(1) Definitions;

(2) Identification of Initial Orders and Notices of Violation that are exempt from UAPA requirements;

(3) Where a Request for Agency Action and other submissions should be filed; and

(4) Whether proceedings will be conducted formally or informally.

R305-6-402. Addresses for Filing.

(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to: Executive Director, Department of Environmental Quality, P.O. Box 144810, Salt Lake City, Utah 84114-4810. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Director, Department of Environmental Quality, 195 North 1950 West, 4th Floor, Salt Lake City, Utah 84116-3097.

(2) Documents submitted to the Executive Secretary of the Air Quality Board shall be sent to: Executive Secretary, Utah Air Quality Board, Division of Air Quality, P.O. Box 144820, Salt Lake City, Utah 84114-4820. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Utah Air Quality Board, Division of Air Quality, 195 North 1950 West, 4th Floor, Salt Lake City, Utah 84116-3097.

(3) Documents submitted to the Executive Secretary of the Drinking Water Board shall be sent to: Executive Secretary, Drinking Water Board, Division of Drinking Water, P.O. Box 144830, Salt Lake City, Utah 84114-4830. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Drinking Water Board, Division of Drinking Water, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(4) Documents submitted to the Executive Secretary of the Radiation Control Board shall be sent to: Executive Secretary, Radiation Control Board, Division of Radiation Control, P.O. Box 144850, Salt Lake City, Utah 84114-4850. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Radiation Control Board, Division of Radiation Control, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(5) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board (but not including documents submitted under the Underground Storage Tank Act, Part 4 of Section 19-6 or the Illegal Drug Operations Site Reporting and Decontamination Act, Part 9 of 19-6) shall be sent to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah 84114-4880. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Solid and Hazardous Waste, 195 North 1950 West, 2nd Floor, Salt Lake City, Utah 84116-3097

(6) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board pursuant to Parts 4 and 9 of Section 19-6 shall be sent to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, P.O. Box 144840, Salt Lake City, Utah 84114-4840. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, 195 North 1950 West, 1st Floor, Salt Lake City, Utah 84116-3097.

(7) Documents submitted to the Executive Secretary of the Water Quality Board shall be sent to: Executive Secretary, Water Quality Board, Division of Water Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Water Quality Board, Division of Water Quality, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(8) Documents submitted to the Executive Secretary of the Water Quality Board relative to uranium mill facilities or low-level radioactive waste disposal facilities shall be sent to: Executive Secretary, Water Quality Board/Radiation, Division of Radiation Control, P.O. Box 144850, Salt Lake City, Utah 84114-4850. For courier or hand delivery, these documents shall be sent to: Executive Secretary, Water Quality Board/Radiation, Division of Radiation Control, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

R305-6-403. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but Not Including Title 19, Chapter 1, Part 4.

(1) Scope. This subsection R305-6-403 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

"Presiding Officer" means the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-404. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but Not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) Scope. This subsection R305-6-404 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) Definitions.

"Board" means the Air Quality Board.

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

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-404(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Air Conservation Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

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

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

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

(d) certification of asbestos contractors under R307-801;

(e) fees imposed for major source reviews under R307-414;

(f) assessment of other fees except as provided in R307-103-14(7);

(g) requests for variances, exemptions, and other approvals;

(h) requests or approvals for experiments, testing or control plans;

(i) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840;

(j) compliance with the requirements of the Air Conservation Act and rules promulgated thereunder; and

(k) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary at the address specified in R305-6-402(2). See also R305-6-202 and R305-6-205.

(6) A challenge to an Initial Order or to a Notice of Violation will be conducted formally under UAPA.

(7) Agency review of the Board's decision under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-405. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-6-405 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Definitions.

"Presiding Officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.

(4) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-6-402(1).

(5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-6-406. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) Scope. This subsection R305-6-406 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

(a) General.

"Board" means, as appropriate, the Air Quality Board or the Water Quality Board.

"Executive Secretary" means, as appropriate, the Executive Secretary of the Air Quality Board or the Water Quality Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders as described in R305-6-406(5).

(4) Requests relating to air pollution control equipment shall be directed to the Air Quality Board and its Executive Secretary. Requests for water pollution control equipment shall be directed to the Water Quality Board and its Executive Secretary. See Section 19-2-102(14)(a).

(5) Initial Orders issued by the Executive Secretary under the authority of 19-2-123 through 19-2-126 are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders include, but are not limited to, Initial Orders regarding eligibility of

pollution control equipment for tax exemptions under R307-120 and R307-121, and declaratory orders under Section 63G-4-503 and R305-6-302.

(6) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served, as appropriate under R305-6-406(4), on the Executive Secretary for the Air Quality Board as specified in R305-6-402(2), or on the Executive Secretary for the Water Quality Board as specified in R305-6-402(7).

(7) A challenge to an Initial Order issued under 19-2-123 through 19-2-126 will be conducted formally under UAPA.

(8) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-407. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but Not Including Section 19-3-109.

(1) Scope. This subsection R305-6-407 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Board" means the Radiation Control Board.

"Executive Secretary" means the Executive Secretary of the Radiation Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-407(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Radiation Control Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses or permits;

(b) x-ray facility registration, qualified expert registration, and mammography imaging medical physicist approval;

(c) generator site access certifications and registrations;

(d) requests for variances or exemptions;

(e) notices of violation and orders associated with notices of violation;

(f) orders assessing penalties;

(g) orders to comply and orders to cease and desist;

(h) orders regarding impoundment of radioactive material

(i) orders regarding decommissioning;

(j) orders regarding financial assurance;

(k) orders regarding surveying, monitoring, sampling, or information;

(l) compliance with the requirements of the Radiation Control Act and rules promulgated thereunder; and

(m) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(4).

(6) A challenge to an Initial Order or notice issued under the Radiation Control Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

(8) See R305-6-411(5)(b) regarding the Executive Secretary responsible for water quality matters at uranium mill facilities, low level radioactive waste processing facilities, and low level radioactive waste disposal facilities.

R305-6-408. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) Scope. This subsection R305-6-408 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Board" means the Radiation Control Board.

"Executive Secretary" means the Executive Secretary of the Radiation Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-3-109.

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(e). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-409. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but Not Including Section 19-4-109(1).

(1) Scope. This subsection R305-6-409 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Board" means the Drinking Water Board.

"Executive Secretary" means the Executive Secretary of the Drinking Water Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-409(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Safe Drinking Water Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

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

(b) notices of violation and orders associated with notices of violation;
(c) orders to comply and orders to cease and desist;
(d) orders regarding variances and exemptions;
(e) certification of water supply operators under R309-300 and backflow technicians under R309-305;
(f) ratings of water systems under R309-400-4;
(g) assessment of fees;
(h) concurrence with source protection plans;
(i) compliance with the requirements of the Safe Drinking Water Act and rules promulgated thereunder; and
(j) declaratory orders under Section 63G-4-503 and R305-6-302.
(5) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary at the address specified in R305-6-402(3).
(6) A challenge to an Initial Order or notice issued under the Safe Drinking water Act will be conducted formally under UAPA.
(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-410. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).
(1) Scope. This subsection R305-6-410 applies to all matters governed by Section 19-4-109 of the Safe Drinking Water Act.
(2) Definitions.
"Board" means the Drinking Water Board.
"Executive Secretary" means the Executive Secretary of the Drinking Water Board.
(3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-4-109(1).
(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.
(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.
(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.
(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-411. Matters Governed by the Water Quality Act, Title 19, Chapter 5.
(1) Scope. This subsection R305-6-411 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.
(2) Definitions.
"Board" means the Water Quality Board.
"Executive Secretary" means the Executive Secretary of the Water Quality Board.
"Presiding Officer" shall mean, as appropriate, an ALJ appointed under 19-1-301, the Board, or, for matters governed by Section 19-5-112(2), the Executive Director.
(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-411(4).
(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Water Quality Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:
(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;
(b) notices of violation and orders associated with notices of violation;
(c) orders to comply and orders to cease and desist;
(d) orders regarding variances and exemptions;
(e) assessment of fees;
(f) requests or approvals for experiments, testing or control plans;
(g) certification of wastewater treatment works operators under R317-10; and
(h) certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems;
(i) compliance with the requirements of the Water Quality Act and rules promulgated thereunder; and
(j) declaratory orders under Section 63G-4-503 and R305-6-302.
(5) Initiating and intervening in a proceeding.
(a) A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary and, except as otherwise provided in R305-6-411(5)(b), shall be addressed to the Executive Secretary at the address specified in R305-6-402(7).
(b) The director of the Radiation Control Division has been appointed as a Co-Executive Secretary of the Water Quality Board, with responsibility for uranium mill facilities, low-level radioactive waste processing facilities, and low level radioactive waste disposal facilities. A request for agency action or a petition to intervene in a proceeding involving an order or notice issued by the Director of the Radiation Control Division as Executive Secretary for the Water Quality Board with respect to those facilities shall be served on the Executive Secretary as specified in R305-6-402(8).
(6) A challenge to an Initial Order or notice issued under the Water Quality Act will be conducted formally under UAPA.

(7) The Executive Director shall be the final decisionmaker for a challenge to a permit decision, as specified in Section 19-5-112(2). The Board shall be the final decisionmaker for all other challenges.

(8) Agency review of the Board's or Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-412. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) Scope. This subsection R305-6-412 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-412(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Solid and Hazardous Waste Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits or plan approvals;

(b) orders regarding approval for equivalent testing or analytical methods;

(c) notices of violation and orders associated with notices of violation;

(d) orders regarding variances and exceptions;

(e) orders for corrective action;

(f) consent orders;

(g) compliance with the requirements of the Solid and Hazardous Waste Act and rules promulgated thereunder; and

(h) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as provided in R305-6-402(5) or (6).

(6) A challenge to an Initial Order or notice issued under the Solid and Hazardous Waste Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-413. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) Scope. This subsection R305-6-413 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Presiding Officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.

(3) Orders and Notices of Violation issued under the authority of the Hazardous Substances Mitigation Act are not exempt from the requirements of UAPA. The provisions of UAPA (including as appropriate the emergency provisions of Section 63G-4-502) and of this Rule shall apply to proceedings initiated under the authority of the Hazardous Substances Mitigation Act.

(4) Proceedings under this statute shall be conducted formally under UAPA.

(5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under the Hazardous Substances Mitigation Act. Requests to intervene in a proceeding shall be governed by Section 63G-4-207 and the provisions of this Rule. A petition to intervene in a proceeding shall be served on the Executive Director as provided in R305-6-402(1).

(6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-414. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but Not Including Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) Scope. This subsection R305-6-414 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-414(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Underground Storage Tank Act are exempt from the requirements of UAPA under 63G-4-102(2)(k), except as provided in R305-6-415. Initial Orders and Notices of Violation that are exempt from UAPA include, but are not limited to, orders and notices regarding:

(a) approval, denial, termination, or revocation of certifications, registrations, and certificates of compliance;

(b) orders regarding approval for equivalent testing or analytical methods;

(c) notices of violation and orders associated with notices of violation;

(d) orders regarding variances and exceptions;

(e) orders for investigation or corrective action;

(f) apportionment;

(g) consent orders;

(h) compliance with the requirements of the Underground Storage Tank Act and rules promulgated thereunder; and

(i) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding.

(a) A challenge to a revocation of a certificate of compliance shall be initiated by serving a Request for Agency Action on the Executive Director as provided in R305-6-402(1). See Section 19-6-414(3) of the Underground Storage Tank Act.

(b) All other requests to initiate or intervene in a proceeding, as described in this Rule, shall be directed to the Board and served on the Executive Secretary as provided in R305-6-402(6).

(5) A challenge to an Initial Order or notice issued under the Underground Storage Tank Act will be conducted formally under UAPA.

(6) Agency review of the Executive Directors or the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-415. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) Scope. This subsection R305-6-415 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue a Notice of Agency Action assessing penalties under Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5.

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Sections 19-6-407, 19-6-408, 19-6-416, or 19-6-416.5. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Sections 19-6-107, 19-6-108, 19-6-416 or 19-6-416.5.

(7) Orders issued by the Executive Secretary to assess penalties under Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5 are not exempt from the requirements of UAPA.

(8) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-416. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) Scope. This subsection R305-6-416 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-416(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Used Oil Management Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals, sureties and registrations;

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

(c) orders for corrective action;

(d) orders regarding variances and exceptions;

(e) consent orders; and

(f) registration and revocation of registration of used oil collection centers, used oil aggregation points or DIYer used oil collection centers;

(g) reclamation orders;

(h) compliance with the requirements of the Used Oil Management Act and rules promulgated thereunder; and

(i) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(6) A challenge to an Initial Order or notice issued under the Used Oil Management Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-417. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) Scope. This subsection R305-6-417 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-417(4).

(4) Notices of agency action for orders and notices of violation under the Waste Tire Recycling Act include, but are not limited to, notices regarding proceedings for:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals;

(b) approvals, denial and other orders regarding financial assurance and insurance;

(c) notices of violation and orders associated with compliance with the statute;

(d) orders regarding variances or exemptions;

(e) orders for corrective action, including reclamation;

(f) consent orders;

(g) registration and revocation of registration of waste tire transporters and recyclers;

(h) approval of reimbursements;

(i) approval of payments to counties or municipalities for costs of a waste tire transporter or recycler to remove waste tires; and

(j) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-418. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) Scope. This subsection R305-6-418 applies to all matters over which the Board has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Notices of Agency Action and to respond to Requests for Agency Action as described in R305-6-418(4).

(4) Proceedings under the Illegal Drug Operations Site Reporting and Decontamination Act include, but are not limited to, notices regarding proceedings for:

(a) proceedings regarding certifications of decontamination specialists; and

(b) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) A proceeding regarding an application for certification based on passing the certification test, submitting verification of citizenship, demonstrating OSHA certification, or paying of the application fee shall be conducted informally by the Executive Secretary. Agency review of the Executive Secretary's decisions is not available. A request for reconsideration may be filed using the procedures specified in 63G-4-302.

(7) A proceeding to revoke certification shall be conducted formally. Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-419. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) Scope. This subsection R305-6-419 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Mercury Switch Removal Act are exempt from the requirements of UAPA under Section 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of plans;

(b) notices of violation and orders associated with compliance with the statute, including orders for corrective action;

(c) orders regarding variances and exceptions;

(d) consent orders;

(e) compliance with the requirements of the Mercury Switch Removal Act and rules promulgated thereunder; and

(f) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(5) A challenge to an Initial Order or notice issued under the Mercury Switch Removal Act will be conducted formally under UAPA.

(6) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-420. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-6-420 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

~~"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.~~

~~(3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-420(4).~~

~~(4) Notices of agency action for orders and notices of violation under the Industrial Byproduct Reuse Act include, but are not limited to, notices regarding proceedings for:~~

~~(a) orders regarding applications for reuse of an industrial byproduct; and~~

~~(b) declaratory orders under Section 63G-4-503 and R305-6-302.~~

~~(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.~~

~~(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).~~

~~(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.~~

~~R305-6-421. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.~~

~~(1) Scope. This subsection R305-6-421 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.~~

~~(2) Definitions.~~

~~"Presiding Officer" means the Executive Director or the Executive Director's designee.~~

~~(3) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director. Unless the Executive Director designates another Presiding Officer, papers shall be filed with the Executive Director as provided in R305-6-402(1).~~

~~(4) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:~~

~~(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;~~

~~(b) approvals, denials or modifications of certificates of completion; and~~

~~(c) declaratory orders under Section 63G-4-503 and R305-6-302.~~

~~(5) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.~~

~~R305-6-422. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.~~

~~(1) Scope. This subsection R305-6-422 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.~~

~~(2) Definitions.~~

~~"Presiding Officer" means the Executive Director or the Executive Director's designee.~~

~~(3) A request to terminate or modify an environmental institutional control adopted under this act shall be considered a Request for Agency Action and shall be directed to the Executive Director as provided in R305-6-402(1). The Executive Director may at any time designate another Presiding Officer. The person submitting the Request for Agency Action shall be notified of the designation.~~

~~(4) Proceedings described in paragraph (3) will be conducted under UAPA using formal procedures. Proceedings under the Environmental Institutional Control Act are not exempt from the requirements of UAPA.~~

~~(5) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.~~

~~R305-6-423. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.~~

~~(1) Scope. This subsection R305-6-423 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.~~

~~(2) The Executive Director, or the Executive Directors designee, is the Presiding Officer.~~

~~(3) Orders issued by the Executive Director or the Executive Director's designee under the authority of the Environmental Institutional Control Act are not exempt from the requirements of UAPA.~~

~~(4) A request to approve, modify or terminate an environmental covenant shall be considered to be a Request for Agency Action and a proceeding to address the Request shall be conducted under UAPA using formal procedures.~~

~~(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be filed with the Executive Director as specified in R305-6-402(1).~~

~~(6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4~~

~~KEY: administrative procedures, adjudicative procedures, hearings~~

~~Date of Enactment or Last Substantive Amendment: August 31, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503; 19-1-301; 19-2-104; 19-3-104; 19-5-104; 19-6-105~~]

Environmental Quality, Administration
R305-7
Administrative Procedures

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 36553
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 11, creating a new "permit review adjudicative proceeding" under Section 19-1-301.5, passed during the 2012 General Session. DEQ's existing administrative procedures, which are based on UAPA, no longer apply to these proceedings and new rules are required to implement them. This new rule also addresses enforcement and other proceedings that will still be handled under UAPA. Although the rules for UAPA proceedings are mostly unchanged, a few changes have been made to clarify or improve the process. DEQ is also proposing to repeal the prior administrative procedures rule, R305-6. (DAR NOTE: The proposed repeal of Rule R305-6 is under DAR No. 36554 in this issue, August 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The rule is based on current Rule R305-6, which is simultaneously proposed for repeal, but adds procedures in new Sections R305-7-201 through R305-7-217 for the permit review adjudicative proceedings that were mandated by S.B. 11 (2012 General Session). Key choices made in these rules include: allowing a party to address standing and questions of law during proceedings on the merits of the case rather than through separate motions; and specifying deadlines and page limits for motions. Some changes not required by S.B. 11 have also been made, such as clarifying language related to service and filing of papers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-1-301.5 and Section 63G-4-102 and Section 63G-4-201 and Section 63G-4-202 and Section 63G-4-203 and Section 63G-4-205 and Section 63G-4-503

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Although it is anticipated that the new permit review adjudicative procedures will be more streamlined than UAPA procedures, any savings will be offset in part by increased workload resulting from an increasing number of permit challenges.
♦ LOCAL GOVERNMENTS: Local governments will not normally be affected. They could be affected to the extent they are parties or a prospective intervenor to a proceeding.
♦ SMALL BUSINESSES: Although some businesses can expect savings as a result of these streamlined rules, permits and licenses to small business are rarely challenged so the proposed changes would not have a substantial impact.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals and organizations that challenge permits, e.g., environmental organizations, will be affected by the rule. Generally, it is anticipated that the streamlined procedure will make that process less expensive both for the challenger and for the permittee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not impose any compliance requirements. It does provide new procedures for challenging permits. To the extent that the responsibility for defending against a permit challenge falls to a regulated entity, the streamlined process should be less expensive than the previous trial-type procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The trial-type procedures previously required for adjudicating permit challenges could be extremely expensive; discovery, for example, can be extremely time-consuming and therefore costly. The streamlined procedures in this rule (authorized by S.B. 11 (2012 General Session)) will be simpler and less costly. A specific estimate of savings is not feasible, however, given the wide variability in complexity of proceedings.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Beverly Rasmussen by phone at 801-536-4405, by FAX at 801-536-0061, or by Internet E-mail at bjrasmussen@utah.gov
♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/20/2012 03:30 PM, DEQ Boardroom, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 10/08/2012

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.
R305-7-101. Scope of Rule and Purpose of Parts.

(1) This rule governs all adjudicative procedures conducted under the authority of the Environmental Quality Code, Utah Code Ann. Title 19. It does not govern proceedings that result in initial orders that are not subject to UAPA under Section 63G-4-102(2)(k).

(2)(a) Part 1 of this Rule (R305-7-101 through 113) applies to all adjudications before the agency. It addresses general and preliminary matters.

(b) Part 2 of this Rule (R305-7-201 through 217) applies to permit review adjudicative procedures. These procedures are governed by Section 19-1-301.5.

(c) Part 3 of this Rule (R305-7-301 through 320) applies to adjudicative procedures that are not permit review adjudicative procedures. These procedures are governed by Section 19-1-301.

(e) Part 4 of this Rule (R305-7-401 through 403) addresses matters initiated by notices of agency action.

(d) Part 5 of this Rule (R305-7-501 through 503) addresses declaratory orders and emergency adjudication.

(e) Part 6 of this Rule (R305-7-601 through 623) addresses matters relevant to specific statutes.

R305-7-102. Definitions.

(1) The following definitions apply to this Rule. The definitions in Part 6 of this Rule, e.g., the definition of "Director," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 6 differs from the definition in Part 1, the definition in Part 6 controls.

(a) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301(5) or Section 19-1-301.5(5) to conduct an adjudicative proceeding.

(b) "Administrative Proceedings Records Officer" means a person who receives a record copy of submissions on behalf of the agency, as specified in R305-7-104.

(c) "Administrative Record," for purposes of Part 2 of this Rule, means the record described in Section 19-1-301.5(8)(b) and upon which a permit review adjudicative proceeding is conducted. See also R305-7-209.

(d) "Days" means calendar days unless otherwise specified. See also R305-7-105.

(e) "Director" means the director of one of the divisions listed in Section 19-1-105(1)(a). The Director is defined, for each statute administered by the Department, in Part 6 of this Rule.

(f) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(g) "Initial Order" means an order that is not a Permit Order, that is issued by the Director and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k).

(h) "Notice of Violation" means a notice of violation issued by the Director that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(i) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-7-501 through 503 are Part 5 of this Rule.

(j) "Party" is defined in R-305-7-207 for permit review adjudicative proceedings, and in R305-7-305 for other proceedings.

(k) "Permit" means any of the following:

(i) a permit;

(ii) a plan;

(iii) a license;

(iv) an approval order; or

(v) another administrative authorization made by a director.

(l)(i) "Permit order" means an order issued by the Director that:

(A) approves a permit;

(B) renews a permit;

(C) denies a permit;

(D) modifies or amends a permit; or

(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(m) "Permit review adjudicative proceeding" means a proceeding to resolve a challenge to a Permit Order.

(n) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in the Department of Environmental Quality Code, Title 19, and in rules promulgated thereunder.

(o) "Rule" means this Rule R305-7, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(p) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

(2)(a) Ordinarily, administrative proceedings under the Environmental Quality Code are decided by the Executive Director based on a proceeding conducted by and recommended decision prepared by an Administrative Law Judge. In the event governing law specifies that another person or entity conduct a proceeding in the place of an Administrative Law Judge, the term "Administrative Law Judge" shall mean the person or entity serving in that function. In the event governing law specifies that another person or entity make final determinations regarding dispositive actions, the term "Executive Director" shall mean the person or entity who makes that final decision.

(b) Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than an administrative law judge to conduct an adjudicative proceeding. Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than the Executive Director to make a final determination regarding an adjudicative proceeding.

R305-7-103. Form of Submissions.

(1) All submissions, whether on paper copy or electronic, shall use 8-1/2 by 11 inch pages, be double-spaced, with each page numbered, and have one inch margins and 12 point font. Paper copies of documents submitted under this Rule shall ordinarily be printed on white paper; double-sided printing is encouraged but not required.

(2) Requests for agency action, notices of agency action, and responses shall include numbered paragraphs.

(3) The first page of every filing shall contain a caption that gives the name and file number of the proceeding, the name of the ALJ if one has been appointed, and the filing date.

(4) Page limits for motions are specified in R305-7-211 and R305-7-312. Page limits for briefs on the merits in a permit review adjudicative proceeding are specified in R305-7-213. Incorporation by reference of pages from other filings shall count toward a page limitation.

R305-7-104. Filing and Service of Notices, Orders and Other Papers.

(1)(a) Filing and service of all papers shall be made by email except as otherwise provided in this R305-7-104 and in R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313.

(b) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(c) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(d) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director; and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's last known address in the agency's file shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov.

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c)(i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)") and keeps the original on file to be provided if requested by the ALJ.

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 160 East 300 South, 5th Floor, Salt Lake City Utah 84111.

(d)(i) Except as provided in R305-7-104(5)(b), a document that is filed or served by U.S Mail or overnight delivery service shall be considered filed or served on the date it is mailed or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(5)(a) A paper, signed original of any Request for Agency Action, Notice of Agency Action or Petition to Intervene shall be filed and served as provided in R305-7-104(2) and (4).

(b) To be timely, a Request for Agency Action or a Petition to Intervene must be received by the Director and the Administrative Proceedings Records Officer as provided in:

(i) R305-7-203(5) and R305-7-205 (for a request for agency action filed and served in a permit review adjudicative proceeding);

(ii) R305-7-303(5) (for a request for agency action filed and served in a proceeding other than a permit review adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a petition to intervene filed and served in a permit review adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a petition to intervene filed and served in a proceeding other than a permit review adjudicative proceeding).

R305-7-105. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal State of Utah holiday.

(2) As provided in R305-7-102, "days" means calendar days unless otherwise specified.

(3) Computing time.

(a) If a period is in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal State of Utah holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal State of Utah holiday.

(b) If a period is in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not filed or served by email, any time for responding to the document shall be extended by three business days. This provision does not apply to a Request for Agency Action or a Petition to Intervene. See R305-7-104(5).

(3) Date of issuance.

The date of issuance of a Permit Order, a Notice of Agency Action or other order is the date the document is signed and dated.

(4) Extensions of Time.

(a) The ALJ may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-7-308.

(b) The ALJ may postpone a deadline or, as applicable, a scheduled conference, oral argument or hearing, upon motion from the parties, or upon the ALJ's own motion.

(c) Notwithstanding any other provision in this section, R305-7-108(2) governs the ALJ's authority to extend time to file a Request for Agency Action or Petition to Intervene. See also the provisions cited in R305-7-108(2).

R305-7-106. Appearances and Representation.

(1) A party may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer or other designated employee if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-7-107. Proceeding Conducted by Teleconference or Other Electronic Means.

(1) All parties shall be present in person, or through an authorized representative (see R305-7-106), at an evidentiary hearing, if applicable.

(2) A party may participate in oral argument on a dispositive motion or oral argument on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if:

(a) all other parties stipulate to participation by teleconference or other electronic means; and

(b) the ALJ approves the stipulation.

(3) A party may participate in any other hearing or conference on a dispositive motion or a hearing on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if all other parties stipulate to participation by teleconference or other electronic means.

R305-7-108. Modifying Requirements of Rules.

(1) Except as provided in R305-7-108(2), the requirements of this Rule may be modified by order of the ALJ for good cause, provided the modification is not inconsistent with applicable statutory provisions.

(2) The following requirements may not be modified:

(a) the requirements for timely filing a Request for Agency Action under R305-7-203(5) and 205 for a permit review adjudicative proceeding;

(b) the requirements for timely filing a Request for Agency Action under R305-7-303(5) for a proceeding other than a permit review adjudicative proceeding;

(c) the requirements for timely filing a Petition to Intervene under R305-7-204(2) and 205 for a permit review adjudicative proceeding; and

(d) the requirements for timely filing a Petition to Intervene under R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a proceeding other than a permit review adjudicative proceeding.

R305-7-109. Default.

(1) The provision controlling default under UAPA, Section 63G-4-209, governs default under permit review adjudicative proceedings as well as proceedings under UAPA. See Section 19-1-301.5(9)(c).

(2) A default order shall include a statement of the grounds for default and shall be filed with the Administrative Proceedings Records Officer and shall be served on all parties.

(3) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the ALJ.

R305-7-110. Limitation on Authority Under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge or require the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-7-111. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502, under the Department of Environmental Quality Code, Utah Code Ann. Title 19. It shall also not be read as a limitation on the procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

R305-7-112. Procedures Not Addressed.

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ shall, for a specific case, identify analogous procedures or other procedures that will apply. If the proceeding is conducted under the authority of Section 19-1-301, it shall be conducted formally under UAPA.

R305-7-113. Applicability of UAPA.

(1) Permit review adjudicative proceedings are exempt from UAPA except as specifically provided in Section 19-1-301.5. See Section 19-1-301.5(3).

(2) With respect to all other orders:

(a) Initial Orders and Notices of Violation issued by the Director are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(b) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA.

(3) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-7-201. Scope of Rule; Purpose of Part.

Part 2 of this Rule (R305-7-201 through 217) specifies procedures to be used in a permit review adjudicative proceeding, as authorized under Section 19-1-301.5.

R305-7-202. Notice and Comment and Exhaustion of Remedies.

(1) As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the permit review adjudicative proceeding that:

(a) the person raised during the public comment period; and

(b) was supported with sufficient information or documentation to enable the Director to fully consider the substance and significance of the issue.

(2) Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the Administrative Record in the same proceeding, or consist of state or federal statutes, regulations or rules, EPA documents of general applicability, or other generally available reference materials.

(3) The relevance of and the relevant portions of any supporting materials included with or incorporated by reference in comments shall be described with reasonable specificity.

(4) In preparing a comment response document, the Director may request the permit applicant provide information in response to comments received during the public comment period.

R305-7-203. Requests for Agency Action.

(1) Permit orders may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

(2) Any Request for Agency Action shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b), and the requirements of Section 19-1-301.5.

(3) A Request for Agency Action shall be in writing, shall be signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the request for agency action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency; and

(f) a statement of the facts and reasons forming the basis for relief or agency action.

(g) the requestor's name, address and email address, if any; and

(h) a statement demonstrating that the person filing the Request for Agency Action has met the requirements of Section 19-1-301.5(4), which requires that person to have raised the issues or arguments in the Request for Agency Action during any public comment period, and to have provided sufficient information or documentation to enable the director to fully consider the substance and significance of the issues or arguments raised.

(4) It is not sufficient under Section 63G-4-201(3) to file and serve a general statement of disagreement, a reservation of rights to serve a request for agency action, or a request to have the matter heard.

(5) To be timely, a Request for Agency Action to contest a Permit Order shall be, within 30 days of the date the Permit Order being challenged was issued:

(a) received for filing by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6; and

(c) served as provided in R305-7-104(2), (4) and (5).

(6) Failure to file a Request for Agency Action within the period specified in R305-7-104(5) waives any right to contest the permit order or to seek judicial review.

R305-7-204. Intervention.

(1) A person who seeks to intervene in a permit review adjudicative proceeding under this section shall file and serve:

(a) a petition to intervene that:

(i) meets the requirements of Section 63G-4-207(1); and

(ii) demonstrates that the person is entitled to intervention under Section 19-1-301.5(7)(c)(ii); and

(b) a timely request for agency action.

(2) To be timely, a Petition to Intervene shall be, within 30 days of the date of the Permit Order being challenged:

(a) received by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6;

(c) served on all other parties as provided in R305-7-104(4).

R305-7-205. Extensions of Time for Filing Requests for Agency Action and Petitions to Intervene.

The time for filing a Request for Agency Action or a Petition to Intervene may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Request for Agency Action or Petition to Intervene.

R305-7-206. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e). The Notice of Further Proceedings shall require any responses to the Request for Agency Action to be filed within 30 days of the date the Notice of Further Proceedings is issued.

(4) Unless otherwise ordered by the ALJ, the Director shall file and serve the Administrative Record, as provided in R305-7-209, within 40 days after service of the Notice of Further Proceedings.

(5) Any dispositive motion shall be filed within 15 days after service of the Agency Record.

(6) Any issue or argument that could be raised in a dispositive motion is not waived by failure to file such a motion, but may be raised during the briefing on the merits. See R305-7-212.

R305-7-207. Parties.

(1) The following are parties to a permit review adjudicative proceeding:

(a) the Director who issued the Permit Order being challenged in the permit review adjudicative proceeding;

(b)(i) the permittee; or

(ii) the person who applied for the permit, if the permit was denied; and

(c) a person granted intervention by the ALJ.

(2) A person who has filed a Petition to Intervene that has not been denied is not a party, but will be treated as a party for purposes of this Rule (e.g., for purposes of service, making motions and settlement) unless otherwise ordered by the ALJ.

R305-7-208. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered through a dispositive motion or during the briefing on the merits;

(c) establishing schedules for the filing of motions and briefs;

(d) considering stipulations of fact or law; and

(e) considering any other matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-208(1).

R305-7-209. Administrative Record.

(1) To the extent they relate to the issues and arguments raised in the Request for Agency Action, the Administrative Record shall consist of the following items, if they exist:

(a) the permit application, draft permit, and final permit;

(b) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the Director as part of the basis for the decision relating to the Permit Order;

(c) the notice and record of each public comment period;

(d) the notice and record of each public hearing, including oral comments made during the public hearing;

(e) written comments submitted during the public comment period;

(f) responses to comments that are designated by the Director as part of the basis for the decision relating to the Permit Order;

(g) any information that is:

(i) requested by and submitted to the Director; and

(ii) designated by the Director as part of the basis for the decision relating to the Permit Order;

(h) any additional information specified by rule;

(i) any additional documents agreed to by the parties; and

(j) information supplementing the record under Section 19-1-301.5(8)(c) or R305-7-210.

(2) If there has been no notice and comment period for a Permit Order, information that is submitted with the request for agency action shall be deemed to be part of the Administrative Record as shall information submitted in any response to the request for agency action.

(3)(a) The Director shall prepare the record by compiling it in chronological order, numbering each page and preparing an index.

(b) The Director shall, within 40 days of service of the Notice of Further Proceedings, or as otherwise ordered by the ALJ:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104; or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(4) Any challenges to the Administrative Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (3)(b).

R305-7-210. Response to Supplemental Information.

If the Administrative Record is supplemented with additional information as described in R305-7-209(1)(i) or (j), the other parties may, in response, serve and file additional information specific to the supplemental information, which shall also be part of the Administrative Record. The additional information may not raise any new matters not raised in the supplemental information.

R305-7-211. Motions.

(1) A motion shall be made in writing, and shall include the grounds upon which it is based and the relief or order sought.

(2) Any response to a motion shall be filed within 21 days of service of the motion.

(3) Any reply to a response to a motion may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 10 pages. A response may not exceed seven pages. A reply may not exceed five pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) Any determination by the ALJ that is dispositive shall be forwarded to the Executive Director in the form of a recommended decision.

(7) See also R305-7-206(6) and R305-7-212 regarding issues and arguments not raised by motion.

R305-7-212. Challenges to a Petition to Intervene or to Failure to Preserve an Issue.

(1) A challenge to a Petition to Intervene under Section 19-1-301.5(7) or to a party's failure to preserve an issue under Section 19-1-301.5(4) and (6)(c) may be made by motion or may be made in the parties' briefs on the merits.

(2) If the argument(s) that forms the basis of a challenge under paragraph (1) requires a substantial evaluation of the arguments in support of or in opposition to the issues that form the basis of the request for agency action, or of its defense, a party is encouraged to raise the matter in the brief on the merits.

(3) The ALJ may defer ruling on a motion under paragraph (1) until the ALJ makes a decision on the merits of the case if the ALJ finds that the argument(s) that forms the basis of a challenge under paragraph (1) is likely to require a substantial evaluation of the arguments in support of or in opposition to the issues that form the basis of the request for agency action, or of its defense.

R305-7-213. Procedures for Determination on the Merits.

(1) Briefs on the merits shall be filed according to a schedule and with page limits established by the ALJ. In the absence of an order otherwise specifying deadlines:

(a) The Petitioner shall file and serve an Opening Brief of no more than 30 pages within 30 days after the Director serves the record or, if a dispositive motion is filed, within 30 days of the ALJ's determination on, or deferral of, the motion; and

(b) A responsive brief of no more than 30 pages shall be filed and served within 30 days after the Petitioner's brief is served.

(c) A reply brief of no more than 15 pages may be filed and served within 15 days after the responsive brief is served.

(d) If a reply brief is filed, a surreply brief of no more than five pages may be filed and served within five business days after the reply brief is served.

(2) A reply or a surreply brief may not raise any issue that was not raised in the responsive brief or the reply, respectively.

(3) The ALJ shall provide an opportunity for oral argument. Oral argument shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter. If the agency does not elect to use a court reporter, any participant may request that the agency use a court reporter for the oral argument, which request shall be granted by the ALJ provided the requesting person agrees to bear the cost associated with the request. Any such request shall be submitted to the ALJ at least 10 business days before the scheduled oral argument.

(4) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed five pages, and shall be submitted within five business days of the service of the recommended decision.

R305-7-214. Review and Determinations.

The procedures and standards for resolving a permit review challenge are specified in Section 19-1-301.5; see in particular paragraphs (8) through (13).

R305-7-215. Interlocutory Orders.

(1) Interlocutory review (review by the Executive Director before a final recommendation made by the ALJ) is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R307-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-216. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-217. Stays.

The procedure and standard for obtaining a stay is specified in Section 19-1-301.5(15).

R305-7-301. Scope of Rule; Purpose of Part.

Part 3 of this Rule (R305-7-301 through 320) specifies procedures to be used in adjudicative proceedings that are not permit review adjudicative proceedings, as authorized by Section 19-1-301. For the most part, proceedings under Part 3 of this Rule will be enforcement proceedings and proceedings to terminate permits.

R305-7-302. Designation of Proceedings as Formal or Informal.

(1) All proceedings to contest an order that is not a Permit Order, including proceedings to challenge a Notice of Violation or compliance order, shall be conducted as formal proceedings except as specifically provided in Part 6 of this Rule.

(2) The ALJ in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. A decision to use informal procedures must be approved by the Executive Director.

R305-7-303. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.

(1) A Notice of Violation or an Initial Order may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

(2) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(3) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the request for agency action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(4) A Request for Agency Action shall include the requestor's name, address and email address, if any.

(5) To be timely, a Request for Agency Action to contest an Initial Order or a Notice of Violation shall be received for filing by the Director and the Administrative Proceedings Records Officer as specified in R305-7-104(2), (4) and (5) within 30 days of the issuance of the Initial Order or a Notice of Violation. This time may not be extended by stipulation.

(6) If a Request for Agency Action is made by a person other than the recipient of an Initial Order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-7-304. See R305-7-110, however (limitations on the ability of third persons to challenge enforcement proceedings).

(7)(a) It is not sufficient under Section 63G-4-201(3)(a) or this rule to file a general statement of disagreement, a reservation of rights to file a request for agency action, or a request to have the matter heard.

(b) If a person files a document challenging a notice of violation or an order under this Part 3 that does not meet the requirements of this rule, a party may file a dispositive motion addressing that inadequacy. The notice of violation or order will be final if the Executive Director approves or approves with modifications the ALJ's recommended order of dismissal.

(8) Failure to file a Request for Agency Action within the period specified in R305-7-104(5) waives any right to contest the Initial Order or to seek judicial review.

R305-7-304. Intervention.

Proceedings that are not permit review adjudicative proceedings will not ordinarily be subject to intervention. See R305-7-110 regarding intervention in enforcement proceedings. In the event intervention is appropriate under the specific facts of the case, the procedures for intervention specified in Part 2, including the deadlines for filing intervention specified in R305-7-204(2), shall govern. This time may not be extended by stipulation. The status and treatment of prospective intervenors in R305-7-207(2), shall also govern.

R305-7-305. Parties.

The following persons are parties to an adjudicative proceeding to resolve a challenge to an Initial Order or Notice of Violation:

(1) the person to whom the Initial Order or Notice of Violation was directed;

(2) the Director who issued an Initial Order or Notice of Violation; and

(3) any person to whom the ALJ has granted intervention under R305-7-304.

R305-7-306. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

R305-7-307. Procedures for Informal Proceedings.

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203 and, except as provided in R305-7-307(4), this Rule.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be

permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The ALJ may issue a subpoena or other order to compel the production of necessary evidence.

(4) The procedures specified in R305-7-310, 313, 314 and 315 do not apply to informal procedures.

R305-7-308. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered at a dispositive motion hearing or an evidentiary hearing;

(c) establishing schedules for disclosures, exchange of witness lists, and the filing of motions, testimony and pre-hearing memoranda;

(d) determining the status of the litigation;

(d) considering stipulations of fact or law; and

(e) considering any other pre-hearing matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-308(1).

R305-7-309. Agency Record.

(1) The final agency record shall consist of an Initial Record and an Adjudicative Record.

(2)(a) The Initial Record shall be prepared by the Director and shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A paper and an electronic copy of the Initial Record shall be filed with the ALJ. An electronic copy of the Initial Record shall be filed and served as provided in R305-7-104(3). Electronic records shall meet the requirements for electronic filing and service in R305-7-104(3).

(3) The Initial Record document index shall include, to the extent they exist and are relevant to the issues raised in the Request for Agency Action, any documentation designated by the Director as part of the basis for issuing the Notice of Violation or Initial Order.

(4) Documents other than those specified in R305-7-309(3) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(5) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Director may propose a more limited Initial Record. If a matter involves a multi-volume document, for example, the Director may propose to exclude the parts of the permit that are unrelated, e.g., emergency response requirements if the dispute is about waste sampling.

(6) Results of analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 days before the date the Director's preliminary witness lists are due.

(7) Procedure for preparing the Initial Record.

(a) Unless the ALJ directs otherwise, the Director shall compile a draft index of documents in the Initial Record, provide the draft index to the other parties. The Director shall allow time for the other parties to comment on the draft index.

(b) After consideration of the comments, the Director shall prepare the Initial Record by compiling it in chronological order, numbering each page and preparing an index. The Director shall:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104(3); or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(8) Any challenges to the Initial Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (7)(b).

(9) The Adjudicatory Record consists of all documents filed or issued in the proceeding beginning with the Request for Agency Action.

R305-7-310. Disclosures and Discovery.

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 2, as modified by Section 19-1-306 of the Utah Environmental Quality Code.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ in a formal proceeding. The ALJ may order formal discovery when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less burdensome;

(c) the formal discovery proposed is not unduly burdensome;

(d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;

(e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment; and

(f) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-7-310, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-7-313(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

R305-7-311. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ. Each administrative subpoena form shall have the following statement prominently displayed on the form: This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Rule 45 of the Utah Rules of Civil Procedure will be used to determine whether a subpoena is appropriate. File any objection with (requestor to insert title and address of ALJ). See also Utah Admin. Code R305-7-311.

(2) Service of the subpoena shall be made by the party requesting it in a manner consistent with Rule 45(b) of the Utah Rules of Civil Procedure.

(3) A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-7-312. Motions.

(1) Motions may be made in writing at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of motions that are not made orally shall be filed and served in accordance with R305-7-104.

(2) A response to a motion, if any, shall be filed within 21 days of service of the motion.

(3) A reply, if any, may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 25 pages. A response may not exceed 15 pages. A reply may not exceed 10 pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Judgment on the Pleadings, a Motion to Dismiss or a Motion for Summary Judgment. Parties are encouraged to file dispositive motions no later than 45 days prior to the scheduled hearing.

R305-7-313. Pre-hearing Briefs and other Pre-hearing Submissions.

(1) At least 30 days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 14 days before a scheduled hearing, the parties shall jointly file any stipulation regarding admission of exhibits and shall file copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-7-104(3), shall be filed with the ALJ and the Administrative Proceedings Records Officer, and served on all other parties. Electronic and paper copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ, each party may, but is not required to file, at least 14 days before a scheduled hearing:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-7-309(6).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-7-314. Hearings.

(1) The ALJ shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ shall also establish the order of presentation at the hearing.

(2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.

(b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ. Unless otherwise ordered by the ALJ, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ at least 10 business days before the scheduled hearing.

(3) Evidence.

(a) Every party to an adjudicative proceeding has the right to introduce evidence, subject to Section 63G-4-206 and the Utah Rules of Evidence, to the extent those rules are not

inconsistent with Section 63G-4-206 or this Rule. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ may admit any reliable evidence possessing probative value that would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ may admit hearsay evidence. however, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under Section 63G-4-206 and, to the extent it is not inconsistent with that section, the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(b) Except as provided in R305-7-314(3)(d), all witnesses who have provided pre-filed testimony shall be present at the hearing unless:

(i) otherwise agreed to by the parties; and

(ii) ordered by the ALJ.

(c) A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(d) Except as otherwise agreed to by the parties and ordered by the ALJ, the pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in Utah Code Ann. Subsections 63G-4-206(1)(c) and 63G-4-208(3).

(e) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter or the ALJ. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-7-315. Post-hearing Findings and Conclusions.

Unless otherwise ordered by the ALJ, not later than 14 days after a hearing, each party may, but is not required to submit proposed findings of fact, indentifying with specificity supporting evidence in the record, and proposed conclusions of law.

R305-7-316. Executive Director's Decision on the Merits.

(1) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed five pages, and shall be submitted within five business days of the service of the recommended decision.

(2) The Executive Director shall issue an order that meets the requirements of Section 63G-4-208.

R305-7-317. Interlocutory Orders.

(1) Interlocutory review is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R305-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-318. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ.

(b) An ALJ shall grant a stay if the party seeking the stay demonstrates the following:

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

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

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

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

(2) The standards specified in R305-7-318(1)(b) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Executive Director shall file a motion with the Executive Director.

(b) The standards specified in R305-7-318(1)(b) shall apply to any such request.

R305-7-319. Effectiveness and Finality of Initial Orders and Notices of Violation.

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation within the period provided in R305-7-303(5) waives any right of administrative contest, reconsideration, review or judicial appeal.

R305-7-320. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-401. Purpose of Part.

Part 4 of this Rule (R305-7-401 through 403) governs proceedings initiated by the agency with a Notice of Agency Action.

R305-7-402. Notices of Agency Action to Impose a Penalty.

Before issuing a Notice of Agency Action assessing penalties, the Director shall provide at least 30 days' notice of the

proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

R305-7-403. Procedures following a Notice of Agency Action.

If the recipient of a Notice of Agency Action does not file a written response within 30 days of the date the Notice of Agency Action is issued, the Director may issue a final order under Section 63G-4-209(1)(c) and R305-7-109. If the recipient does file a written response, an ALJ will conduct a formal proceeding on the matter using, as appropriate, the procedures specified in UAPA and Parts 1, 2 (for Permit Orders), 3 (for all other orders) and 6 of this Rule.

R305-7-501. Purpose of Part.

Part 5 of this Rule (R305-7-501 through 503) governs requests for declaratory and emergency actions.

R305-7-502. Declaratory Orders.

(1) Any Request for a Declaratory Order shall be addressed first to the Director specified in Part 6 of this Rule.

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;

(e) Set out a proposed order;

(f) As appropriate, address with specificity each of the circumstances described in R305-7-502(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):

(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;

(b) Circumstances in which the person requesting the declaratory order does not have standing;

(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;

(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;

(e) Circumstances that raise questions that are clear and do not warrant an order;

(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;

(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;

(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and

(j) Circumstances involving use of the agency's emergency authority.

(5) If no declaratory order or order setting the matter for hearing is issued within 60 days of the Request, the Request shall be deemed denied.

(6) An Initial Order of the Director on a Request for Declaratory Action may be challenged by filing a request for agency action under this Rule.

R305-7-503. Emergency Actions.

Emergency orders may be issued as provided in Section 63G-4-502. See R305-7-111.

R305-7-601. Purpose of Part.

(1) Part 6 of this Rule (R305-7-601 through 623) provides definitions and other provisions that will govern the way the procedures specified in Parts 2 through 5 of this Rule will apply to adjudicative procedures brought under specific statutes.

(2) For all statutes, Parts 1, 2 and 6 of this Rule apply to a proceeding to challenge a Permit Order.

(3) For all statutes, Parts 1, 3 and 6 of this Rule apply to a proceeding to challenge a Notice of Violation or other Initial Order.

R305-7-602. Addresses for Filing.

(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:

Executive Director
Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Director
Department of Environmental Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(2) Documents submitted to the Director of the Division of Air Quality shall be sent to:

Director, Division of Air Quality
P.O. Box 144820
Salt Lake City, Utah 84114-4820

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Air Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(3) Documents submitted to the Director of the Division of Drinking Water shall be sent to:

Director, Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830

Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Drinking Water
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097
(4) Documents submitted to the Director of the Division of Radiation Control shall be sent to:
Director, Division of Radiation Control
P.O. Box 144850
Salt Lake City, Utah 84114-4850
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Radiation Control
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097
(5) Documents submitted to the Director of the Division of Solid and Hazardous Waste shall be sent to:
Director, Division of Solid and Hazardous Waste
P.O. Box 144880
Salt Lake City, Utah 84114-4880
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Solid and Hazardous Waste
195 North 1950 West, 2nd Floor
Salt Lake City, Utah 84116-3097
(6) Documents submitted to the Director of the Division of Environmental Response and Remediation shall be sent to:
Director, Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, Utah 84114-4840
Alternatively, these documents may be delivered by courier or hand delivery to:
Director, Division of Environmental Response and Remediation
195 North 1950 West, 1st Floor
Salt Lake City, Utah 84116-3097
(7) Documents submitted to the Director of the Division of Water Quality shall be sent to:
Director, Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870
Alternatively, these documents may be delivered by courier or hand delivery to:
Director
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

R305-7-603. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but not Including Title 19, Chapter 1, Part 4.

(1) Scope. This subsection R305-7-603 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

"Director" shall refer to the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-7-604. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) This subsection R305-7-604 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) "Director" means the Director of the Division of Air Quality.

R305-7-605. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-7-605 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-7-602(1).

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-7-606. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) This subsection R305-7-606 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

"Director" means the Director of the Division of Air Quality for Requests relating to air pollution control equipment, or the Director of the Division of Water Quality for requests relating to water pollution control equipment.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) This subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

R305-7-608. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) This subsection R305-7-608 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-3-109.

R305-7-609. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not Including Section 19-4-109(1).

(1) This subsection R305-7-609 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Director" means the Director of the Division of Drinking Water.

R305-7-610. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) This subsection R305-7-610 applies to all matters governed by Section 19-4-109(1) of the Safe Drinking Water Act.

(2) Definitions.

"Director" means the Director of the Drinking Water Division.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-4-109(1).

R305-7-611. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) This subsection R305-7-611 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

"Director" means the Director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the Director of the Division of Radiation Control.

R305-7-612. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) This subsection R305-7-612 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Director" means the Director of the Solid and Hazardous Waste Division.

R305-7-613. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) This subsection R305-7-613 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Director" means the Executive Director.

R305-7-614. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not Including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-614 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

R305-7-615. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-615 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

R305-7-616. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) This subsection R305-7-616 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-617. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) This subsection R305-7-617 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

R305-7-618. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) This subsection R305-7-618 applies to all matters over which the Director has authority under the Illegal Drug

Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

R305-7-619. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) This subsection R305-7-619 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

R305-7-620. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-7-620 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Director" means the Director of the Division of Solid and Hazardous Waste.

R305-7-621. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) This subsection R305-7-621 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director or a person appointed by the Executive Director.

(3) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-7-502.

R305-7-622. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) This subsection R305-7-622 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) A request to approve a proposed termination or modification of an environmental institutional control adopted under this act shall be considered a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

R305-7-623. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) This subsection R305-7-623 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) A request to approve a proposed agreement, modification of an agreement, or termination of an agreement shall be considered to be a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

KEY: administrative procedures, adjudicative procedures, hearings
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5, 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503

Environmental Quality, Air Quality
R307-207
Residential Fireplaces and Solid Fuel Burning Devices

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36607
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes in this rule are required in order for DAQ to regulate residential coal burning.

SUMMARY OF THE RULE OR CHANGE: A definition is added for "solid fuel burning device," and the rule is also changed to apply in all areas except PM10 and PM2.5 nonattainment and maintenance areas.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101 and Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Because this change expands the visible emission standards for solid fuel burning devices, there are no anticipated costs or savings to the state budget.

♦ LOCAL GOVERNMENTS: Because this change expands the visible emission standards for solid fuel burning devices, there are no anticipated costs or savings to local governments.

♦ SMALL BUSINESSES: Because this change expands the visible emission standards for solid fuel burning devices, there are no anticipated costs for savings to local governments.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this change expands the visible emission standards

for solid fuel burning devices, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this change expands the applicability of the visible emission standards already established in the rule, there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this change expands the applicability of the visible emission standards already established in the rule, there is no anticipated fiscal impact on businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/12/2012 09:00 AM, DEQ Bldg, 195 N 1950 W, Room No. 4100, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-207. [~~Emission Standards:~~]Residential Fireplaces and [~~Stoves~~]Solid Fuel Burning Devices.
R307-207-1. Purpose and Definition.

R307-20[~~+~~]7 establishes emission standards for residential fireplaces and solid fuel burning devices.[~~all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.~~]

"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, including, but not limited to, wood stoves, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-207-2. Applicability.

(1) R307-207 applies to residential fireplaces and solid fuel burning devices [~~statewide~~]in all areas of the state, except for PM10 and PM2.5 nonattainment and maintenance areas. R307-302 applies to PM10 and PM2.5 nonattainment or maintenance areas. [~~except for the following areas: all regions of Utah County north of the southernmost border of Payson City and east of State Route 68, all of Salt Lake County, all of Davis County, and in all regions of Weber County west of the Wasatch Mountain Range.~~]

KEY: [~~woodburning,~~]fireplaces,[~~ stoves, PM10,~~] residential, solid fuel burning
Date of Enactment or Last Substantive Amendment: [~~September 2, 2005~~]2012
Notice of Continuation: March 4, 2010
Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Air Quality
R307-302
Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36611
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2006, EPA tightened the PM2.5 standard from 65 to 35 micrograms per cubic meter. Currently, seven Utah counties do not meet this standard. Because solid fuel burning devices contribute to PM2.5, this rule is being amended as part of the required PM2.5 State Implementation Plan (SIP).

SUMMARY OF THE RULE OR CHANGE: A definition for "solid fuel burning device" is added. The applicability has been redefined to include the entire PM10 and PM2.5 nonattainment areas using common geographical landmarks. Section R307-302-5 now requires sole sources of residential heating using solid fuel burning devices to register with the director by 06/01/2013 in order to be exempt from the rule. The red-alert cut point for PM2.5 is reduced from 35 to 25 micrograms per cubic meter, and a contingency plan cut point of 15 micrograms per cubic meter has been added for PM2.5. A new section, R307-302-6, is added to prohibit the sale, supply, installation or transfer of a wood burning stove that is not EPA phase 2 certified.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101 and Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional administrative costs to register existing outdoor wood boilers

with DAQ; however, any costs to the state budget are anticipated to be minimal.
♦ LOCAL GOVERNMENTS: Because there are no requirements for local government in this rule, there are no anticipated costs or savings.
♦ SMALL BUSINESSES: Small businesses will be affected as by 09/01/2013 they will no longer be able to sell, supply, or install wood burning stoves that are not EPA Phase 2 certified. However, they will have time to sell off any stoves they may currently have in inventory.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be little to no cost to persons other than small businesses, businesses, or local government entities as most wood stoves manufactured are EPA phase 2 certified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Businesses will be minimally affected as by 09/01/2013 they will no longer be able to sell, supply, or install wood burning stoves that are not EPA Phase 2 certified. However, they will have time to sell off any stoves they may currently have in inventory.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will be minimally affected as by 09/01/2013 they will no longer be able to sell, supply, or install wood burning stoves that are not EPA Phase 2 certified. However, they will have time to sell off any stoves they may currently have in inventory.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/12/2012 09:00 AM, DEQ Bldg, 195 N 1950 W, Room No. 4100, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-302. [~~Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves~~]Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties.
R307-302-1. Purpose and Definitions.
(1) R307-302 establishes emission standards for residential fireplaces and solid fuel burning devices.
(2) The following additional definitions apply[~~ies~~] to R307-302:
"Sole [~~S~~]source of [~~H~~]heat" means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.
"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, including, but not limited to, wood stoves, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-302-2. Applicability.
(1) R307-302-3 and R307-302-6 shall apply in all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199[~~Utah County north of the southernmost border of Payson City and east of State Route 68, all of Salt Lake County, all of Davis County, and in all regions of Weber County west of the Wasatch Mountain Range~~].
(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.
(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.
[~~(3) R307-302-5 shall apply in both areas.~~
]
R307-302-3. No-Burn Periods for Fine Particulate.
(1) By June 1, 2013, [~~S~~]sole sources of residential heating using solid fuel burning devices must be registered with the director in order to be exempt[~~:~~
~~(a) Previously registered sole source residential solid fuel burning devices in areas described in (i),(ii),and(iii) below must continue to be registered with the executive secretary or local health district office in order to be exempt~~] during mandatory no-burn periods. [~~as detailed below.~~]No new registrations will be accepted in these areas after June 1, 2013.
[~~(i) Areas of Utah County north of the southernmost border of Payson City and east of State Route 68,~~
~~(ii) all of Salt Lake County, and~~
~~(iii) areas in Davis County that are south of the southernmost border of Kaysville.~~
~~(b) By November 1, 2006, all sole source residential solid fuels burning devices in Weber County west of the Wasatch Mountain Range and areas north of the southernmost border of Kaysville must be registered with the executive secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below.~~

] (2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah [~~C~~]counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the [~~executive secretary~~]director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents of the affected areas shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the [~~executive secretary~~]director[~~ or the local health district office~~], or those having no visible emissions.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the [~~s~~]State [~~i~~]Implementation [~~p~~]Plan has been implemented, [~~the following actions will be implemented immediately:~~

~~(a) T~~]the trigger level for no-burn periods as specified in R307-302-3(2)[~~-above~~] will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.[~~; and~~

~~(b) In the regions of Utah County north of the southernmost border of Payson City and east of State Route 68, Salt Lake County, Davis County, and all regions of Weber County west of the Wasatch Mountain Range, it shall be unlawful to sell or install for use as a solid fuel burning device any used solid fuel burning device that is not approved by the Environmental Protection Agency.~~]

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties[~~Salt Lake, Davis, Weber, or Utah Counties~~] are forecasted to reach or exceed [~~the~~]25 micrograms per cubic meter[~~PM2.5 NAAQS~~], the [~~executive secretary~~]director will issue a public announcement to provide broad notification that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those counties identified by the [~~executive secretary~~]director. Residents within the geographical boundaries described in R307-302-2(1)[~~of Salt Lake County, Davis County, or the affected areas of Utah and Weber Counties~~] shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and registered with the [~~executive secretary~~]director[~~ or the local health district office~~], or those having no visible emissions.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan described in Chapter 9 of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the [~~executive secretary~~]director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1)[~~-above~~], the [~~executive secretary~~]director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) [~~a~~]A national weather service forecasted clearing index value of 250 or less;

(b) [~~f~~]Forecasted wind speeds of three miles per hour or less;

(c) [~~p~~]Passage of a vigorous cold front through the Wasatch Front; or

(d) [~~a~~]Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2)[~~-above~~], residents of Provo City shall not use residential solid fuel burning devices or fireplaces except those that are the sole source of heat for the entire residence and are registered with the [~~executive secretary~~]director or the local health district office, or those having no visible emissions.

R307-302-5. Opacity for Residential Heating.

Except during no-burn periods as required by R307-302-3 and 4, visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) An initial fifteen minute start-up period, and

(2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

R307-302-6. Prohibition.

(1) Beginning September 1, 2013, no person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA Phase 2 certified.

(2) Ownership of a non EPA Phase 2 certified stove within a residential dwelling installed prior to the rule effective date may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, [~~woodburning, ~~]fireplaces, [~~stoves~~]residential solid fuel burning
Date of Enactment or Last Substantive Amendment: [~~August 7, 2008~~]2012
Notice of Continuation: June 2, 2010
Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Air Quality
R307-330
Generator Testing

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 36605
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2006, EPA tightened the PM2.5 standard from 65 to 35 micrograms per cubic meter. Currently, seven Utah counties do not meet this standard, and the state is required to create a PM2.5 State Implementation Plan (SIP) to bring these counties into attainment. This rule is part of that SIP.

SUMMARY OF THE RULE OR CHANGE: This rule prohibits the testing of back-up generators during red air quality alert days.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101 and Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings as this rule prohibits the testing of back-up generators during red air quality alert days.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings as this rule prohibits the testing of back-up generators during red air quality alert days.
♦ SMALL BUSINESSES: There are no anticipated costs or savings as this rule prohibits the testing of back-up generators during red air quality alert days.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings as this rule prohibits the testing of back-up generators during red air quality alert days.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Prohibiting the testing of back-up generators during red air quality alert days should not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses by prohibiting the testing of back-up generators during red air quality alert days.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-330. Generator Testing.
R307-330-1. Purpose.
The purpose of R307-330 is to prohibit the testing of back-up generators on red air quality alert days.

R307-330-2. Applicability.
R307-330 applies to all owners and operators of back-up generators located within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

R307-330-3. Exemptions.
Owners or operators required under state or federal regulations to test a back-up generator on a day which occurs during a red air quality alert are exempt from R307-330.

R307-330-4. General Provisions.
No owner or operator shall test a back-up generator on days for which the director has issued a red air quality alert for the county in which the back-up generator is located.

KEY: generator testing, air quality
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Air Quality
R307-356
Appliance Pilot Light

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 36604
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2006, EPA tightened the PM2.5 standard from 65 to 35 micrograms per cubic meter. Currently, seven Utah counties do not meet this standard. Natural gas pilot lights emit volatile organic compounds (VOCs) which are precursors to the formation of PM2.5. This new rule for the State Implementation Plan will reduce the VOCs emitted by pilot lights in natural gas appliances by prohibiting their future sale and distribution in the PM2.5 nonattainment areas.

SUMMARY OF THE RULE OR CHANGE: This rule prohibits all persons in the PM2.5 nonattainment areas from selling, distributing, offering for sale, or installing any natural gas-fired fan-type central furnaces, gas fireplaces, or gas stoves that require the use of a pilot light for ignition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101 and Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will likely be increased administrative costs to enforce this rule; however, any additional costs should be minimal.
♦ LOCAL GOVERNMENTS: There are no added requirements to local government; therefore, there are no anticipated costs or savings.
♦ SMALL BUSINESSES: There will likely be costs to small businesses, as they will no longer be able to sell or install some appliances that use a pilot light for ignition. However, cost should be minimal for two reasons: 1) they will be given until 01/01/2014 to comply with the rule, giving them time to sell of any inventory they have in stock; and 2) most appliances are being manufactured with pilotless options at prices competitive with the appliances manufactured with pilot lights.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be minimal costs to persons other than small businesses, businesses or local government entities. The prices on most pilotless appliances is competitive with appliances with pilot lights. However, for lower-end gas fireplaces there is additional cost for adding the pilotless option, but that cost is often covered by manufacturer rebates.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs should be minimal as businesses will be given sufficient time to sell off current inventories of appliances that use pilot lights. And costs to those purchasing appliances without pilot lights will also be minimal, as pilotless appliances are already commonly manufactured and sold at prices competitive with appliances with pilot lights. Any additional costs to the end user are often offset by manufacturer rebates.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact should be minimal as businesses will be given sufficient time to sell off current inventories of appliances that use pilot lights.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/01/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/12/2012 10:00 AM, DEQ Bldg, 195 N 1950 W, Room No. 4100, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-356. Appliance Pilot Light.
R307-356-1. Purpose.
The purpose of R307-356 is to reduce volatile organic compound (VOC) emissions from natural gas-fired fan-type central furnaces, gas fireplaces, and gas stoves.

R307-356-2. Applicability.
R307-356 applies to manufacturers, distributors, retailers, and installers of residential, institutional, and commercial natural gas-fired fan-type central furnaces, fireplaces, stoves, and cooktops, and applies in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

R307-356-3. Exemptions.
The requirements of R307-356 shall not apply to:
(1) Units using a fuel other than natural gas;
(2) Units used in recreational vehicles; or
(3) Units manufactured and sold in Box Elder, Davis, Cache, Weber, Salt Lake, and Utah counties that are for shipment and use outside of those counties.

R307-356-4. Definitions.
The following additional definitions apply to R307-356:
"Fan type central furnace" means a self-contained space heater providing for circulation of heated air at pressures other than atmospheric through ducts more than ten inches in length that have:
(1) Rated heat input capacity of less than 175,000 BTU per hour; or
(2) For combination heating and cooling units, a cooling rate of less than 65,000 BTU per hour.
"Rated heat input capacity" means the gross heat input capacity specified on the nameplate of either the unit or the burner.
"Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.

R307-356-4. General Provisions.
After January 1, 2014, no person shall manufacture for sale, distribute, sell, offer for sale, or install any natural gas-fired

fan-type central furnaces, gas fireplaces, or gas stoves that require the use of a pilot light for ignition.

KEY: pilot light, furnaces, fireplaces, stoves
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Drinking Water
R309-515-6
Ground Water - Wells

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36562
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are inconsistencies between the engineering rule in Subsection R309-515-6(4) and the source protection rule in Subsection R309-600-13(3) regarding sewer lines in drinking water source protection zones. Further, the source protection rule used language about "at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum season ground-water table or perched water table." The "5 feet of suitable soil" requirement was problematic because of lack of definition and no practicable means to determine if it existed. This requirement has been replaced with protected or unprotected aquifer status. The technical requirements for upgrading sewer lines in zones one and two have been updated and clarified.

SUMMARY OF THE RULE OR CHANGE: Specifications for high density polyethylene (HDPE), polyvinyl chloride pipe (PVC), and ductile iron pipe for upgrading sewer lines in source protection zones one and two have been updated and clarified. Provisions for leakage tests and video inspection of sewer lines have been added. A provision to install cutoff walls in sewer trenches has been added to prevent sewer line leakage from migrating down sewer lines into source protection zones.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There should be no significant cost or savings from this rule change to the state budget. The amount of time state staff spends reviewing and approving projects with sewer lines in source protection zones one and two will not increase.
♦ LOCAL GOVERNMENTS: There should be no significant cost or savings from this rule change to local government. This rule change should make it easier for water systems, often owned by local governments, to comply with sewer line upgrades in source protection zones one and two.
♦ SMALL BUSINESSES: There should be no significant cost or savings from this rule change to small businesses because the rule is not applicable to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no significant cost or savings from this rule change to persons other than small businesses, businesses. or local government entities because the rule is not applicable to them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no significant cost or savings to public drinking water systems from this rule change because systems routinely leakage test and video inspect sewer lines when installed. The cost to install cutoff walls in sewer trenches is minimal, probably less than $500. Water systems may have to be more selective in the location of new drinking water wells.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change makes it easier for water systems to comply with the requirements for upgrading sewer lines in drinking water source protection zones. It clarifies what is required and makes it easier to implement.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
♦ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.
R309-515. Facility Design and Operation: Source Development.
R309-515-6. Ground Water - Wells.
(1) Required Treatment.

If properly developed, water from wells may be suitable for culinary use without treatment. A determination as to whether treatment may be required can only be made after the source has been developed and evaluated.

(2) Standby Power.

Water suppliers, particularly community water suppliers, should assess the capability of their system in the event of a power outage. If gravity fed spring sources are not available, one or more of the system's well sources should be equipped for operation during power outages. In this event:

(a) To ensure continuous service when the primary power has been interrupted, a power supply should be provided through connection to at least two independent public power sources, or portable or in-place auxiliary power available as an alternative; and

(b) When automatic pre-lubrication of pump bearings is necessary, and an auxiliary power supply is provided, the pre-lubrication line should be provided with a valved by-pass around the automatic control, or the automatic control shall be wired to the emergency power source.

(3) The Utah Division of Water Rights.

The Utah Division of Water Rights (State Engineer's Office) regulates the drilling of water wells. Before the drilling of a well commences, the well driller must receive a start card from the State Engineer's Office. For public drinking water supply wells the rules of R655-4 still apply and must be followed in addition to these rules.

(4) Source Protection.

Public drinking water systems are responsible for protecting their sources from contamination. The selection of a well location shall only be made after consideration of the requirements of R309-600. Sources shall be located in an area which will minimize threats from existing or potential sources of pollution.

[~~If certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zones at the discretion of the Executive Secretary. When sewer lines are permitted in protection zones both sewer lines and manholes shall be specially constructed as follows:~~]Generally, sewer lines should not be located within zone one and zone two of a public drinking water system's source protection zones. However, if certain precautions are taken, sewer lines may be permitted within a public drinking water system's source protection zone one and zone two. Sewer lines shall meet the conditions identified in R309-600-13(3), and shall be specially constructed throughout zone one in aquifers classified as protected, and zones one and two, if the aquifer is classified as unprotected, as follows:

[~~(a) sewer lines shall be ductile iron pipe with mechanical joints or fusion welded high density polyethylene plastic pipe (solvent welded joints shall not be accepted);~~](a) sewer lines shall be constructed to remain watertight. The lines shall be deflection tested in accordance with the Division of Water Quality Rule R317-3. The lines shall be video inspected for any defect following completion of construction and before being placed in service. The sewer pipe material shall be:

(i) high density polyethylene (HDPE) pipe with a PE3408 or PE4710 rating from the Plastic Pipe Institute and have a Dimension Ratio (DR) of 17 or lower, and all joints shall be fusion welded, or

(ii) polyvinyl chloride (PVC) pipe meeting AWWA Specification C900 or C905 and have a DR of 18 or lower. PVC pipe shall be either restrained gasketed joints or shall be fusion welded. Solvent cement joints shall not be acceptable. The PVC pipe shall be clearly identified when installed, by marking tape or other means as a sanitary sewer line, or

(iii) ductile iron pipe with ceramic epoxy lining, polyethylene encasement, restrained joints, and a minimum pressure class of 200.

(b) procedures for leakage tests shall be specified and comply with Division of Water Quality Rule R317-3 requirements.

[~~(b)~~](c) lateral to main connection shall be fusion welded, shop fabricated, or saddled with a mechanical clamping watertight device designed for the specific pipe;

[~~(c)~~](d) the sewer pipe to manhole connections shall be made using a shop fabricated sewer pipe seal ring cast into the manhole base (a mechanical joint shall be installed within 12 inches of the manhole base on each line entering the manhole, regardless of the pipe material);

[~~(d)~~](e) the sewer pipe shall be laid with no greater than 2 percent deflection at any joint;

[~~(e)~~](f) backfill shall be compacted to not less than 95 percent of maximum laboratory density as determined in accordance with ASTM Standard D-690;

[~~(f)~~](g) sewer manholes shall meet the following requirements:

[~~(i) the manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be shop fabricated in a single concrete pour.~~

~~(ii) the manholes shall be constructed of reinforced concrete.~~

~~(iii) all sewer lines and manholes shall be air pressure tested after installation~~](i) the manholes shall be constructed of reinforced concrete;

(ii) manhole base and walls, up to a point at least 12 inches above the top of the upper most sewer pipe entering the manhole, shall be fabricated in a single concrete pour without joints; and

(iii) the manholes shall be air pressure tested after installation.

(h) in unprotected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone two. In protected aquifers, an impermeable cutoff wall shall be constructed in all sewer trenches on the up-gradient edge of zone one.

(5) Outline of Well Approval Process.

(a) Well drilling shall not commence until both of the following items are submitted and receive a favorable review:

(i) a Preliminary Evaluation Report on source protection issues as required by R309-600-13, and

(ii) engineering plans and specifications governing the well drilling, prepared by a licensed well driller holding a current Utah Well Drillers Permit if previously authorized by the Executive Secretary or prepared, signed and stamped by a licensed professional engineer or professional geologist licensed to practice in Utah.

(b) Grouting Inspection During Well Construction.

(i) Authorized Individuals

(A) The following individuals are authorized to witness the well sealing procedure for a public drinking water well:

(I) An engineer or a geologist from the Division of Drinking Water,

(II) A district engineer of the Department of Environmental Quality,

(III) An authorized representative of the Division of Water Rights, or

(IV) An individual having written authorization from the Executive Secretary and meeting the below listed criteria.

(B) At the time of the well sealing an individual, who is authorized per (i)(A)(IV), shall present to the well driller a copy of the letter authorizing him or her to witness a well sealing on behalf of the Division of Drinking Water. A copy of this letter shall be appended to the witness certification letter.

(C) At least three days before the anticipated well grouting the well driller shall arrange for an authorized witness listed in (i)(A) above to witness the procedure. (See R309-515-6(6)(i)).

(ii) Obtaining Authorization

(A) To be authorized per (i)(A)(IV) above to witness a well sealing procedure, an individual must have no relationship to the driller or the well's owner and have at least five years professional experience designing wells, supervising well drilling or other equivalent experience associated with well drilling or well sealing that are acceptable to the Executive Secretary.

(B) Individuals, desiring the Executive Secretary's authorization to witness a well grouting procedure, shall provide the following information to the Executive Secretary for review over his or her signature attesting to the correctness of the information:

(I) A detailed description of the applicant's experience with well drilling projects, including number of years of experience and type of work. Three references confirming this professional experience are required.

(II) Evidence of licensure as a professional engineer or professional geologist in Utah.

(III) No relationship may exist between a person authorized to witness well sealings and a well driller that would serve as the basis for suspicion of favoritism, leniency or punitive action in the performance of this task. Examples of such relationships would be: family; former long term employment; business partnerships, either formal or informal; etc. The Executive Secretary's decision, with right of appeal to the Drinking Water Board, shall be accepted relative to what constitutes a conflict of interest or a relationship sufficient to disqualify an applicant from all or specific witness opportunities.

(IV) An acknowledgement that he/she would not be acting as an agent or employee of the State of Utah and any losses incurred while acting as a witness would not be covered by governmental immunity or Utah's insurance.

(VI) Willingness to follow established protocols and attend such training events as may be required by the Executive Secretary.

(VII) Complete with a minimum 75% passing grade, an examination on water well drilling rules, as offered by the Division of Water Rights.

(C) The Executive Secretary may rescind the authorization if an individual fails to comply with the criteria or conditions of authorization listed above.

(iii) Well Seal Certification

The individual witnessing the well sealing procedure shall provide a signed letter to the Executive Secretary within 30 days of the well sealing including the following:

(A) Certification that the well sealing procedure met all the requirements of Rule R309-515-6(6)(i);

(B) The water right under which the well was drilled and the well driller's license number;

(C) The public water system name (if applicable);

(D) The latitude and longitude of the well and method used for its determination;

(E) The well head's approximate elevation;

(F) Casing diameter(s), length(s), and material(s);

(G) The size of the annulus between the borehole and casing;

(H) A description of the sealing process including the sealing material used, its volume, density, method of placement, and depth from surface; and

(I) The names and company affiliations of other individuals observing the sealing procedure including, but not limited to the well driller, the well owner, and/or a consultant.

(c) After completion of the well drilling the following information shall be submitted and receive a favorable review before water from the well can be introduced into a public water system:

(i) a copy of the "Report of Well Driller" as required by the State Engineer's Office which is complete in all aspects and has been stamped as received by the same;

(ii) a copy of the letter from the authorized individual described in R309-515-6(5)(b) above, indicating inspection and confirmation that the well was grouted in accordance with the well drilling specifications and the requirements of this rule;

(iii) a copy of the pump test including the yield vs. drawdown test as described in R309-515-6(10)(b) along with comments / interpretation by a licensed professional engineer or licensed professional geologist of the graphic drawdown information required by R309-515-6(b)(vi)(E);

(iv) a copy of the chemical analyses required by R309-515-4(5);

(v) documentation indicating that the water system owner has a right to divert water for domestic or municipal purposes from the well source;

(vi) a copy of complete plans and specifications prepared, signed and stamped by a licensed professional engineer covering the well housing, equipment and diversion piping necessary to introduce water from the well into the distribution system; and

(vii) a bacteriological analysis of water obtained from the well after installation of permanent equipment, disinfection and flushing.

(d) An Operation Permit shall be obtained in accordance with R309-500-9 before any water from the well is introduced into a public water system.

(6) Well Materials, Design and Construction.

(a) ANSI/NSF Standards 60 and 61 Certification.

All interior surfaces must consist of products complying with ANSI/NSF Standard 61. This requirement applies to drop pipes, well screens, coatings, adhesives, solders, fluxes, pumps, switches, electrical wire, sensors, and all other equipment or surfaces which may contact the drinking water.

All substances introduced into the well during construction or development shall be certified to comply with ANSI/NSF Standard 60. This requirement applies to drilling fluids (biocides, clay thinners, defoamers, foamers, loss circulation materials, lubricants, oxygen scavengers, viscosifiers, weighting agents) and regenerants. This requirement also applies to well grouting and sealing materials which may come in direct contact with the drinking water.

(b) Permanent Steel Casing Pipe shall:

(i) be new single steel casing pipe meeting AWWA Standard A-100, ASTM or API specifications and having a minimum weight and thickness as given in Table 1 found in R655-4-9.4 of the Utah Administrative Code (Administrative Rules for Water Well Drillers, adopted January 1, 2001, Division of Water Rights);

(ii) have additional thickness and weight if minimum thickness is not considered sufficient to assure reasonable life expectancy of the well;

(iii) be capable of withstanding forces to which it is subjected;

(iv) be equipped with a drive shoe when driven;

(v) have full circumferential welds or threaded coupling joints; and

(vi) project at least 18 inches above the anticipated final ground surface and at least 12 inches above the anticipated pump house floor level. At sites subject to flooding the top of the well casing shall terminate at least three feet above the 100 year flood level or the highest known flood elevation, whichever is higher.

(c) Non-Ferrous Casing Material.

The use of any non-ferrous material for a well casing shall receive prior approval of the Executive Secretary based on the ability of the material to perform its desired function. Thermoplastic water well casing pipe shall meet ANSI/ASTM Standard F480-76 and shall bear the logo NSF-wc indicating compliance with NSF Standard 14 for use as well casing.

(d) Disposal of Cuttings.

Cuttings and waste from well drilling operations shall not be discharged into a waterway, lake or reservoir. The rules of the Utah Division of Water Quality must be observed with respect to these discharges.

(e) Packers.

Packers, if used, shall be of material that will not impart taste, odor, toxic substances or bacterial contamination to the well water. Lead, or partial lead packers are specifically prohibited.

(f) Screens.

The use of well screens is recommended where appropriate and, if used, they shall:

(i) be constructed of material resistant to damage by chemical action of groundwater or cleaning operations;

(ii) have size of openings based on sieve analysis of formations or gravel pack materials;

(iii) have sufficient diameter to provide adequate specific capacity and low aperture entrance velocities;

(iv) be installed so that the operating water level remains above the screen under all pumping conditions; and

(v) be provided with a bottom plate or washdown bottom fitting of the same material as the screen.

(g) Plumbness and Alignment Requirements.

Every well shall be tested for plumbness and vertical alignment in accordance with AWWA Standard A100. Plans and specifications submitted for review shall:

(i) have the test method and allowable tolerances clearly stated in the specifications. and

(ii) clearly indicate any options the design engineer may have if the well fails to meet the requirements. Generally wells may be accepted if the misalignment does not interfere with the installation or operation of the pump or uniform placement of grout.

(h) Casing Perforations.

The placement of perforations in the well casing shall:

(i) be so located to permit as far as practical the uniform collection of water around the circumference of the well casing, and

(ii) be of dimensions and size to restrain the water bearing soils from entrance into the well.

(i) Grouting Techniques and Requirements.

For all public drinking water wells the annulus between the outermost well casing and the borehole wall shall be grouted to a depth of at least 100 feet below the ground surface unless an "exception" is issued by the Executive Secretary (see R309-500-4(1)). If more than one casing is used, including a conductor casing, the annulus between the outermost casing and the next inner casing shall be sealed with grout (meeting the grouting materials requirements of R309-515-6(i)(ii) herein) or with a water tight steel ring having a thickness equal to that of the permanent well casing and continuously welded to both casings.

If a well is to be considered in a protected aquifer the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective layer, as described in R309-600-6(1)(x) (see also R309-515-6(6)(i)(iii)(D) below).

The following applies to all drinking water wells:

(i) Consideration During Well Construction.

(A) Sufficient annular opening shall be provided to permit a minimum of two inches of grout between the outermost permanent casing and the drilled hole, taking into consideration any joint couplings.

(B) Additional information is available from the Division for recommended construction methods for grout placement.

(C) The casing(s) must be provided with sufficient guides welded to the casing to permit unobstructed flow and uniform thickness of grout.

(ii) Grouting Materials.

(A) Neat Cement Grout.

Cement, conforming to ASTM Standard C150, and water, with no more than six gallons of water per sack of cement, shall be used for two inch openings. Additives may be used to increase fluidity subject to approval by the Executive Secretary.

(B) Concrete Grout.

Equal parts of cement conforming to ASTM Standard C150, and sand, with not more than six gallons of water per sack of cement may be used for openings larger than two inches.

(C) Clay Seal.

Where an annular opening greater than six inches is available a seal of swelling bentonite meeting the requirements of R655-4-9.4.2 may be used when approved by the Executive Secretary.

(iii) Application.

(A) When the annular opening is less than four inches, grout shall be installed under pressure, by means of a positive displacement grout pump, from the bottom of the annular opening to be filled.

(B) When the annular opening is four or more inches and 100 feet or less in depth, and concrete grout is used, it may be placed by gravity through a grout pipe installed to the bottom of the annular opening in one continuous operation until the annular opening is filled.

(C) All temporary construction casings shall be removed prior to or during the well sealing operation. Any exceptions shall be approved by the State Engineer and evidence of approval submitted to the Executive Secretary (see R655-4-9.4.3.1 for conditions surrounding leaving temporary surface casing in place. A temporary construction casing is a casing not intended to be part of the permanent well.

(D) When a "well in a protected aquifer" classification is desired, the grout seal shall extend from the ground surface down to at least 100 feet below the surface, and through the protective clay layer (see R309-600-6(1)(x)).

(E) After cement grouting is applied, work on the well shall be discontinued until the cement or concrete grout has properly set; usually a period of 72 hours.

(j) Water Entered Into Well During Construction.

Any water entering a well during construction shall not be contaminated and should be obtained from a chlorinated municipal system. Where this is not possible the water must be dosed to give a 100 mg/l free chlorine residual. Refer also to the administrative rules of the Division of Water Rights in this regard.

(k) Gravel Pack Wells.

The following shall apply to gravel packed wells:

(i) the gravel pack material is to be of well rounded particles, 95 percent siliceous material, that are smooth and uniform, free of foreign material, properly sized, washed and then disinfected immediately prior to or during placement,

(ii) the gravel pack is placed in one uniform continuous operation,

(iii) refill pipes, when used, are Schedule 40 steel pipe incorporated within the pump foundation and terminated with screwed or welded caps at least 12 inches above the pump house floor or concrete apron,

(iv) refill pipes located in the grouted annular opening be surrounded by a minimum of 1.5 inches of grout,

(v) protection provided to prevent leakage of grout into the gravel pack or screen, and

(vi) any casings not withdrawn entirely meet requirements of R309-515-6(6)(b) or R309-515-6(6)(c).

(7) Well Development.

(a) Every well shall be developed to remove the native silts and clays, drilling mud or finer fraction of the gravel pack.

(b) Development should continue until the maximum specific capacity is obtained from the completed well.

(c) Where chemical conditioning is required, the specifications shall include provisions for the method, equipment, chemicals, testing for residual chemicals, and disposal of waste and inhibitors.

(d) Where blasting procedures may be used the specifications shall include the provisions for blasting and cleaning. Special attention shall be given to assure that the grouting and casing are not damaged by the blasting.

(8) Capping Requirements.

(a) A welded metal plate or a threaded cap is the preferred method for capping a completed well until permanent equipment is installed.

(b) At all times during the progress of work the contractor shall provide protection to prevent tampering with the well or entrance of foreign materials.

(9) Well Abandonment.

(a) Test wells and groundwater sources which are to be permanently abandoned shall be sealed by such methods as necessary to restore the controlling geological conditions which existed prior to construction or as directed by the Utah Division of Water Rights.

(b) Wells to be abandoned shall be sealed to prevent undesirable exchange of water from one aquifer to another. Preference shall be given to using a neat cement grout. Where fill materials are used, which are other than cement grout or concrete, they shall be disinfected and free of foreign materials. When an abandoned will is filled with cement- grout or concrete, these materials shall be applied to the well- hole through a pipe, tremie, or bailer.

(10) Well Assessment.

(a) Step Drawdown Test.

Preliminary to the constant-rate test required below, it is recommended that a step-drawdown test (uniform increases in pumping rates over uniform time intervals with single drawdown measurements taken at the end of the intervals) be conducted to determine the maximum pumping rate for the desired intake setting.

(b) Constant-Rate Test.

A "constant-rate" yield and drawdown test shall:

(i) be performed on every production well after construction or subsequent treatment and prior to placement of the permanent pump,

(ii) have the test methods clearly indicated in the specifications,

(iii) have a test pump with sufficient capacity that when pumped against the maximum anticipated drawdown, it will be capable of pumping in excess of the desired design discharge rate,

(iv) provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours when test pumped at a "constant-rate" equal to the desired design discharge rate,

(v) provide the following data:

(A) capacity vs. head characteristics for the test pump (manufacturer's pump curve),

(B) static water level (in feet to the nearest tenth, as measured from an identified datum; usually the top of casing),

(C) depth of test pump intake,

(D) time and date of starting and ending test(s),

(vi) For the "constant-rate" test provide the following at time intervals sufficient for at least ten essentially uniform intervals for each log cycle of the graphic evaluation required below:

(A) record the time since starting test (in minutes),

(B) record the actual pumping rate,

(C) record the pumping water level (in feet to the nearest tenth, as measured from the same datum used for the static water level),

(D) record the drawdown (pumping water level minus static water level in feet to the nearest tenth),

(E) provide graphic evaluation on semi-logarithmic graph paper by plotting the drawdown measurements on the arithmetic scale at locations corresponding to time since starting test on the logarithmic scale, and

(vii) Immediately after termination of the constant-rate test, and for a period of time until there are no changes in depth to water level measurements for at least six hours, record the following at time intervals similar to those used during the constant-rate pump test:

(A) time since stopping pump test (in minutes),

(B) depth to water level (in feet to the nearest tenth, as measured from the same datum used for the pumping water level).

(11) Well Disinfection.

Every new, modified, or reconditioned well including pumping equipment shall be disinfected before being placed into service for drinking water use. These shall be disinfected according to AWWA Standard C654 published by the American Water Works Association as modified to incorporate the following as a minimum standard:

(i) the well shall be disinfected with a chlorine solution of sufficient volume and strength and so applied that a concentration of at least 50 parts per million is obtained in all parts of the well and comes in contact with equipment installed in the well. This solution shall remain in the well for a period of at least eight hours, and

(ii) a satisfactory bacteriologic water sample analysis shall be obtained prior to the use of water from the well in a public water system.

(12) Well Equipping.

(a) Naturally Flowing Wells.

Naturally flowing wells shall:

(i) have the discharge controlled by valves,

(ii) be provided with permanent casing and sealed by grout,

(iii) if erosion of the confining bed adjacent to the well appears likely, special protective construction may be required by the Division.

(b) Line Shaft Pumps.

Wells equipped with line shaft pumps shall:

(i) have the casing firmly connected to the pump structure or have the casing inserted into the recess extending at least 0.5 inches into the pump base,

(ii) have the pump foundation and base designed to prevent fluids from coming into contact with joints between the pump base and the casing,

(iii) be designed such that the intake of the well pump is at least ten feet below the maximum anticipated drawdown elevation,

(iv) avoid the use of oil lubrication for pumps with intake screens set at depths less than 400 feet (see R309-105-10(7) and/or R309-515-8(2)for additional requirements of lubricants).

(c) Submersible Pumps.

Where a submersible pump is used:

(i) The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables.

(ii) The electrical cable shall be firmly attached to the riser pipe at 20 foot intervals or less.

(iv) The intake of the well pump must be at least ten feet below the maximum anticipated drawdown elevation.

(d) Pitless Well Units and Adapters.

If the excavation surrounding the well casing allowing installation of the pitless unit compromises the surface seal the competency of the surface seal shall be restored. Torch cut holes in the well casing shall be to neat lines closely following the outline of the pitless adapter and completely filled with a competent weld with burrs and fins removed prior to the installation of the pitless unit and adapter.

Pitless well units and adapters shall:

(i) not be used unless the specific application has been approved by the Executive Secretary,

(ii) be used to make a connection to a water well casing that is made below the ground. A below the ground connection shall not be submerged in water during installation,

(iii) terminate at least 18 inches above final ground elevation or three feet above the highest known flood elevation whichever is greater,

(iv) pitless adapters or pitless units to be used shall contain a label or imprint indicating compliance with the Water Systems Council Pitless Adapter Standard (PAS-97),

(v) have suitable access to the interior of the casing in order to disinfect the well,

(vi) have a suitable sanitary seal or cover at the upper terminal of the casing that will prevent the entrance of any fluids or contamination, especially at the connection point of the electrical cables,

(vii) have suitable access so that measurements of static and pumped water levels in the well can be obtained,

(viii) allow at least one check valve within the well casing,

(ix) be furnished with a cover that is lockable or otherwise protected against vandalism or sabotage,

(x) be shop-fabricated from the point of connection with the well casing to the unit cap or cover,

(xi) be of watertight construction throughout,

(xii) be constructed of materials at least equivalent to and having wall thickness compatible to the casing,

(xiii) have field connection to the lateral discharge from the pitless unit of threaded, flanged or mechanical joint connection,

(xiv) be threaded or welded to the well casing. If the connection to the casing is by field weld, the shop assembled unit must be designed specifically for field welding to the casing. The only field welding permitted on the pitless unit will be that needed to connect a pitless unit to the casing, and

(xv) have an inside diameter as great as that of the well casing, up to and including casing diameters of 12 inches, to facilitate work and repair on the well, pump, or well screen.

(e) Well Discharge Piping.

The discharge piping shall:

(i) be designed so that the friction loss will be low,

(ii) have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided,

(iii) be protected against the entrance of contamination,

(iv) be equipped with (in order of placement from the well head) a smooth nosed sampling tap, a check valve, a pressure gauge, a means of measuring flow and a shutoff valve,

(v) where a well pumps directly into a distribution system, be equipped with an air release vacuum relief valve located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least six inches above the floor and covered with a No. 14 mesh corrosion resistant screen. An exception to this requirement will be allowed provided specific proposed well head valve and piping design includes provisions for pumping to waste all trapped air before water is introduced into the distribution system,

(vi) have all exposed piping valves and appurtenances protected against physical damage and freezing,

(vii) be properly anchored to prevent movement, and

(f) Water Level Measurement.

(i) Provisions shall be made to permit periodic measurement of water levels in the completed well.

(ii) Where permanent water level measuring equipment is installed it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and installed in such a manner as to prevent entrance of foreign materials.

(g) Observation Wells.

Observation wells shall be:

(i) constructed in accordance with the requirements for permanent wells if they are to remain in service after completion of a water supply well, and

(ii) protected at the upper terminal to preclude entrance of foreign materials.

(h) Electrical Protection.

Sufficient electrical controls shall be placed on all pump motors to eliminate electrical problems due to phase shifts, surges, lightning, etc.

(13) Well House Construction.

The use of a well house is strongly recommended, particularly in installations utilizing above ground motors.

In addition to applicable provisions of R309-540, well pump houses shall conform to the following:

(a) Casing Projection Above Floor.

The permanent casing for all ground water wells shall project at least 12 inches above the pump house floor or concrete apron surface and at least 18 inches above the final ground surface. However, casings terminated in underground vaults may be permitted if the vault is provided with a drain to daylight sized to handle in excess of the well flow and surface runoff is directed away from the vault access.

(b) Floor Drain.

Where a well house is constructed the floor surface shall be at least six inches above the final ground elevation and shall be sloped to provide drainage. A "drain-to-daylight" shall be provided unless highly impractical.

(c) Earth Berm.

Sites subject to flooding shall be provided with an earth berm terminating at an elevation at least two feet above the highest known flood elevation or other suitable protection as determined by the Executive Secretary.

(d) Well Casing Termination at Flood Sites.

The top of the well casing at sites subject to flooding shall terminate at least 3 feet above the 100 year flood level or the highest known flood elevation, whichever is higher (refer to R309-515-6(6)(b)(vi)).

(e) Miscellaneous.

The well house shall be ventilated, heated and lighted in such a manner as to assure adequate protection of the equipment (refer to R309-540-5(2) (a) through (h).

(f) Fencing.

Where necessary to protect the quality of the well water the Executive Secretary may require that certain wells be fenced in a manner similar to fencing required around spring areas.

(g) Access.

An access shall be provided either through the well house roof or sidewalls in the event the pump must be pulled for replacement or servicing the well.

KEY: drinking water, source development, source maintenance
Date of Enactment or Last Substantive Amendment: [~~May 13, 2010~~]2012
Notice of Continuation: March 22, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Drinking Water
R309-600-13
New Ground-water Sources of Drinking Water

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36561
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify, simplify, and justify how sewers will be regulated within source protection zones and management areas for new wells and springs.

SUMMARY OF THE RULE OR CHANGE: In the amended rule, sewers within unprotected aquifers in zones one and two must be 50 feet from the well or spring collection area and and be constructed in accordance with Section R309-515-6. Sewers in zone one of protected aquifers must be at least 10 feet from the well and constructed in accordance with Section R309-515-6. Previously, the rule required that at least 5 feet of suitable soils be present below the sewer and above the water table or bedrock and be constructed in accordance with Section R309-515-6, or be at least 300 feet from the well or spring collection area and be constructed in accordance with Section R309-515-6. "Suitable soils" was not well defined, so emphasis has been changed to protected versus unprotected aquifers as defined in Rule R309-600.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There should be no additional cost or savings from this rule change. The amount of time state staff spends reviewing and approving projects will not be affected.
♦ LOCAL GOVERNMENTS: There should be no additional cost or savings from this rule change. The rule change for local governments, which often own water systems, will make it easier to understand what is required with regard to sewer systems, when developing new sources of drinking water.
♦ SMALL BUSINESSES: There should be no additional cost or savings from this rule change. The rule change for small businesses, which are often the owners of water systems, will make it easier to understand what is required with regard to sewer systems, when developing new sources of drinking water.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no additional cost or savings from this rule change. The rule change for persons, who might be the owners of a water system, will make it easier to understand what is required with regard to sewer systems, when developing new sources of drinking water.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional costs--The rule change for persons, who might be the owners of a water system, will make it easier to understand what is required with regard to sewer systems, when developing new sources of drinking water.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule change clarifies, simplifies, and justifies how sewers will be handled within source protection zones and management areas, for water systems developing new sources of drinking water and there will be no additional costs involved in this rule change on affected water systems.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jim Martin by phone at 801-536-4494, by FAX at 801-536-4211, or by Internet E-mail at jhmartin@utah.gov
♦ Kate Johnson by phone at 801-536-4206, by FAX at 801-536-4211, or by Internet E-mail at katej@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.
R309-600. Source Protection: Drinking Water Source Protection For Ground-Water Sources.
R309-600-13. New Ground-water Sources of Drinking Water.

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-515-6(5)(a) or R309-515-7(4) must be submitted to DDW. The Executive Secretary will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-515. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-600-9(6), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells. The Delineation Report for Estimated DWSP Zones shall be stamped and signed by a professional geologist or professional engineer unless the Optional Two-Mile Radius Delineation Procedure is used for a new spring.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-600-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with

R309-600-9(6)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-600-6(1)(p). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with [~~this~~]these criteria. Sewer lines that comply with these criteria may be assessed as adequately controlled potential contamination sources.

[~~(a) Zone One - If the conditions specified in R309-600-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-515-6(4) and must be at least 10 feet from the wellhead.~~

~~(i) There is at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum seasonal ground-water table or perched water table. (Suitable soils contain adequate sand/silt/clay to act as an effective effluent filter within its depth for the removal of pathogenic organisms and fill the voids between coarse particles such as gravel, cobbles, and angular rock fragments); and~~

~~(ii) there is at least 5 feet of suitable soil between the bottom of the sewer line and the top of any bedrock formations or other unsuitable soils. Bedrock formations include formations that have such a low permeability that they prevent the downward passage of effluent. Bedrock formations that have open joints or solution channels, which permit such rapid flow that effluent is not renovated, are also considered unacceptable. Other unsuitable soils include those with coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable.~~

~~(b) Zones One and Two - If the conditions identified in R309-600-13(3)(a)(i and ii) above cannot be met, any sewer lines within zones one and two or a management area shall be constructed in accordance with R309-515-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.~~](a) Unprotected Aquifers -

(i) Zone one- all sewer lines and laterals shall be at least 50 feet from the wellhead or margin of the collection area, and be constructed in accordance to R309-515-6.

(ii) Zone two- all sewer lines and laterals within zone two or a management area shall be constructed in accordance with R309-515-6.

(b) Protected Aquifers - in zone one all sewer lines and laterals shall be constructed in accordance with R309-515-6, and shall be at least 10 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from the Executive Secretary that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-600-6(1)(y) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-600-13(6), and

(b) the Outline of Well Approval Process (refer to R309-515-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-600-7(1) for any new ground-water source of drinking water within one year after the date of the Executive Secretary's concurrence letter for the PER. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

KEY: drinking water, environmental health
Date of Enactment or Last Substantive Amendment: [~~October 29, 2003~~]2012
Notice of Continuation: March 17, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104(1)(a)(iv)

Governor, Energy Development (Office of)

R362-1

Qualification for the Alternative Energy Development Tax Credit

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 36548
FILED: 07/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: New legislation passed in S.B. 65 (2012 General Session) instructs the Office of Energy Development to create this rule. Please see Subsection 63M-4-503(1)(a) for explicit instruction to create this rule.

SUMMARY OF THE RULE OR CHANGE: The rule is meant to establish the viability of each applicant's alternative energy development project. The goal of adding to those fundamental requirements already outlined in the statute is to ensure that applicants do not submit applications for projects that are either premature or lack merit. The rule does not create processes or create significant impacts, fiscal or otherwise; it simply establishes criteria with respect to when companies are eligible to apply for the tax credits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-4-503(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Whereas the statute to which this rule speaks may have some unfavorable fiscal impacts to the state budget, the rule itself is expected to have, if anything, a favorable fiscal impact on the state budget. The rule is meant to keep less viable applicants from applying for tax credits, and therefore the division anticipates that the rule will protect the Office of Energy Development from frivolous applications that would otherwise tend to waste valuable staff time.
♦ LOCAL GOVERNMENTS: This rule will have no impact on local government, as it is simply a qualification standard for energy development projects being undertaken by private companies. Though one of the rule's requirements entails the acquisition of a permit which may be granted by a local government, there is no foreseeable additional burden, as any permits would be necessary regardless of this rule.
♦ SMALL BUSINESSES: Those small businesses that could potentially apply for an Alternative Energy Development Tax Credit are the only businesses that could be affected by the rule. However, the rule will not impose any costs on those businesses, as it does not compel them to go through any process that they would not already have had to undertake. As an example, while there certainly are costs associated with attaining site control, those costs must necessarily be borne in the course of project development regardless of the application of this rule. While there is a potential cost associated with third-party financial review, the rule allows for a series of options, so that undergoing financial review is not a requirement, but rather just one potential choice of an applicant.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: As indicated in earlier responses, although the statute with which this rule is associated may conceivably be shown to have cost impacts on various groups, this rule does not. It is a simple screening tool meant to limit the applicant pool, and as such it would have no cost impact to these groups.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As noted above, while there is a potential cost associated with third-party financial review, the rule allows for a series of options, so that undergoing financial review is not a requirement, but rather a potential choice of the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Division does not expect this rule to have any fiscal impact on business. The rule establishes criteria applicants must meet in order to apply for the tax credit. Although in order to meet those criteria applicants must certainly have expended some amount of capital on predevelopment expenses, the rule itself will not require any expenditure that would not have been necessary in the absence of the rule. The rule simply ensures that applicants have a viable project and are at a point in the development process that warrants an application.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ENERGY DEVELOPMENT (OFFICE OF)
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jeffrey Barrett by phone at 801-739-5191, or by Internet E-mail at jhbarrett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2012

AUTHORIZED BY: Jeffrey Barrett, Infrastructure and Incentives Manager

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R362. Governor, Energy Development.
R362-1. Qualification for the Alternative Energy Development Tax Credit.
R362-1-1. Purpose and Authority.
(1) Purpose. Pursuant to the Alternative Energy Development Tax Credit Act, this rule establishes standards an alternative energy entity shall meet to qualify for a tax credit.
(2) Authority. This rule is authorized by Subsection 63M-4-503(1)(a), Utah Code.

R362-1-2. Definitions.
(1) Terms used in this rule are defined in Section 63M-4-502.
(2) In addition:
(a) "site control" means an enforceable right to use a parcel of land for an alternative energy project; and

(b) "project development activities" means those actions described under Subsections 63M-4-502(3)(a) and 63M-4-502(3)(b).

R362-1-3. Conditions.
(1) In order to qualify for a tax credit, an alternative energy entity must meet those requirements outlined in Subsection 63M-4-503(1)(b), and must be prepared to:
(a) follow the procedures and expectations outlined in Sections 59-7-614.7, 59-10-1029, and 63M-4-504; and
(b) bear any costs associated with meeting the requirements outlined below in Subsection R362-1-4(2)(b)(ii)(A).
(2) In addition, the alternative energy entity must demonstrate the viability of its alternative energy project by submitting evidence it has secured:
(a) one or more land leases or other form of site control; and
(b) one or more of the following:
(i) permits from a local, state or federal regulatory agency, not to include conditional use permits;
(ii) financing sufficient to initiate project development activities, as may be:
(A) assessed, at the office's request, by third party financial review; or
(B) affirmed by the existence of one or more:
(I) power purchase agreements; or
(II) off-take agreements.
(iii) a position in the generation interconnection queue that has advanced beyond the Feasibility Study phase.

KEY: alternative energy development tax credit
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 63M-4-503(1)(a)

Health, Disease Control and Prevention, Environmental Services
R392-510
Utah Indoor Clean Air Act

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36620
FILED: 08/01/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2012 General Session, the statute regarding Utah Indoor Clean Air requirements was modified in H.B. 245. This bill was passed which required an amendment to the rule.

SUMMARY OF THE RULE OR CHANGE: The rule has been updated to include the requirements of the statute. The main modification was the inclusion of a restriction of the use of e-cigarettes and also the use of a heated substance containing tobacco or nicotine. These are now defined as smoking and would now be prohibited under the new rule. Also, the rule has included the allowed exemption for certain businesses operating under required criteria listed by statute as of January 2012.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost of savings to state budgets. Administration will be handled with existing funding.
♦ LOCAL GOVERNMENTS: There may be some slight increase in regulatory costs which will impact budgets of local health departments due to a small increase in the number of facilities required to inspect. The impact of this cost can be mitigated by required permit fees allowed by statute. Total costs are unknown at this time.
♦ SMALL BUSINESSES: There are fewer than five small businesses statewide known at this time based on information received from local health departments which will be affected by the restriction of the use of heated tobacco. As outlined by statute and proposed rule, facilities have the opportunity to apply for a one-time, five-year exemption to mitigate possible revenue reductions due to these restrictions. It is unknown at this time how many of these businesses will qualify for the exemption, but it is anticipated that at least 50% will qualify. Those who do not qualify for the exemption will be severely impacted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no known large businesses that allow smoking of tobacco in hookah apparatus known at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be slight increase in costs for the individual local health departments with exempted facilities within their jurisdiction, due to increased education and inspection costs. For those individual businesses who qualify for an exemption, there will be permit fees for a "reasonable amount" which will be paid to local health departments as the statute requires. For those businesses which do not qualify for an exemption, their individual revenue will be severely reduced, but the amount is not known.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule follows Legislative direction and implements with cost minimization to business as a significant guiding factor. Comments will be carefully evaluated.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.
R392-510. Utah Indoor Clean Air Act.
R392-510-2. Definitions.

The definitions in Section 26-38-2 apply to this rule in addition to the following:

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.

(2) "Area" means a three dimensional space.

(3) "Building" means an entire free standing structure enclosed by exterior walls.

(4) "Building owner" means the person(s) who has an ownership interest in any public or private building.

(5) "E-cigarette" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the vapor through the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.

[~~(5)~~](6) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.

[~~(6)~~](7) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.

[~~(7)~~](8) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.

[~~(8)~~](9) "Facility" means any part of a building, or an entire building.

[~~(9)~~](10) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.

[~~(10)~~](11) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.

[~~(11)~~](12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.

[~~(12)~~](13) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

[~~(13)~~](14) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

[~~(14)~~](15) "Place" means any "place of public access", or "publicly owned building or office", as defined in Title 26, Chapter 38.

[~~(15)~~](16) "Smoking" means the possession of any lighted or heated tobacco product in any form[~~.~~]; inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah.

[~~(16)~~](17) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

R392-510-6. Requirements for Smoking Permitted Areas.

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

(2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

(a) any part of the facility defined as a place of public access in Section 26-38-2(1);

(b) another room designated as a non-smoking room; or

(c) common areas of the facility, including dining areas, lobby areas and hallways.

(d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non- smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.

[~~(3) A Class B and Class D private club licensed under Title 32A, Chapter 5, Private Club Liquor Licenses, operating and sharing air space with an adjoining place of public access as of January 1, 1995 does not have to meet the requirements of Subsection R392-510-6(1) if the adjoining place of public access is in operation or construction footers were completed by January 1, 1995. This exemption is only effective before January 1, 2009, at which time smoking is prohibited in Class B and Class D private clubs.~~

] ([~~4~~]3) Smoking may be permitted in vehicles that are workplaces when not occupied by nonsmokers.

R392-510-14. Temporary Exemption.

(1) The definition of smoking, which prohibits heated tobacco inhaled or exhaled through a hookah does not apply to a place of public access if it meets the requirements outlined by statute in 26-38-2.5, and action was required prior to July 1, 2012. The department or local health department shall certify that the exemption requirements are met as directed by 26-38-2.5 and a reasonable fee may be imposed to recover the cost of certification of exemption. In addition, penalties may be imposed for violation of the exemption as defined in 26-23-6. The exemption will sunset, in accordance with 63I-1-226, July 1, 2017. Additionally, as required by statute, the place of public access must provide through written notice on menus, or conspicuously located signage that only tobacco products sold at this place of public access may be heated, inhaled, and exhaled and that only those 21 years of age and older may be admitted. Any change in exemption status must be reported to the local health department.

(2) The place of public access shall allow the local health department and State Health Department to inspect the facility to verify ongoing compliance with the rule and statute during the 5 year exemption period. To maintain the exemption, the place of public access must:

(a) Maintain its class C or D liquor license.

(b) Admit only individuals 21 years of age and older into the place of public access.

(c) Prominently display signs on the premises and in advertisements that disclose the dangers of second hand smoke and inhaling tobacco.

(d) Require that only tobacco products sold by the place of public access may be heated, inhaled, and exhaled in the place of public access.

(e) Not sell a product for use in a hookah that contains more than 30% tobacco or more than .05% nicotine.

(f) Sell a mixture of tobacco and other flavors for the purpose of heating, inhaling, and exhaling the tobacco mixture through a hookah pipe

(g) Be able to demonstrate that the sale of the mixture of tobacco and other flavors for use in a hookah pipe in the place of public access constitutes at least 10% of the establishment's gross annual sales (January 1 to December 31 during the exemption period).

(3) If the place of public access does not meet the requirements of the exemption as determined by inspection of the local health department and/or State Health Department, the certification of exemption shall be suspended, and the place of public access shall go through the appeals process as outlined in 26a-1-121 (2) to determine if the permit should be permanently revoked or if corrections have been made, renewed for the balance of the 5 year period.

R392-510-15. Signs Required for Temporary Exemption.

(1) The building owner, agent or operator must conspicuously post signs that are easily readable and not obscured in any way as outlined in R392-510-12. The words must not be less than 1.5 inches in height. The signs shall state "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S. Surgeon General".

(2) The sign shall be posted at all entrances or in a position clearly visible on entry into the place.

(3) Any advertisements to the public must include the statement "WARNING: There is no risk-free level of inhaling tobacco smoke or exposure to secondhand tobacco smoke. -U.S Surgeon General".

R392-510-16. Restriction on Use of e-Cigarette in Place of Public Access.

The prohibition against the use of an e-cigarette in a place of public access does not apply if:

(1) the use of the e-cigarette occurs in the place of public access that is a retail establishment that sells e-cigarettes and the use is for the purpose of:

(a) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to use the e-cigarette; or

(b) the customer sampling a product sold by the retailer for use in an e-cigarette; and the retailer of e-cigarettes:

(i) has all required licenses for the possession and sale of e-cigarettes in a place of business;

(ii) does not permit a person under the age of 19 to enter any part of the premises of the retail establishment in which the e-cigarettes are sold; and

(iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least 75% of the establishment's gross sales.

(2) this section sunsets, in accordance with 63I-1-226, July 1, 2017.

R392-510-17. Enforcement action by Proprietors.

An owner, agent, or employee of the owner of a place where smoking is prohibited by this rule who observes a person smoking in apparent violation of this rule shall request the person to stop smoking. If the person fails to comply, the proprietor, agent, or employee shall ask the person to leave the premises.

KEY: public health, indoor air pollution, smoking, ventilation
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2012
Notice of Continuation: April 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-1 et seq.; 26-38-1

Health, Disease Control and Prevention, Environmental Services
R392-700
Indoor Tanning Bed Sanitation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36580
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In the 2012 General Session, the statute regarding tanning requirements was modified in S.B. 41. This bill was passed which required amendments to the rule.

SUMMARY OF THE RULE OR CHANGE: The rule has been updated to include the requirements of the statute. The main modification was the inclusion of local health department permit requirements; requirements for a doctor's order, or in-person permission by parent or legal guardian to tan for those under 18 years of age; modifications to the required sign; and a uniform consent form to be used statewide. Additional warning information which was on a previous consent form has now been included in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost of savings to state budgets. Administration will be handled with existing funding.
♦ LOCAL GOVERNMENTS: There may be a slight increase in regulatory costs which will impact budgets of local health departments due to the education of tanning operators and possible increase of follow-up inspections. Total costs are unknown at this time.
♦ SMALL BUSINESSES: To our knowledge all tanning operators are small businesses and revenue will be negatively impacted as the number of tanning patrons under 18 years of age will be reduced due to the new restriction required by statute. The exact costs are not known, and are difficult to estimate as the number of patrons under 18 years if age is not known. There was a fiscal note attached to S.B. 41 which goes into more detail on the effect on small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no large tanning facilities known at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a slight increase in costs for each of the 12 local health departments due to increased education and follow-up inspection costs to governments and a decrease in revenue for individual tanning salons due to projected decrease in patrons under 18 years of age. There will also be an increase in costs of parents or legal guardians as they will need to accompany those under 18 years of age to tanning salons if they so choose to allow minors to tan.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule reflects Legislative policy and costs have been minimized.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.
R392-700. Indoor Tanning Bed Sanitation.
R392-700-1. Authority and Purpose.

This rule establishes tanning facility standards. It is authorized by Section 26-15-2 and 26-15-13.

R392-700-2. Applicability.

This rule applies to places where consideration is given in exchange for access to a tanning device. This rule does not apply to private, non-commercial use of tanning equipment exclusively for non-commercial use. A tanning facility may not operate in Utah unless the facility owner has obtained a permit to do so from the local health department with jurisdiction.

R392-700-3. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Health.

(2) "Operator" means any person who owns, leases, or manages a business operating a tanning facility.

(3) "Patron" mean any person who enters a tanning facility with the intent to use a tanning device.

(4) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease when used at the health care professional's health care office or clinic.

(5)(a) "Tanning device" means [~~any~~]equipment to which a tanning facility provides access that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for tanning of the skin, including:

(i) a sunlamp; and

(ii) a tanning booth or bed.

(b) "Tanning device" does not include a phototherapy device.

(6) "Tanning Facility" means [~~any~~]a commercial location, place, area, structure, or business that provides [~~an individual~~] access to a tanning device[~~for the purpose of tanning the individual's skin while in the facility~~].

(7) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period of time.

(8) "Ultraviolet Radiation" means electromagnetic radiation that has a wave length interval of 200 nanometers to 400 nanometers in air.

R392-700-5. Warning Sign Requirements.

(1) The warning sign required by R392-700-5 shall meet the requirements of this section. An Adobe Acrobat Portable Document Format, .pdf, file that meets the requirements of this section is available from the Department or the local health department.

(2) The sign shall be in a landscape format 11 inches high by 17 inches wide on a white background.

(3) All lettering shall be in Arial font as produced in Adobe Acrobat. In addition, the letters shall be:

(a) black in color

(b) all uppercase

(c) adequately spaced and not crowded

(4) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(a) be 3.3 centimeters, high and 42 centimeters wide, including a black line border that is 0.16 centimeter wide surrounding the safety orange background;

(b) have the word "WARNING" in capital letters that are 80 points in size (approximately two centimeters high); and

(c) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING"

(5) The safety alert symbol shall be black with a yellow field.

(6) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(7) Immediately below the orange panel shall appear the words: "[~~ULTRAVIOLET~~]UV RADIATION HEALTH RISK" in letters that are 61 points in size (approximately 1.5 centimeters high) and centered between the vertical margins. The vertical space between the "WARNING" panel and the top of the words "[~~ULTRAVIOLET~~]UV RADIATION HEALTH RISK" shall be approximately 1.6 centimeters. The vertical space between the bottom of the words "[~~ULTRAVIOLET~~]UV RADIATION HEALTH RISK" and the top of the words of the first bulleted statement required in subsection (9) shall be approximately 1.6 centimeters.

(8) Beneath the "[~~ULTRAVIOLET~~]UV RADIATION HEALTH RISK" line shall appear the body wording of the sign in letters that are 39 points in size (approximately one centimeter high).

(9) The body of the sign shall be the following [~~five~~]four bulleted statements:

-[~~WEAR EYE PROTECTION TO PREVENT BLINDNESS~~]TANNING DEVICES MAY CAUSE SEVERE EYE AND SKIN DAMAGE AND MAY CAUSE CANCER

-TALK TO [~~YOUR~~]A DOCTOR IF YOU ARE PREGNANT OR [~~USE~~]ON ORAL CONTRACEPTIVES OR OTHER DRUGS

[~~-SOME COSMETICS OR MEDICINES MAY MAKE YOU BURN EASILY - TALK TO YOUR DOCTOR.~~

~~-FREQUENT OR LENGTHY EXPOSURE MAY CAUSE SKIN CANCER OR OTHER SEVERE SKIN DAMAGE~~

] -[~~YOU SHOULD~~]WAIT AT LEAST 48 HRS[~~ BETWEEN TANNING SESSIONS~~] BEFORE RE-TANNING

-REQUIRED FOR ALL PERSONS UNDER 18 YEARS FOR EACH TANNING SESSION: IN PERSON WRITTEN CONSENT BY PARENT OR LEGAL GUARDIAN OR PHYSCIAN'S WRITTEN ORDER

(10) The vertical spacing between each of the bulleted statements shall be approximately 1.6 centimeters. The margins to the right and left of the bulleted statements shall be no less than 4.4 centimeters.

(11) The vertical spacing between the last bulleted statement and the bottom margin of the paper shall be no less than two centimeters.

(12) Local health departments may add additional warning requirements that are applicable to all patrons of all tanning facilities.

R392-700-6. Written Health Risk Warning and Signed Consent.

(1) It is unlawful for any operator of a tanning facility to allow a person younger than 18 years old (hereinafter "minor") to use a tanning device, unless the person either:

(a) has a written order from a physician as a medical treatment that includes the frequency and duration of tanning sessions; or

(b) at each time of use is accompanied at the tanning facility by a parent or legal guardian who signs a written consent form authorizing the minor to use the tanning device (the parent or legal guardian is not required to remain at the facility for the duration of the use)[~~except upon meeting the requirements of 26-15-13~~].

(2) The operator shall not allow a minor to exceed a physician's order for tanning in either frequency or duration of the tanning sessions.

(3) The consent form for use of a tanning device by a minor shall conform to the Utah Department of Health Tanning Consent Form, [~~October 15, 2007~~]July 2012, which is incorporated by reference.

(4) Before allowing a patron to use a tanning device, the operator shall require the patron to provide proof of age.

(5) The operator or designee shall not allow any person to use a tanning device without providing the information listed under (6) to the patron (or parent or legal guardian in the case of a minor).

([~~2~~]6) Before allowing any patron to use a tanning device, the operator shall upon a[~~n~~] patron's initial visit to the tanning facility and annually thereafter:

(a) provide the patron (or parent or legal guardian in the case of a minor) a written paper health risk warning notice containing the health risk information in subsection ([~~3~~]7);

(b) provide the patron (or parent or legal guardian in the case of a minor) an opportunity to read the notice and ask questions;

(c) obtain the patron's (or parent's or legal guardian's in the case of a minor) dated signature signifying that the patron (or parent or legal guardian in the case of a minor) has read and understands the notice;

(d) give the patron (or parent or legal guardian in the case of a minor) a copy of the notice.

([~~3~~]7) The notice required in subsection ([~~2~~]3) shall include the following:

(a) a representative list of potential photosensitizing drugs and agents and the importance of consulting a physician before tanning if the patron is taking certain medicines, has a history of skin problems, is pregnant, or is sensitive to sunlight;

(b) information regarding potential negative health effects related to ultraviolet exposure including:

(i) the increased risk of skin cancer and increased risk for those patrons with health problems who sunburn easily, have a family history of melanoma, or often get cold sores;

(ii) the increased risk of skin thinning, wrinkling, and premature aging;

(iii) the possible adverse effect on some viral conditions or medical condition, such as lupus when using a tanning device.

(c) information on how to determine skin sensitivity[~~,~~] and information on how different skin types respond to the tanning facilities different tanning devices and the importance of adhering to the time limit the manufacturer recommends for each skin type;

(d) an explanation of Ultraviolet-A (UVA) and Ultraviolet-B (UVB) light's effect on the body, the need to use proper protective eye wear with both UV-A and UV-B systems, and that closing the eyes is not sufficient to prevent possible eye damage;

(e) information on the capacity of devices, including proper exposure times and intensity;

(f) information on the risk of tanning too frequently and on over exposure including advice to space tanning sessions 48 hours apart and information on how long it takes before skin burns may develop;

(g) the importance of the use of protective eye wear including the possibility of eye damage if the eye wear is not used and the tanning device's recommendations on how to properly use eye wear while using the tanning device;

([~~g~~]h) information that tanning may be inadvisable during pregnancy; and

([~~h~~]i) other relevant medical information as determined by the local health department, but at a minimum, the local health department contact information to enable the patron to obtain additional information regarding skin cancer.

([~~3~~]8) The operator shall retain the signed patron notices at the tanning facility and make them readily available for inspection by the Department and local health department.

([~~4~~]9) The operator shall provide a separate enclosed area for each tanning device that ensures patron safety and privacy.

([~~5~~]10) The operator shall ensure that only one person enters tanning area during a tanning session.

([~~6~~]11) The operator shall not allow an animal, except for a service animal, to be in a tanning area during a tanning session. The operator shall ensure that service animals allowed in tanning areas be provided eye protection from UV exposure.

R392-700-8. Protective Eye Wear.

Prior to each tanning session, the operator shall offer protective eye wear to each patron, instruct the patron on proper use and the importance of proper use of eye wear,[~~instructions for its use,~~] and notify the patron of possible damage that might occur to the patron if the patron does not wear it. Protective eye wear shall be eye wear that is supplied by the manufacturer for use with the tanning device or that is the equivalent to the protective eye wear supplied by the manufacturer.

R392-700-9. Tanning Physical Facilities.

(1) The operator shall provide a restroom that includes a flushing toilet and a hand-washing sink with hot and cold running water accessible to patrons at each tanning facility. The operator shall ensure that tanning facility floors and walls in the toilet rooms and hand-washing areas are constructed of smooth, non-absorbent material.

(2) The operator shall ensure that all areas of the tanning facility and temporary tanning facility are properly ventilated. The internal ambient air temperature of the facility shall not exceed 85 degrees F.

(3) The operator shall ensure that all rooms of a tanning facility are capable of being illuminated to allow for proper cleaning and sanitizing.

(4) To prevent patron slip injury, the operator shall ensure that the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.

R392-700-11. Permit Requirements.

(1) A tanning facility may not operate in Utah unless it has first obtained a permit to operate from the local health department with jurisdiction.

(2) In order to obtain a permit, the facility must fill out the required local health department form, submit the form to the local health department, and pay the associated fee. A permit, unless revoked, is good for one year.

(3) Before the facility is eligible for a permit, the tanning facility operator must demonstrate to the local health department that the facility can meet the tanning physical facility requirements, warning sign requirements, and the tanning device requirements in this rule. The tanning facility operator must also demonstrate that the facility has the systems in place to meet the written consent requirements, information notification requirements, eye wear requirements, and operational requirements in this rule.

(4) The tanning facility operator must be able to demonstrate to the local health department initially and upon subsequent inspections sufficient knowledge of safe operation of the tanning device in accordance with manufacturers recommendations.

R392-700-[~~11~~]12. Enforcement and Penalties.

A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor, and revocation of the permit to operate. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to a civil penalty as provided in Section 26-23-6.

KEY: tanning beds, salons, sanitation, ultraviolet light safety
Date of Enactment or Last Substantive Amendment: [~~March 15, 2010~~]2012
Authorizing, and Implemented or Interpreted Law: 26-15-2; 26-15-13

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-1-30
Governing Hierarchy

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36511
FILED: 07/18/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule the governing hierarchy of regulations to administer the Medicaid program.

SUMMARY OF THE RULE OR CHANGE: This new section of the rule implements the governing hierarchy federal waivers, the Utah Medicaid State Plan, and administrative rules to clarify the authority used by the Department to administer the Medicaid program.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. It is the intent that this rule be budget neutral. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider, but the overall effect should be neutral on the state budget.
♦ LOCAL GOVERNMENTS: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. It is the intent that this rule be budget neutral. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider, but the overall effect should be neutral to local government.
♦ SMALL BUSINESSES: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. It is the intent that this rule be budget neutral. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider, but the overall effect should be neutral for small business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. It is the intent that this rule be budget neutral. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider, but the overall effect should be neutral on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. It is the intent that this rule be budget neutral. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Clarification of the standards and their relative authority will provide clarity to all regulated entities, providers and Medicaid recipients. Ambiguity in the past has led to Medicaid in some cases paying more for or covering a service that was not intended. This clarification may increase or decrease reimbursement to an individual provider, but the overall effect should be neutral to regulated entities. Comments will be carefully evaluated to assess fiscal impact.

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 09/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-30. Governing Hierarchy.
(1) The Utah Medicaid State Plan under Title XIX of the Social Security Act Medical Assistance Program and any Waivers to

that State Plan ("State Plan") shall be the governing authority for implementing the Medicaid program to the extent incorporated by rule. If a conflict exists between a Waiver and the Utah Medicaid State Plan, the Waiver shall govern.

(2) If an administrative rule addresses an issue that is not fully addressed by the State Plan, the administrative rule adopted by the Department shall govern the implementation of the Medicaid program, after giving full effect to the State Plan.

(3) Statements or actions by department employees shall not constitute exceptions or waivers to the governing authority of Subsection R414-1-30 (1) or (2).

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 1,~~] 2012
Notice of Continuation: March 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-308-3
Application and Signature

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36566
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the application date for applications submitted through the online "myCase" application process.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the application date for applications submitted through the online myCase application process so the date of application is the date in which the applicant submits the online application to the Department of Workforce Services.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this amendment does not add new coverage, does not impose new costs on Medicaid providers and recipients, and does not eliminate existing Medicaid coverage.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund Medicaid services or determine Medicaid eligibility.
♦ SMALL BUSINESSES: The Department does not anticipate any budget impact because this change does not affect Medicaid coverage and does not impose new costs and requirements on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any budget impact because this change does not impose new costs on Medicaid providers and recipients, does not add new coverage, and does not eliminate existing Medicaid coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any compliance costs because this change does not impose new costs on a single Medicaid provider or recipient, does not add new coverage, and does not eliminate existing Medicaid coverage.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Encouraging use of online resources like "myCase" should have a positive fiscal impact on all parties.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: David Patton, 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 under penalty of perjury 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 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, 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.

(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 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.

(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~~] except as described below:

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

([~~b~~]i) 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 is available to receive[~~s~~] the application;

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

([e]b) When the eligibility agency receives application data transmitted from 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 to the 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[~~.~~];

(c) If an application is filed through the "myCase" system, the date of application is the date the application is submitted to the eligibility agency online.

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

(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 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 when the eligibility agency receives a new application.

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

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-310
Medicaid Primary Care Network Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36565
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to add insurance that an employer offers through the Utah Health Exchange (UHE) as a form of creditable health insurance.

SUMMARY OF THE RULE OR CHANGE: This amendment adds insurance that an employer offers through UHE as a form of creditable health insurance. It also adds, clarifies, and deletes certain definitions, clarifies effective dates, and makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this amendment does not add new coverage to the Primary Care Network (PCN) program, does not impose new costs on PCN providers and recipients, and does not eliminate existing PCN coverage.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund PCN services or determine eligibility for the PCN program.
♦ SMALL BUSINESSES: The Department does not anticipate any budget impact because this change does not affect PCN coverage and does not impose new costs and requirements on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any budget impact because this change does not impose new costs on PCN providers and recipients, does not add new PCN coverage, and does not eliminate existing PCN coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any compliance costs because this change does not impose new costs on a single PCN provider or recipient, does not add new coverage to the PCN program, and does not eliminate existing PCN coverage.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As the Utah Health Exchange enters the market, these changes will allow these policies to be recognized as a form of creditable insurance. No fiscal impact expected.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act.

([~~3~~]4) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

([~~4~~]5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

([~~5~~]6) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

([~~6~~]7) "Department" means the [~~Utah~~]Department of Health.

[~~(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.~~]

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for the Primary Care Network program under contract with the Department.

(9) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange[~~that meets the requirements of Subsection R414-320-2(19)(a), (b), (c), (d) and (e)~~].

(10) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program and has paid the enrollment fee.

(11) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the eligibility agency to enroll in and receive coverage under the Primary Care Network program.

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

(13) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(14) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time to represent future income.

(15) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.

(16) "Primary Care Network" or ["](PCN)["] means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(17) "[~~Review~~]Recertification month" means the last month of the [~~eligibility~~]certification period for an enrollee during which the eligibility agency shall redetermine eligibility for a new certification period if the [~~s an~~]enrollee[~~'s~~] completes the recertification process timely[~~eligibility for a new certification period~~].

[~~(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.~~]

(1[~~9~~]8) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(19) "Utah Health Exchange" or (UHE) means an internet portal for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online.

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

[~~(21) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the UPP program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.~~]

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-3 apply to applicants and enrollees of the PCN program except that reportable changes for PCN applicants and enrollees are defined in Subsection R414-310-3(3).

(2) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

(a) an individual with children under the age of 19 in the home;

(b) an individual without children under the age of 19 in the home;

(c) an individual who is enrolled in the PCN program;

(d) an individual who is enrolled in the UPP program;

(e) an individual who is enrolled in the General Assistance program;

(f) an individual who is enrolled in the Medicaid program within 30 days before the open enrollment period begins; or

(g) any group that the Department designates in advance to be consistent with efficient administration of the program.

[~~(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.~~

~~(3) An applicant or enrollee must provide requested information and verification within the time limits given. The eligibility agency shall allow the client at least ten calendar days from the date of a request to provide information and may grant more time to provide information and verification upon request of the applicant or enrollee.~~

~~(4) An applicant or enrollee has a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.~~

~~(5) An applicant or enrollee may look at information in his case file that the eligibility agency uses to make an eligibility determination.~~

~~(6) Anyone may look at the eligibility policy manuals located at any eligibility agency office.~~

~~(7) An individual must repay any benefits that the individual receives under PCN if the eligibility agency determines that the individual is not eligible to receive the benefits.~~

] ([~~8~~]3) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in PCN begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;

(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System;

(c) An enrollee leaves the household or dies;

(d) An enrollee or the household moves out of state;

(e) Change of address of an enrollee or the household; or

(f) An enrollee enters a public institution or an institution for mental diseases.

([~~9~~]4) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

([~~10~~]5) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2010 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2011, which are incorporated by reference.

(2) Subject to Subsection R414-310-7(10), an individual who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed., at the time of application is not eligible for enrollment in PCN. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. Nevertheless, an individual who is enrolled in the Utah Health Insurance Pool may enroll in PCN.

(3) The eligibility agency determines PCN eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer as follows:

(a) If the individual's cost [~~of~~]for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through UHE, does not exceed 15% of the household's countable gross income as defined in this rule, the individual is not eligible for PCN.

(b) If the individual's cost [~~of~~]for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through UHE, is 5% or more of the household's countable gross income, the individual may enroll in the employer[~~'s~~]-sponsored health insurance plan and the UPP program during an UPP open enrollment period. The employer[~~'s~~]-sponsored health plan must meet the requirements of Subsection R414-320-2(1[~~9~~]8).

(c) If the individual's cost [~~of~~]for the least expensive health insurance plan offered by the employer, or for the employer's default plan offered through UHE, exceeds 15% of the household's countable gross income, the individual may choose to enroll in either PCN or the UPP program. The following conditions apply:

(i) to enroll in UPP, the employer[~~'s~~]-sponsored health insurance plan the individual enrolls in, or the plan the employee selects through UHE, must meet the requirements of Subsection R414-320-2(1[~~9~~]8); and

(ii) enrollment for the program that the individual chooses to enroll in has not been stopped under the provisions of Subsections R414-310-16(2) or R414-320-16(2).

(d) If none of the plans offered by the employer, either directly or through UHE, meet the requirements of Subsection R414-320-2(18), and the individual's cost to enroll exceeds 15% of the household's countable gross income, the individual may only enroll in the PCN program during a PCN open enrollment period.

[~~(d) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in Subsection R414-320-2(19), the individual may only enroll in the PCN program.~~

] (4) The eligibility agency considers the individual to have access to coverage even when the employer only offers coverage during an open enrollment period, if the individual has at least one opportunity to enroll, or if the first opportunity to enroll occurs within 30 days of either the date of application or the first day of the recertification month.

(5) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible that must be met before it will pay any claims. If the employee must be enrolled to enroll the spouse, the cost of coverage for the spouse includes the cost to enroll the employee and the spouse.

(6) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in PCN, even when the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in PCN. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be

eligible for PCN while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for PCN ends once the individual's coverage [~~becomes enrolled~~]in the VA Health Care System begins.

(8) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(9) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for six months after the date that the earlier health insurance ends.

(a) To be eligible to enroll in PCN, the six-month ineligibility period must end by the earlier of the following dates:

(i) the last day of the open enrollment period during which the individual applies for PCN; or

(ii) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(b) If the six-month ineligibility period does not end by the earlier of the dates mentioned in Subsection R414-310-7(9)(a)(i) or (ii), the eligibility agency shall deny the application.

(c) The effective date of enrollment in PCN must be after the six-month ineligibility period ends.

(10) An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the State Health Insurance Pool, or who is involuntarily terminated from an employer['~~s~~]-sponsored health plan may be eligible for PCN without a six-month ineligibility period.

(a) An individual is eligible to enroll in PCN if the individual's health insurance coverage expires before the end of the calendar month that follows the month in which he applies for PCN.

(b) The PCN enrollment date must be after health insurance coverage ends.

(11) Notwithstanding the limitations in Section R414-310-7, an individual with creditable health coverage operated or financed by Indian Health Services may enroll in PCN.

(12) An individual must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(13) The eligibility agency shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify in the program.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.

(2) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN. The effective date of enrollment for an applicant who meets the eligibility criteria for PCN and who turns 19 or 65 years of age is defined in Section R414-310-15.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in PCN, a household's countable gross income must be equal to or less than 150% of the federal, non-farm, poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under PCN. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency may not count any [~~I~~]income that is excluded under this section[~~is not countable income~~].

(2) The eligibility agency shall treat [~~A~~]any income in a trust that is available to, or is received by a household member as[~~, is~~] income of the person for whom it is received. It is countable income if the eligibility agency counts that person's income to determine eligibility.

(3) The eligibility agency shall count as income [~~P~~]payments that a household member receive[~~d~~]s from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, Employment Support Act[~~are countable income~~].

(4) The eligibility agency shall count [~~R~~]rental income[~~is countable income~~]. The eligibility agency may deduct the following expenses[~~may be deducted~~]:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) The eligibility agency shall count as income [~~C~~]cash contributions made by non-household members [~~are counted as income~~]unless the parties have a signed written agreement for repayment of the funds.

(6) The eligibility agency shall count as income the interest earned from payments made under a sales contract or a loan agreement [~~is countable income~~]to the extent that the household member continues to receive these payments during the certification period.

(7) The eligibility agency shall count as income[~~N~~]needs-based Veteran's pensions[~~are counted as income~~]. Nevertheless, the agency counts[~~O~~]only the portion of a Veteran's Administration check to which the individual is legally entitled[~~is countable income~~]. Any portion of the payment that is for other family members counts as that family member's income.

(8) The eligibility agency shall count solely as the child's income[~~C~~]child support payments that a [~~household member receives for a dependent child living in the home are counted as that child's income, and do not count as income of the parent~~]parent receives for a dependent child when that child lives in that parent's home.

(9) The eligibility agency may only count[~~I~~]in-kind income[~~, which is~~] when a non-household member provides goods or services [~~provided~~]to the individual [~~from a non-household~~

~~member and which is not in the form of cash, for which~~]in exchange for services the individual performs.[~~ed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.~~]

(10) The eligibility agency shall count as income Supplemental Security Income and State Supplemental payments[~~are countable income~~].

(11) The eligibility agency shall count as[~~I~~]income, unearned and earned income that[~~,~~] is deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

(12) The eligibility agency may not count as[~~I~~]income payments that [~~is~~]are excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference[~~, is not countable~~].

(13) The eligibility agency may not count as income[~~P~~]payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs[~~are not countable~~].

(14) The eligibility agency may not count as income[~~D~~]death benefits [~~are not countable income~~]to the extent that the funds are spent on the deceased person's burial or last illness.

(15) The eligibility agency may not count as income[~~A~~]a bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment[~~is not countable income~~].

(16) The eligibility agency may not count as income Child Care Assistance under Title XX[~~is not countable income~~].

(17) The eligibility agency may not count as income [~~R~~]reimbursements of Medicare premiums that an individual receives from the Social Security Administration[~~are not countable income~~].

(18) The eligibility agency may only count earned and unearned income of an individual's spouse who is under 19 years of age when that spouse is the head of the household.[~~If the spouse of an applicant or enrollee is under the age of 19, the eligibility agency counts that spouses earned and unearned income only if the spouse is the head of the household.~~]

(19) The eligibility agency may not count as income [~~E~~]educational income, such as educational loans, grants, scholarships, and work-study programs[~~are not countable income~~]. The individual must verify enrollment in an educational program.

(20) The eligibility agency may not count as income [~~R~~]reimbursements for employee work expenses incurred by an individual[~~are not countable income~~].

(21) The eligibility agency may not count as income [~~T~~]the value of food stamp assistance[~~is not countable income~~].

(22) The eligibility agency may not count [~~I~~]income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census[~~is not countable income~~].

[~~(23) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, for certain government retirees are not countable income.~~]

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2010 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the eligibility agency shall determine whether the individual is eligible for Medicaid or CHIP.

(a) An individual who qualifies for Medicaid without paying a spenddown, a poverty level pregnant woman asset copayment or an MWI premium cannot enroll in PCN. An applicant who turns 19 years of age during the application month and qualifies for Medicaid or CHIP during that month may enroll in PCN the following month in accordance with Section R414-310-15.

(b) If the individual appears to qualify for Medicaid, or CHIP, but additional information is required to make that determination, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual fails to provide the requested information.

(3) If the individual qualifies for Medicaid and PCN, but must pay a spenddown, poverty[~~-~~]-level, pregnant woman asset copayment or MWI premium to qualify for Medicaid, the individual may choose to enroll in the PCN program. If the PCN program is not in an enrollment period, the applicant may choose to enroll in Medicaid and wait for an open enrollment period to reapply for PCN.

(a) PCN does not cover prenatal or delivery services for a pregnant woman.

(b) PCN does not provide long-term care services in a medical institution or under a home and community-based waiver.

(4) To enroll, the individual must meet the eligibility criteria for enrollment in PCN, pay the enrollment fee, and enroll during an open enrollment period under Section R414-310-16.

(5) 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 dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.

(6) Upon determining that the applicant is eligible for PCN and upon receiving payment of the enrollment fee, the eligibility agency shall enroll the individual in PCN for a 12-month certification period. The eligibility agency shall end enrollment after the 12-month certification period.

(7) The eligibility agency shall provide an enrollee the opportunity to reenroll for a new 12-month certification period when the certification period is near completion.

(a) The recertification is a reapplication to determine whether the enrollee is eligible to enroll in a new 12-month certification period.

(b) The eligibility agency shall notify the enrollee that PCN benefits end after the 12-month certification period.

(c) The eligibility agency shall inform the enrollee of the necessary steps to complete the recertification.

(8) At each recertification, the eligibility agency shall determine whether the enrollee is eligible for Medicaid. The individual may not reenroll in PCN if the individual qualifies for Medicaid without a cost. If the individual appears to qualify for Medicaid, the individual must provide additional information requested by the agency. The eligibility agency shall deny recertification if the individual fails to provide the requested information.

(9) The eligibility agency may request verification from the enrollee if the enrollee responds to the recertification request during the [~~review~~]recertification month.

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

(b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification.

(c) The eligibility agency shall determine eligibility if the enrollee provides all verification by the verification due date or by the end of the application processing period. The agency shall either approve a new 12-month certification period pending payment of the enrollment fee or deny eligibility for a new certification period. The eligibility agency shall notify the enrollee of its decision.

(10) If the enrollee fails to respond to the request for recertification during the recertification month or does not provide all verification within the application processing period after responding timely to the recertification request, the enrollee may reapply in the calendar month that follows the effective closure date, without waiting for an open enrollment period.

(a) The enrollee must reapply by responding to the recertification request and providing all requested verification; or[~~(b)~~] by fil[e]ing a new application before the end of the [~~due process~~]month that follows the [~~review~~]recertification month.

([e]b) The application processing period is based on the date that the enrollee contacts the eligibility agency to complete the recertification, provides all requested verification, or reapplies during such month.

([~~d~~]c) The benefits become effective upon the enrollee paying the required enrollment fee if the eligibility agency approves an enrollee for a new 12-month certification period.

([e]d) The eligibility agency shall notify the enrollee if the agency does not approve an enrollee for the new certification period.

(11) The enrollee must wait for the next open enrollment period to reapply for PCN if the enrollee fails to [~~respond to a request for recertification or does not file a new application before the end of the month that follows the review month~~]complete the recertification process as defined in Subsection R414-310-14(9) or (10).

R414-310-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

(1) Subject to the limitations in Sections R414-306-6 and R414-310-7, the effective date of PCN enrollment is the first day of the month in which the eligibility agency receives an application with the following exceptions:

(a) An applicant who turns 19 years of age during the application month and before the end of the open enrollment period in the application month is enrolled in PCN as follows:

(i) The eligibility agency shall enroll the applicant in Medicaid if the applicant qualifies for Medicaid during the application month without cost. In this instance, enrollment in PCN becomes effective for the month that follows the application month if the applicant neither qualifies for Medicaid nor qualifies without cost and chooses not to pay for Medicaid during that following month;

(ii) The eligibility agency shall enroll the applicant in CHIP if the applicant qualifies for enrollment in CHIP during the application month. Enrollment in PCN then becomes effective for the following month;

(iii) If the applicant is not eligible for Medicaid without cost and is not eligible for CHIP in the application month, enrollment in PCN becomes effective in the application month, but no earlier than when the applicant turns 19 years of age;

(iv) The applicant is not eligible for PCN if the applicant turns 19 years of age after the open enrollment period.

(b) An otherwise eligible applicant who turns 65 years of age during the application month and applies before age 65 may enroll in PCN, which coverage becomes effective [~~on the first day of the application month subject to the limitations~~]as defined in Sub[~~S~~]section R414-310-15(1). The applicant is not eligible for PCN if the applicant is [~~not~~]eligible for Medicaid without cost in the application month. The eligibility agency shall end enrollment [~~after~~]effective the end of the month in which the applicant turns 65 years of age.

(c) The eligibility agency shall deny enrollment to an individual if the individual applies for PCN [~~upon turning~~]on or after the date the individual turns 65 years of age.

(d) Subject to the limitations in Section R414-310-15 and the open enrollment requirement, the effective date of enrollment for the spouse of an enrollee is the first day of the month in which the enrollee requests to add the spouse.

(2) The eligibility agency shall enroll an applicant who meets all eligibility criteria and pays the enrollment fee for a 12-month certification period that begins with the first month of enrollment. The applicant must pay the enrollment fee before any benefits for a 12-month certification period become effective. The Department may not provide any benefits or pay for any services that an applicant receives before the effective date of enrollment.

(3) The effective date of reenrollment for PCN recertification is the first day after the review month, if the recertification is completed as described in either Subsection R414-310-14(9) or (10). The enrollee must continue to meet all eligibility criteria and pay the enrollment fee timely before benefits become effective for the new 12-month certification period.

(4) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns 65 years of age;

(b) the individual becomes a full-time student who is entitled to receive student health insurance, [~~and~~]becomes entitled to or eligible to enroll in Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located; or

(e) the individual enters a public institution or an Institution for Mental Disease.

(5) The eligibility agency shall end PCN enrollment when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan.[~~, except under the following circumstances:~~] The eligibility agency shall continue PCN eligibility through the end of the certification period if the individual gains access to an employer-sponsored health plan but does not enroll in the plan.

([~~a~~]6) An [~~individual~~]enrollee who gains access to or enrolls in an employer-sponsored health plan may choose to enroll in the employer-sponsored health plan and switch to the UPP program.

(a) The individual must notify the eligibility agency within ten calendar days of enrolling in the plan or within ten days after coverage begins, whichever is longer, to switch to UPP.

(b) The [~~individual must meet the~~]requirements defined in Subsection R414-310-7(3)(b) [~~and~~]or (c) must be met except that the individual does not have to enroll in UPP during an open enrollment period[~~;~~

~~(b) The eligibility agency shall continue PCN eligibility through the end of the certification period if the individual gains access to an employer-sponsored health plan but does not enroll in the plan~~].

(c) The eligibility agency continues the current certification period without doing a new income determination when a PCN enrollee switches to UPP.

(7) The eligibility agency shall determine if an enrollee who gains access to an employer-sponsored health plan during the certification period but does not enroll in such plan may reenroll in PCN at the next recertification as follows:[~~end eligibility after the due process month if the enrollee does not return requested verification upon receiving proper notice;~~]

([~~i~~]a) The individual is not eligible to reenroll in PCN for a new 12-month certification period if the enrollee has access to an employer-sponsored health plan that costs less than 15% of the enrollee's countable gross income at the next recertification;

([~~ii~~]b) The enrollee may choose to switch to UPP if the enrollee can enroll in the employer[~~'s~~]-sponsored health plan upon recertifying, and the plan meets the requirements of Subsection R414-310-7(3)(b) [~~and~~]or (c) and costs 5% or more of the enrollee's countable gross income. The enrollee does not have to wait for an UPP open enrollment period and must enroll in the employer-sponsored health plan to switch to UPP.

(c) The enrollee may reenroll in PCN if the cost exceeds 15% of the enrollee's countable gross income.

([~~6~~]8) An individual who enrolls in the Utah Health Insurance Pool does not lose PCN eligibility.

([~~7~~]9) An enrollee who fails to report changes or return verifications timely must repay any overpayment of benefits for which the individual is not eligible to receive.

([~~8~~]10) The individual may file a new application or make a request to the eligibility agency to reenroll if a PCN case closes for any reason.

(a) The individual must file a new application or make a request to reenroll within the calendar month that follows the effective closure date;

(b) The eligibility agency shall process the request as a new application. The agency shall waive the open enrollment period and determine whether the individual is still eligible for PCN;

(c) The eligibility agency shall continue eligibility through the end of the current certification period if the agency determines that the individual is eligible for PCN;

(d) The eligibility agency shall approve the individual for a new certification period if the certification period has ended[~~s~~] when the agency determines that the individual [~~is~~]continues to be eligible. The individual must pay the enrollment fee timely for the new 12-month certification period;

(e) The eligibility agency shall deny the request to reenroll and send a notice to the individual if the agency determines that the individual is not eligible for PCN.

([~~9~~]11) The eligibility agency shall determine eligibility for PCN if a Medicaid-eligible recipient reports a change during a PCN enrollment month that makes the recipient ineligible for Medicaid or causes a spenddown. The effective date of enrollment for PCN is the day after the Medicaid case closes if the agency determines that the recipient is eligible for PCN and the recipient pays the enrollment fee timely.

(1[~~0~~]2) If a PCN case closes for any reason, other than to become covered by another Medicaid or UPP program, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying a new enrollment fee.

(1[~~1~~]3) If a PCN case closes because the enrollee is eligible for another Medicaid program or UPP, the individual may request to reenroll in PCN if there is no break in coverage between the programs, even if the eligibility agency ends open enrollment under Subsection R414-310-16(2).

(a) If the individual's 12-month PCN certification period, or 12-month UPP certification period, has not ended, the individual may reenroll for the rest of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in Section R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the certification period.

(b) If the 12-month certification period from the earlier enrollment [~~ends~~]has ended and the individual is moving from Medicaid to PCN, the individual may still reenroll in PCN. The individual must meet eligibility and income guidelines, and pay a new enrollment fee for the new 12-month certification period.

(1[~~2~~]4) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification, the eligibility agency shall end eligibility [~~after~~]effective the end of the month in which the agency sends proper notice. The eligibility agency shall treat the receipt of verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date.

(a) The eligibility agency shall waive the open enrollment period and continue eligibility for the rest of the certification period if the agency determines that the enrollee is eligible for PCN.

(b) The eligibility agency shall send a denial notice to the enrollee if the agency determines that the enrollee is not eligible for PCN.

(1[~~3~~]5) A change in income during the certification period does not make the enrollee ineligible for PCN for the months remaining in the current certification period; however, the individual may request the eligibility agency [~~to~~]make a Medicaid determination of eligibility.

(a) The eligibility agency shall change coverage to Medicaid and end PCN enrollment if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid without cost.

(b) The enrollee may choose to remain on PCN through the end of the certification period if the enrollee requests a Medicaid determination of eligibility and the reported change makes the enrollee eligible for Medicaid with a spenddown or MWI premium.

KEY: Medicaid, primary care, covered-at-work, demonstration
Date of Enactment or Last Substantive Amendment: [~~December 23, 2011~~]2012
Notice of Continuation: June 4, 2012
Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-320
Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36564
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to add insurance that an employer offers through the Utah Health Exchange (UHE) as a form of creditable health insurance.

SUMMARY OF THE RULE OR CHANGE: This amendment adds insurance that an employer offers through UHE as a form of creditable health insurance. It also adds, clarifies, and deletes certain definitions, clarifies effective dates, and clarifies reenrollment and benefits in Utah's Premium Partnership for Health Insurance (UPP) program. It further removes the requirement for children to apply for UPP only during an open enrollment period and makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this amendment does not add new coverage to the UPP program, does not impose new costs on UPP providers and recipients, and does not eliminate existing UPP coverage.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund UPP services or determine eligibility for the UPP program.
♦ SMALL BUSINESSES: The Department does not anticipate any budget impact because this change does not affect UPP coverage and does not impose new costs and requirements on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any budget impact because this change does not impose new costs on PCN providers and recipients, does not add new UPP coverage, and does not eliminate existing UPP coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any compliance costs because this change does not impose new costs on a single UPP provider or recipient, does not add new coverage to the UPP program, and does not eliminate existing UPP coverage.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As the Utah Health Exchange enters the market, these changes will allow these policies to be recognized as a form of creditable insurance. No fiscal impact expected.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-2. Definitions.

The definitions in Section[s] 26-40-102 and Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 through 64 years of age.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

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

(4) "Consolidated Omnibus Budget Reconciliation Act" or ["](COBRA["]) continuation coverage is a temporary extension of employer health insurance coverage whereby a person who loses coverage under an employer's group health plan can remain covered for a certain length of time. To receive [UPP]reimbursement under Utah's Premium Partnership for Health Insurance (UPP) program, the COBRA health plan must be an UPP [Q]qualified [H]health [P]plan.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

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

(7) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee. The due process month is not counted as part of the certification period.

(8) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for [Utah's Premium Partnership for Health Insurance (]the UPP[)] program under contract with the Department.

(9) "Employer-sponsored health plan" means a health insurance plan offered [through]by an employer either directly or through the Utah Health Exchange.[To receive UPP reimbursement, the employer must contribute at least 50 % of the cost of the health insurance premium of the employee and offer a UPP Qualified Health Plan.]

(10) "Enrollee" means an individual who applies for and is found eligible for the UPP program, and is receiving UPP benefits.

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

(12) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(13) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(14) "Open enrollment" means a [time]period during which the eligibility agency accepts applications for the UPP program.

(15) "Primary Care Network" or ["](PCN)["] means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(16) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(17) "Review month" means the last month of the [eligibility]certification period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

[(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.
] (1[9]8) "UPP Qualified Health Plan" means a health plan that meets all of the following requirements:

(a) Health plan coverage includes:
(i) physician visits;
(ii) hospital inpatient services;
(iii) pharmacy services;
(iv) well child visits; and
(v) children's immunizations.

(b) Lifetime maximum benefits must be at least $1,000,000.

(c) The deductible may not exceed $2,500 per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The employer contributes at least 50% of the cost of the employee's health insurance premium when the plan is offered directly through the employer. If the employer offers plans through the Utah Health Exchange, the employer must contribute at least 50% of the cost of the employee's health insurance premium for either the employer's default plan or the plan the employee selects. If the plan is a COBRA continuation plan, the employer does not have to contribute to the premium.

([e]f) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(19) "Utah Health Exchange" or (UHE) means an internet portal where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.

(20) "Utah's Premium Partnership for Health Insurance" or ["](UPP)["] means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan, including employer-sponsored health plans available under UHE, or COBRA continuation coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

[(21) "Verification" means the proof needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties

~~who have information needed to determine the eligibility of the individual.~~

]

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-3 apply to applicants and enrollees of the UPP program except that reportable changes for UPP applicants and enrollees are defined in Subsection R414-320-3(3).

([~~1~~]2) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) adults with children living in the home;

(b) adults without children living in the home;

(c) adults enrolled in the PCN program;

(d) [~~children enrolled in the CHIP program;~~

~~(e)~~]adults [~~or children~~]who were enrolled in the Medicaid program within the last thirty days before the beginning of the open enrollment period; or

([~~f~~]e) other groups designated in advance by the eligibility agency consistent with efficient administration of the program.

[~~(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the eligibility agency or outreach staff.~~

~~(3) An applicant or enrollee must provide requested information and verification within the time limits given. The eligibility agency shall allow the applicant or enrollee at least ten calendar days from the date of a request to provide information and may grant more time to provide information and verification upon request of the applicant or enrollee.~~

~~(4) The eligibility agency shall notify an applicantor enrollee about an eligibility determination or other action that affects eligibility.~~

~~(5) An applicant or enrollee may review information that the eligibility agency uses to make an eligibility determination.~~

~~(6) Eligibility policy manuals are available for review at any eligibility agency office and on the Internet. These manuals are not available for review at call centers and outreach locations.~~

~~(7) An individual must repay any benefits that the individual receives under the UPP program if the eligibility agency determines that the individual is not eligible to receive the benefits.~~

] ([~~8~~]3) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of learning of the change. The eligibility agency shall notify the applicant at the time of application of the changes that the [~~enrollee~~]individual must report. Examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan or COBRA continuation coverage;

(b) An enrollee changes health insurance plans;

(c) [~~An enrollee has a change in t~~]The amount of the premium that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage changes;

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System;

(e) An enrollee leaves the household or dies;

(f) An enrollee or the household moves out of state;

(g) Change of address of an enrollee or the household; or

(h) An enrollee enters a public institution or an institution for mental diseases.

([~~9~~]4) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-5 and R414-301-6.

([~~10~~]5) An enrollee must continue to pay premiums and remain enrolled in an employer-sponsored health plan or COBRA continuation coverage to be eligible for benefits.

([~~11~~]6) An eligible child may choose to enroll in his parent's or guardian's employer-sponsored health insurance plan or COBRA continuation coverage and receive UPP benefits, or may choose direct coverage through CHIP. A child under the age of 19 may enroll in an employer-sponsored health insurance plan offered by the child's employer or COBRA continuation coverage and UPP, or may choose direct coverage through CHIP.

R414-320-5. Verification and Information Exchange.

(1) An applicant and enrollee must provide verification of eligibility factors as requested by the eligibility agency and in accordance with the provisions of Section R414-308-4.

(2) The Department and the eligibility agency may release information concerning an applicant or enrollee and [~~their~~]his household to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The eligibility agency shall safeguard information about applicants and enrollees to comply with the provisions of Section R414-301-4.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2010 ed., which is incorporated by reference.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA continuation coverage may be eligible for UPP enrollment.

(4) The eligibility agency determines UPP eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage who meets the requirements of Subsection R414-320-2(14) as follows:

(a) If the individual's cost [~~of~~]for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through UHE, is less than 5% of the household's countable gross income, the individual is not eligible for the UPP program.

(b) If the individual's cost [~~of~~]for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through UHE, equals or exceeds 5% of the household's countable gross income, the individual may enroll in UPP.

(c) For adults, if the individual's cost [~~of~~]for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through UHE, exceeds 15% of the household's countable gross income, the adult may choose to enroll in UPP or may choose direct coverage through PCN if PCN enrollment continues under the provisions of Section R414-310-16.

(d) If the cost to enroll a child in[~~of~~] the employer-sponsored coverage offered by the employer directly, or the

employer's default plan offered through UHE, is greater than or equal to 5% of the household's countable gross income, a child may choose enrollment in the employer-sponsored health plan and UPP or direct coverage through CHIP.

(e) The cost of coverage includes a deductible if the employer-sponsored plan has [~~one~~]a deductible that must be met before it will pay any claims. For a spouse or dependent child, if the employee must be enrolled to enroll the spouse or dependent child, the cost of coverage includes the cost to enroll the employee and the spouse or dependent child.

(5) An eligible individual who has access to or who is enrolled in a COBRA plan may choose to enroll in UPP and the COBRA plan if the individual's cost for the COBRA plan exceeds 5% of the household's gross countable income and the plan meets the criteria to be an UPP qualified health plan as defined in R414-320-2(16).

([~~5~~]6) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for UPP enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

([~~6~~]7) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for UPP enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual's coverage [~~becomes enrolled~~]in the VA Health Care System begins.

([~~7~~]8) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days after the earlier insurance ends.

(a) For an individual to enroll in UPP, the 90-day ineligibility period must expire by the earlier of:

(i) [~~by~~]the end of the open enrollment period during which the individual applies for UPP; or

(ii) [~~by~~]the end of the month which follows the month that the individual applies for UPP if the open enrollment period continues.

(b) If the 90-day ineligibility period does not end by the earlier of those two dates, the eligibility agency shall deny the application.

(c) An effective date of enrollment can only occur after the 90-day ineligibility period.

([~~8~~]9) An applicant, applicant's spouse, or dependent child may be eligible for enrollment in UPP without a 90-day ineligibility period if that person discontinues coverage under a COBRA plan, the Utah Comprehensive Health Insurance Pool, or [~~who~~]involuntarily discontinues coverage under an employer['~~s~~]-sponsored health plan.

(a) An individual is eligible to enroll in UPP if the individual's prior health insurance coverage expires before the end of the calendar month that follows the month in which he applies for UPP, and the individual has access to another employer-sponsored health insurance plan that meets the criteria of an UPP qualified health plan.

(b) The UPP enrollment date must be after the prior health insurance coverage ends.

([~~9~~]10) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if [~~their~~]his earlier insurance ended more than 90 days before the application date.

(1[~~0~~]1) An eligible individual with access to an employer['~~s~~]-sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program to receive reimbursement for [~~their~~]his employer-sponsored health plan.

(1[~~1~~]2) The individual must enroll in an UPP [~~Q~~]qualified [~~H~~]health [~~P~~]plan either with an employer-sponsored health plan or a COBRA continuation health plan within 30 days of the date of the approval notice to enroll in UPP.

(1[~~2~~]3) Individuals must report at application and review whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's or parent's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

(1[~~3~~]4) The eligibility agency shall deny an application or review if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual that the household seeks to enroll or recertify.

R414-320-9. Age Requirement.

(1) An individual must be under age 65 to be eligible for UPP and must enroll in the UPP program before [~~the end of the month in which he turns 65 years of age.~~

~~(a) An individual must apply for UPP before~~]he turns 65 years of age.

([~~b~~]2) The eligibility agency shall deny eligibility if it does not receive an application before an individual turns 65 years of age.

R414-320-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2010 ed., which are incorporated by reference.

(2) The applicant must complete and sign a written application or complete an application on-line[~~, via the Internet~~] to enroll in the UPP program. The provisions of Section R414-308-3 apply to applicants of the UPP program.

(3) The eligibility agency shall reinstate an UPP case without requiring a new application if the case closes in error.

(4) An applicant may withdraw an application any time before the eligibility agency completes an eligibility decision on the application.

(5) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) The effective date of enrollment in UPP for the new household is defined in Section R414-320-15. Coverage continues through the end of the certification period.

(b) The eligibility agency may not require a new income test to add the new household member for the months remaining in the certification period.

(c) A household may add a new member only during an open enrollment period under Section R414-320-16. A child is not subject to the open enrollment period.

(d) The eligibility agency shall consider income of the new member at the next scheduled review.

[~~(6) A child who loses Medicaid coverage when the child reaches the maximum age limit may enroll in UPP without waiting for the next open enrollment period.~~

~~(7) A child who loses Medicaid coverage because the child is no longer deprived of parental support and either does not qualify for any other Medicaid program, or only qualifies for a Medicaid program that requires paying a spenddown, may enroll in UPP without waiting for the next open enrollment period, unless the child qualifies for a different Medicaid program without cost.~~

~~(8) A child who is born to or placed for adoption with an enrollee may enroll in UPP without waiting for the next open enrollment period if the child does not qualify for a Medicaid program without cost.~~

]

R414-320-14. Eligibility Decisions and Eligibility Reviews.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2010 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the eligibility agency shall determine whether the individual is eligible for Medicaid.

(a) An individual who qualifies for Medicaid without paying a spenddown, a poverty level, pregnant woman asset copayment, or an MWI premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the application if the individual does not provide the requested information.

([~~a~~]b) If the individual must pay a spenddown, a poverty[ ]-level, pregnant woman asset copayment or an MWI premium to qualify for Medicaid, the individual may choose to enroll in the employer-sponsored health insurance and the UPP program. The individual may enroll in UPP only during an open enrollment period, except that a child is not subject to an open enrollment period, and [~~when the individual~~]must meet[~~s~~] all the eligibility criteria.

([~~b~~]c) At each review for UPP reenrollment, the eligibility agency shall decide whether the enrollee is eligible for Medicaid. If the individual qualifies for Medicaid without a spenddown, a poverty[~~-~~]-level, pregnant woman asset copayment or an MWI premium, the individual cannot reenroll in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. The eligibility agency shall deny the [~~application~~]review if the individual does not provide the requested information.

(3) To enroll in UPP, the individual must meet enrollment criteria during an open enrollment period under the provisions of Section R414-320-16, except that a child is not subject to open enrollments.

(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 dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if that date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency uses available, reliable sources to gather necessary information to complete the review.

(6) The eligibility agency may ask the enrollee to respond to a request to complete the review process. The eligibility agency shall end the enrollee's eligibility [~~after~~]effective at the end of the review month if the enrollee fails to respond to the request. The eligibility agency shall treat [~~any~~]a response from the enrollee to complete the review or reapply as a new application if the enrollee responds to the review request or reapplies [~~after~~]by the end of the month immediately following the review month. The application processing period applies for this new request for coverage.

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

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee. The agency shall send a denial notice to the enrollee if the enrollee fails to return verification within the application processing period or if the agency determines that the enrollee is ineligible.

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

(d) The eligibility agency shall waive the open enrollment period requirement and the requirement found at Subsection R414-320-7(2) if the enrollee completes the review process or reapplies in the calendar month immediately following the effective closure date.

[~~(d) The enrollee must reapply if the case closes for one or more calendar months.~~

] (e) The new certification period begins the day after the closure date if the enrollee becomes eligible.

(7) The eligibility agency may request verification from the enrollee if the enrollee responds to the review request during the review month.

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

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

(8) The eligibility agency shall determine eligibility and notify the enrollee of its decision if the enrollee responds to the review request on time and provides all verification by the verification due date.

(a) The eligibility agency shall send proper notice of an adverse decision when the decision affects eligibility for the [~~due process~~]month that follows the review month.

(b) The eligibility agency shall extend eligibility to the due process month when the agency does not send[~~s~~] proper notice of an adverse change. The eligibility agency shall send proper notice of the adverse decision that becomes effective the first of the month after the due process month.

(9) The eligibility agency shall extend eligibility to the due process month if the enrollee responds to the review request during the review month and the verification due date is during the due process month. The enrollee must provide all verification by the verification due date.[~~If the enrollee responds to the request during the review month and the~~]

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

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

(c) The eligibility agency shall treat the date that it receives all verification as a new application date if the enrollee returns all verification after the verification due date and before the effective closure date. The agency shall determine the enrollee's eligibility and [~~send proper notice to~~]notify the enrollee.

(d) The eligibility agency shall waive the open enrollment period during the due process month, and for a reapplication received before the effective closure date. The eligibility agency also waives the requirement found at Subsection R414-320-7(2) if the enrollee completes the review or reapplies before the effective closure date.

(e) The eligibility agency may not continue eligibility while it makes an eligibility determination. If the agency determines that an enrollee is eligible, the new certification date for the application is the day after the effective closure date.

(10) The eligibility agency shall provide ten-day notice of a case closure if the agency determines that the enrollee is ineligible or if the enrollee fails to provide verification by the verification due date.

(11) The eligibility agency shall waive the open enrollment period and the requirement found at Subsection R414-320-7(2) if an enrollee reapplies in the calendar month immediately following the effective closure date.

(12) The enrollee must reapply if the case closes for one or more calendar months and must meet all eligibility criteria.

R414-320-15. Effective Date of Enrollment, Change Reporting and Enrollment Period.

(1) Subject to Sections R414-320-7, R414-320-9 and R414-320-16 and the limitations in Section R414-306-6, the effective date of enrollment in the UPP program is the first day of the application month. An individual who is approved for the UPP program must enroll in the employer-sponsored health plan or COBRA continuation coverage within 30 days of receiving an approval notice from the eligibility agency. Eligibility for UPP is a qualifying event and employers must allow the individual to enroll in the health insurance plan upon approval.

(2) The Department may not reimburse the enrollee for premiums before the effective date of enrollment and not before the month in which the enrollee pays a health insurance or COBRA premium that the enrollee verifies to the eligibility agency. [~~individual pays a premium for coverage for the spouse or dependent child.~~]

(3) If the applicant does not enroll in the employer-sponsored health insurance or COBRA continuation coverage that meets the requirements of Subsection R414-320-2(14) within 30 days of the date that the eligibility agency sends the UPP approval notice, DWS shall deny the application. The individual may reapply during another open enrollment period, except that a child is not subject to the open enrollment period.

(4) The effective date of enrollment for a newborn or newly adopted child is the date of birth or the date that the child is placed for adoption if the newborn or newly adopted child is enrolled in the employer-sponsored health insurance or COBRA continuation coverage and the family requests UPP coverage within 30 days of the birth or placement for adoption. If the family makes the request after 30 days of the birth or placement for adoption, enrollment becomes effective on the first day of the month in which the date of report occurs.

(a) The requirement found at Subsection R414-320-7(2) does not apply if the request for UPP enrollment occurs during such 30 days.

(b) If the request for UPP enrollment is made more than 30 days after the date of birth or date of placement for adoption, the child must meet the requirements of Section R414-320-7.

(5) An enrollee may request to add a spouse to UPP coverage during the certification period.

(a) If the spouse had previous UPP coverage, but became eligible for Medicaid or PCN, the enrollee may add the spouse to UPP [~~whose eligibility~~]without waiting for an open enrollment period. Eligibility for the spouse becomes effective the month after coverage for Medicaid or PCN ends if there is no break in coverage. A spouse moving back to UPP from Medicaid may reenroll in UPP even if the spouse is enrolled in the employer-sponsored health insurance at the time of request and there is no break in coverage between Medicaid and UPP.

(b) If the spouse did not have previous UPP coverage, but is moving directly from PCN to UPP coverage, the effective date of enrollment is the first day of the month after PCN ends. The spouse does not have to wait for an open enrollment period.[~~(c)~~] If the spouse is not moving directly from PCN to UPP coverage, the spouse may enroll in UPP during an open enrollment period. The eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(6) An enrollee may request to add a dependent child to UPP coverage during the certification period.

(a) If the child had previous UPP coverage, but became eligible for Medicaid or CHIP, the effective date of enrollment is the first day of the month after Medicaid or CHIP ends if there is no break in coverage.

(b) If the child [~~did not have previous UPP or CHIP coverage, the enrollee may add the child to UPP during an open enrollment period unless the child is a newborn or is a child who has been placed for adoption with the enrollee. The~~]is not moving from another medical assistance program to UPP, the eligibility agency shall determine the effective date of enrollment in accordance with Subsection R414-320-15(1).

(c) If the child is a newborn or has recently been placed for adoption with the enrollee, the provision in Subsection R414-320-15(4) applies.

(7) The effective date of reenrollment in UPP after the eligibility agency completes the periodic eligibility review, is the first day of the month after the review month, or [~~is~~]the first day after the due process month. The eligibility agency shall complete

the review as described in Subsection R414-320-14([~~7~~]8) or ([~~8~~]9), and the enrollee must continue to meet eligibility criteria.

(8) An individual who becomes eligible for UPP is enrolled for a 12-month certification period that begins with the first month of eligibility. If the enrollee completes the review process and continues to be eligible, the recertification period continues for an additional 12 months, except that the eligibility agency may not count a due process month associated with a review in the new 12-month recertification period.

(9) The eligibility agency shall end eligibility before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns 65 years of age;

(b) An enrolled child turns 19 years of age;

([~~b~~]c) The individual becomes entitled to receive Medicare;

([~~c~~]d) The individual becomes covered by VA Health Insurance, or fails to apply for VA health system coverage when potentially eligible;

([~~d~~]e) The individual dies;

([~~e~~]f) The individual moves out of state or cannot be located; or

([~~f~~]g) The individual enters a public institution or an Institution for Mental Disease.

(10) The eligibility agency shall end eligibility if an adult enrollee discontinues enrollment in employer-sponsored insurance or COBRA continuation coverage.

(a) The enrollee may switch to the PCN program for the rest of the certification period if the enrollee discontinues enrollment in employer-sponsored insurance involuntarily and does not enroll in COBRA continuation coverage, or if the individual discontinues COBRA coverage voluntarily or involuntarily. The individual must meet the PCN income test.

([~~a~~]b) The enrollee must notify the eligibility agency within ten calendar days after the enrollee's insurance coverage ends to be eligible to switch to PCN outside of an open enrollment period.

([~~b~~]c) The eligibility agency shall complete a new eligibility determination and the individual must pay a PCN enrollment fee for the new 12-month certification period if the change occurs in the last month of the UPP certification period.

(11) When the enrollee reports other changes, the eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility. The eligibility agency shall send proper notice of changes in eligibility. The agency may end eligibility if the enrollee fails to report changes within ten calendar days. Other changes that may affect eligibility or benefits occur when:

(a) an enrollee changes health insurance plans or has a COBRA qualifying event; or

(b) the amount of the premium changes that the enrollee pays for an employer-sponsored health insurance plan or COBRA continuation coverage.

(12) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(13) A child [~~enrollee~~]enrolled in UPP may discontinue employer-sponsored health insurance or COBRA continuation coverage and UPP, and move to direct coverage under CHIP at any time during the certification period without any [~~waiting~~]ineligibility period.

(14) An individual who is enrolled in PCN or CHIP and who enrolls in an employer-sponsored health plan or COBRA continuation coverage may switch to the UPP program. The individual must report to the eligibility agency within ten calendar days of signing up for an employer-sponsored plan or COBRA continuation coverage, or within ten days after coverage begins, whichever is later.

(a) The eligibility agency shall add the individual for the rest of the certification period if the household has an open UPP case.

(b) The eligibility agency shall approve a new 12-month certification period if the household does not have an open UPP or PCN case. If the household has an open PCN case, eligibility under UPP continues through the end of the PCN certification period.

(15) If an UPP case closes for any reason, other than to become covered by another Medicaid program, PCN or CHIP, and remains closed for one or more calendar months, the individual must submit a new application to the eligibility agency during an open enrollment period to reapply, except that a child is not subject to the open enrollment period. The individual must meet all the requirements of a new applicant.

(16) If an UPP case closes because the enrollee is eligible for another Medicaid program, PCN or CHIP, the individual may reenroll in UPP if there is no break in coverage between the programs, even when the eligibility agency stops enrollment under Subsection R414-320-16(2).

(a) The individual may reenroll during the current 12-month certification period for UPP, PCN or CHIP. The eligibility agency may not require the individual to complete a new application or have a new income eligibility determination.

(b) The individual may still reenroll [~~during~~]in UPP if the previous 12-month certification period has ended and the individual is moving from Medicaid. The individual must meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period, except that a child is not subject to the open enrollment period.

(d) If the individual reapplies in the month immediately following the closure, the eligibility agency waives the open enrollment period and the provision in Subsection R414-320-7(2). The individual must meet all other UPP requirements.

(17) The eligibility agency shall end eligibility effective at the end of the month[~~after the month~~] in which the agency sends proper notice if the agency requests verification of a reported change and the enrollee fails to return the verification. The eligibility agency shall treat the verification as a new application if the enrollee returns the verification within one calendar month after the effective closure date. The eligibility agency shall waive the open enrollment period, and if the enrollee is eligible, continue eligibility for the rest of the certification period. The eligibility agency shall send a denial notice to the enrollee if the enrollee is ineligible.

(18) An enrollee may request a Medicaid determination of eligibility when there is a change of income during the certification period.

(a) The eligibility agency shall end UPP enrollment and change the enrollee's coverage to Medicaid if the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid without cost.

(b) If the enrollee asks for a Medicaid determination and the reported change makes the enrollee eligible for Medicaid with[~~out~~] a spenddown, MWI premium or a poverty level, pregnant woman asset copayment, the enrollee may choose to remain on UPP.

R414-320-16. Open Enrollment Period.

(1) The eligibility agency accepts applications for enrollment at times when sufficient funding is available to justify enrollment of more individuals. The eligibility agency limits the number it enrolls according to the funds available for the program.

(2) The eligibility agency may stop enrollment of new individuals at any time based on availability of funds.

(3) The eligibility agency may not accept applications or maintain waiting lists during a period that it stops enrollment of new individuals.

(4) A child is not subject to the open enrollment requirement to enroll in UPP.

R414-320-18. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that an individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is [~~not~~]eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under the UPP program for which the individual is not eligible must repay the Department for the cost of the benefits that he receives.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a period that the enrollee is not eligible to receive the benefits.

R414-320-19. Benefits.

(1) The UPP program shall provide cash reimbursement to enrollees.

(2) The reimbursement may not exceed the amount that the enrollee pays toward the cost of the employer-sponsored health plan, employer-sponsored plans selected through UHE, or COBRA continuation coverage.

(3) The UPP program may reimburse an adult up to $150 each month.

(4) The UPP program may reimburse a child up to $120 each month for medical coverage. The UPP program will pay the child [~~and~~]an additional $20 if the child elects to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, a child may receive cash reimbursement up to $120 for the medical insurance cost and may receive dental-only benefits through CHIP.

(b) When the employer also offers employer-sponsored [~~insurance includes~~]dental coverage, the applicant may choose to enroll a child in the employer-sponsored dental coverage, in which case, the UPP program will pay the child [~~and receive~~]an additional [~~reimbursement of up to~~]$20. The enrollee may also choose to only enroll the child in the employer-sponsored health insurance and UPP, and not enroll the child in the employer-sponsored dental coverage, in which case the child may[~~also elect to~~] receive dental-only benefits through CHIP.

KEY: CHIP, Medicaid, PCN, UPP
Date of Enactment or Last Substantive Amendment: [~~December 23, 2011~~]2012
Notice of Continuation: October 13, 2011
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-320-10
Income Provisions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36563
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to increase the income limit for eligibility under Utah's Premium Partnership for Health Insurance (UPP) program.

SUMMARY OF THE RULE OR CHANGE: This amendment increases the income limit from 150% of the federal poverty level to 200% of the federal poverty level to qualify for UPP assistance.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department anticipates an increase of about 200 enrollees in UPP as a result of this change. Nevertheless, the cost to the state budget as a result of this new enrollment is offset by the reduction of that same number of enrollees from the Primary Care Network (PCN) program.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not provide UPP services or determine eligibility for the UPP program.

♦ SMALL BUSINESSES: The Department anticipates an increase of about 200 enrollees in UPP as a result of this change. Nevertheless, any increase in revenue to small businesses as a result of this change is offset by the reduction of that same number of enrollees from the PCN program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department anticipates an increase of about 200 enrollees in UPP as a result of this change. Some health plans will see an increase in revenue with the increase in UPP enrollment while PCN providers will see a decrease in total revenue. Additionally, there is an increase in savings to UPP enrollees as UPP helps pay for their health insurance premiums, and a loss in savings to potential PCN recipients due to the decrease in PCN enrollment. There is no data at this time to estimate these increases and decreases in revenue and savings to these affected providers and applicants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is a potential loss in revenue to a single PCN provider due to the expected decrease in PCN enrollment, and a loss in potential savings to a single PCN applicant due to the decrease in PCN enrollment. Nevertheless, there is no data at this time to estimate the decrease in revenue or the decrease in savings to a single PCN provider or PCN applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Growth in the population served by the UPP program is good policy and supported by this rule with no negative fiscal impact.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-10. Income Provisions.

(1) For an [~~adult~~]individual to be eligible to enroll, gross countable household income must be equal to or less than [~~150~~]200% of the federal non-farm poverty guideline for a household of the same size.

(2) [~~For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.~~

~~(3)~~]All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income. The eligibility agency shall use the countable gross income of parents who live with a child to determine the child's eligibility. The agency may not count any income that it excludes under Section R414-320-10.

([~~4~~]3) Any income in a trust that a household member receives becomes the income of the individual for whom it is received. The income is countable if the eligibility agency [~~uses it~~]counts that individual's income to determine eligibility.

([~~5~~]4) The eligibility agency shall count as income [~~P~~]payments that a household member receives from the Family Employment program, Working Toward Employment program, or from refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3, Employment Support Act[~~, are countable income~~].

([~~6~~]5) The eligibility agency shall count [~~R~~]rental income[~~, is countable income~~]. The eligibility agency may deduct the following expenses:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

([~~7~~]6) The eligibility agency shall count as income cash contributions from non-household members unless the parties sign a written agreement to repay the funds.

([~~8~~]7) The eligibility agency shall count as income the interest earned from payments under a sales contract or a loan agreement to the extent that the [~~agency~~]individual continues to receive these payments during the certification period.

([~~9~~]8) The eligibility agency shall count as income needs-based veteran's pensions. Nevertheless, the agency counts only the portion of a Veteran's Administration check to which the individual is legally entitled. Any portion of the payment for another family member counts solely as that family member's income.

([~~10~~]9) The eligibility agency shall count solely as the child's income the child support payments that a parent receives for a dependent child when that child lives in the home.

(1[~~1~~]0) The eligibility agency may only count in-kind income when a non-household member provides goods or services to an individual in exchange for services that the individual performs.

(1[~~2~~]1) The eligibility agency shall count as income supplemental security income and state supplemental payments.

(1[~~3~~]2) The eligibility agency may not count income that is excluded under 20 CFR 416 Subpart K, Appendix, 2010 edition, which is incorporated by reference.

(1[~~4~~]3) The eligibility agency may not count as income payments that are prohibited under other federal laws from being counted to determine eligibility for federally-funded medical assistance programs.

(1[~~5~~]4) The eligibility agency may not count as income death benefits to the extent that the funds are spent on the deceased person's burial or last illness.

(1[~~6~~]5) The eligibility agency may not count as income a bona fide loan that an individual contracts in good faith and endorses in writing to repay.

(1[~~7~~]6) The eligibility agency may not count as income child care assistance under Title XX.

(1[~~8~~]7) The eligibility agency may not count as income reimbursements of Medicare premiums that an individual receives from the Social Security Administration[~~ or the Department~~].

(1[~~9~~]8) The eligibility agency may only count earned and unearned income of an eligible child who is under 19 years of age when the child is the head of the household. When the applicant or enrollee's spouse is under the age of 19, the agency may only count the spouse's earned and unearned income when the spouse [~~is~~] under the age of 19 [~~and~~]is the head of the household. The eligibility agency shall count income of a spouse over age 19.

([~~20~~]19) The eligibility agency may not count as income educational income, such as educational loans, grants, scholarships, and work-study programs. The individual must verify enrollment in an educational program.

(2[~~+~~]0) The eligibility agency may not count reimbursements for employee work expenses incurred by an individual.

(2[~~2~~]1) The eligibility agency may not count the value of food stamp assistance.

(2[~~3~~]2) The eligibility agency may not count income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census.

[~~(24) The eligibility agency may not count the additional $25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, which an individual may receive from March 2009 through June 2010.~~

~~(25) The eligibility agency may not count the one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, for certain government retirees.~~

~~(26) The eligibility agency may not count a COBRA premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L No. 111-5, 123 Stat. 115.~~

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KEY: CHIP, Medicaid, PCN, UPP
Date of Enactment or Last Substantive Amendment: [~~December 23, 2011~~]2012
Notice of Continuation: October 13, 2011
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-502
Nursing Facility Levels of Care

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 36567
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to modify the level of care for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to incorporate a new definition of autism spectrum disorders.

SUMMARY OF THE RULE OR CHANGE: All requirements of the repealed rule are reenacted in the proposed rule. In contrast to the repealed rule, this new rule removes the description of obsolete levels of care and modifies the level of care for ICFs/ID by incorporating the new definition of autism spectrum disorders. It further replaces the previous term of disability with the appropriate term of "intermediate care facilities for persons with intellectual disabilities".

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this new rule only updates previous requirements from the old rule and incorporates new terms and definitions for disabilities.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund Medicaid nursing facilities nor make determinations for nursing facility admission.
♦ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because this new rule only updates previous requirements from the old rule and incorporates new terms and definitions for disabilities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this new rule only updates previous

requirements from the old rule and incorporates new terms and definitions for disabilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid recipient because this new rule only updates previous requirements from the old rule and incorporates new terms and definitions for disabilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Recognition of autism spectrum disorder and updating terms is not expected to have a negative fiscal impact on business.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

[~~R414-502. Nursing Facility Levels of Care.~~

~~R414-502-1. Introduction and Authority.~~

~~This rule defines the levels of care provided in nursing facilities.~~

~~R414-502-2. Definitions.~~

~~The definitions in R414-1-1 and R414-501-2 apply to this rule.~~

~~R414-502-3. Approval of Level of Care.~~

~~(1) In determining whether the applicant has mental or physical conditions that can only be cared for in a nursing facility, or equivalent care provided through an alternative Medicaid health care delivery program, the department shall document that at least two of the following factors exist:~~

~~(a) Due to diagnosed medical conditions, the applicant requires at least substantial physical assistance with activities of daily living above the level of verbal prompting, supervising, or setting up;~~

~~(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through an alternative Medicaid health care delivery program; or~~

~~(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of an alternative Medicaid health care delivery program.~~

~~(2) The department shall assign a level of care based upon the severity of illness, intensity of service needed, anticipated outcome, and setting for the service. The department shall not assign a more intense level of care if, as a practical matter, the applicant's care and treatment needs can be met at a less intense level of care. Levels of care, ranked in order of intensity from the least intense to the most intense, are:~~

~~(a) nursing facility III care;~~

~~(b) nursing facility II care;~~

~~(c) nursing facility I care; and~~

~~(d) intensive skilled care.~~

~~R414-502-4. Criteria for Nursing Facility III Care.~~

~~The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility III care level:~~

~~(1) A physical examination was completed within 30 days before or seven days after admission;~~

~~(2) A registered nurse completed, coordinated, and certified a comprehensive resident assessment;~~

~~(3) A person licensed as a social worker, or higher degree of training and licensure, completed a social services evaluation that meets the criteria in 42 CFR 456.370;~~

~~(4) A physician established a written plan of care;~~

~~(5) All less restrictive alternatives or services to prevent or defer nursing facility care have been explored; and~~

~~(6) When the department has determined necessary, health care professionals completed and submitted to the department a psychological or psychiatric evaluation in accordance with 42 CFR 483.20(f). If an applicant is diagnosed with a condition related to a code within the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM) psychiatric code range, the inter-disciplinary team shall submit its determinations to the department, including the behavior intervention program if the team determined one to be necessary. If the team determined that behavior intervention is unnecessary, it shall include evidence supporting the determination. All behavior intervention programs shall:~~

~~(a) be a precisely planned systematic application of the methods and experimental findings of behavioral science with the intent of reducing observable negative behaviors;~~

~~(b) incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;~~

~~(c) be conducted only following identification and, if feasible, remediation of environmental and social factors that are likely to be precipitating or reinforcing the inappropriate behavior;~~

~~(d) incorporate a process for identifying and reinforcing a desirable replacement behavior;~~

~~(e) include a program data sheet;~~

(f) include a behavior baseline profile consisting of all of the following: the applicant's name; the date, time, location, and specific description of the undesirable behavior exhibited; the persons present and the conditions existing prior to and at the time of the undesirable behavior; the interventions used and their results; and the recommendations for future action; and

(g) include a behavior intervention plan consisting of all of the following: the applicant's name; the date the plan is prepared and when it will be used; the objectives stated in terms of specific behaviors; the names, titles, and signatures of the persons responsible for conducting the plan; and the methods and frequency of data collection and review.

R414-502-5. Criteria for Nursing Facility II Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility II care level:

(1) The applicant meets all the criteria for nursing facility III care;

(2) The required intensity of services needed is less than that for skilled care; and

(3) The applicant has documented service needs for at least one of the following:

(a) Daily rehabilitative or restorative services provided under the direction of licensed professional staff, with documented measurable outcomes of treatment;

(b) Close observation, documentation, and follow-through to establish the impact of specified services, such as services to applicants with neurological involvement, hospice services, diabetes control, or dialysis, any one of which may utilize laboratory services and physician intervention;

(c) Training in personal care services to minimize dependency on staff for completion of activities of daily living;

(d) A behavior intervention program established because of specified aberrant behavior such as wandering, excessive sexual drive, destructive or aberrant acting out, prolonged depression leading to self-isolation or violent acts;

(e) Specialized nursing services for skin and wound care;

(f) Extensive interaction with professional staff to assist the applicant and family through the final three months of his anticipated life expectancy;

(g) Any skilled services ordered and given more frequently than two times each week, but less frequently than required for skilled care;

(h) Alzheimer's disease, senile dementia, organic brain disorder, and other diagnosed disease processes that use specialized documented programs that increase staff intervention in an effort to enhance the applicant's quality of life and functional and cognitive status;

(i) Multi-drug resistant, non-compliant tuberculosis applicants in the active phases of tuberculosis who are court ordered as a public health or communicable disease placement; or

(j) A diagnosis of mental retardation with a Level II determination indicating that the applicant can benefit from specialized rehabilitative services. The department shall pay a provider for services provided for an applicant in this category an individual add-on rate depending on the specialized rehabilitative services provided to meet his needs.

R414-502-6. Criteria for Nursing Facility I Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant at the nursing facility I care level:

(1) The applicant meets all the criteria for nursing facility II care;

(2) The services are provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the federal Health Care Financing Administration to furnish nursing facility I care in the Medicare program;

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(4) The applicant requires specialized and complex care documented in the applicant's medical record; and

(5) The criteria in 42 CFR 409.31 through 409.35, requirements for coverage of post-hospital skilled nursing facility care, are satisfied.

R414-502-7. Criteria for Intensive Skilled Care.

The following criteria must be met before the department may authorize Medicaid coverage for an applicant for intensive skilled care:

(1) The applicant meets all the criteria for nursing facility I care. However, the following routine skilled care does not qualify as intensive skilled care under R414-502-6(5) in making a determination under this section:

(a) skilled nursing services described in 42 CFR 409.33(b);

(b) skilled rehabilitation services described in 42 CFR 409.33(c);

(c) routine monitoring of medical gases after a therapy regimen;

(d) routine levin tube and gastrostomy feedings; and

(e) routine isolation room and techniques.

(2) The applicant has exhausted Medicare benefits or has been denied by Medicare for reasons other than level of care requirements;

(3) The applicant requires and receives at least five hours daily of direct licensed professional nursing care, including a combination of specialized care and services, and assessment by a registered nurse and observation on a 24-hour basis;

(4) The attending physician has made any one of the following determinations:

(a) there is presently no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility;

(b) the applicant's condition requires physician follow-up at the nursing facility at least once every 30 days; or

(5) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential;

(6) Except in extraordinary circumstances, the applicant has been hospitalized immediately prior to admission to the nursing facility;

(7) The applicant has been continuously approved for skilled care, either through Medicare or Medicaid, since admission to the nursing facility;

(8) The attending physician has written and signed progress notes at the time of each physician visit reflecting the current medical condition of the applicant; and

(9) If an applicant was previously approved for intensive skilled care and later downgraded to a lower care level, then, even though he was not discharged from a hospital, he may return to intensive skilled care instead of being hospitalized in an acute care setting if:

(a) a complication occurs involving the condition for which he was originally approved for intensive skilled care; and

(b) it has been less than 30 days since the termination of the previous intensive skilled care.

R414-502-8. Criteria for Intermediate Care Facility for Persons with Mental Retardation.

The following criteria must be met before the Department may authorize Medicaid coverage for an individual in an intermediate care facility for persons with mental retardation:

(1) The individual must have a diagnosis of:

(a) mental retardation in accordance with 42 CFR 483.102(b)(3); or

(b) a condition closely related to mental retardation in accordance with 42 CFR 435.1010.

(2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with mental retardation. The diagnosis identified in Subsection R414-502-8(1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:

(a) self care;

(i) the individual requires assistance, training and supervision to eat, dress, groom, bathe, or use the toilet;

(b) receptive and expressive language;

(i) the individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or is unable to follow two-step instructions;

(c) learning;

(i) the individual has a valid diagnosis of mental retardation based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, 1994);

(d) mobility;

(i) the individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device;

(e) self-direction;

(i) the individual is seven through 17 years of age and significantly at risk in making age appropriate decisions, or an adult is unable to provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent. The individual is a danger to himself or others without supervision;

(f) capacity for independent living;

(i) the individual who is seven through 17 years of age is unable to locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills;

(g) economic self-sufficiency; (not applicable to children under age 18);

(i) the individual receives disability benefits, is unable to work more than 20 hours a week, or is paid less than minimum wage without employment support.

(3) The Department considers a child under the age of seven to be at risk for functional limitation in three or more areas of major life activity, if the child has a diagnosis of mental retardation or a condition closely related to mental retardation. The Department does not require separate documentation of the limitations defined in Subsection R414-502-8(2) until the child turns seven years of age.

(4) To meet the criteria of a condition closely related to mental retardation, an individual must manifest the condition before the age of 22 and the condition must be likely to continue. A diagnosis will qualify as a condition closely related to mental retardation only if the criteria as defined in 42 CFR 435.1010 is met. The following is a list of diagnoses that the Department considers to be conditions closely related to mental retardation. It includes:

(a) cerebral palsy (the Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate that they have functional limitations as described in Subsection R414-502(2));

(b) epilepsy (the Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate that they have functional limitations as described in Subsection R414-502(2));

(c) autism or autistic disorder, childhood disintegrative disorder, Rett syndrome, and pervasive developmental disorder, not otherwise specified (only if "atypical autism");

(d) severe brain injury (acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis);

(e) fetal alcohol syndrome;

(f) chromosomal disorders (Down syndrome, fragile x syndrome, Prader-Willi syndrome);

(g) other genetic disorders (Williams syndrome, spina bifida, phenylketonuria).

(5) The following conditions do not qualify as conditions closely related to mental retardation. Nevertheless, a person with any of these conditions is not disqualified if there is a simultaneous occurrence of a qualifying condition as cited in Subsection R414-502-8(1)(a) and (b):

(a) learning disability;

(b) behavior or conduct disorders;

(c) substance abuse;

(d) hearing impairment or vision impairment;

(e) mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(f) borderline intellectual functioning, developmental disability that does not result in an intellectual impairment, developmental delay, or "at risk" designations;

(g) physical problems (such as multiple sclerosis, muscular dystophy, spinal cord injuries, and amputations);

~~(h) medical health problems (such as cancer, acquired immune deficiency syndrome, and terminal illnesses);~~

~~(i) milder autism spectrum disorders (such as Asperger's disorder, and pervasive developmental disorder not otherwise specified if not "atypical autism");~~

~~(j) neurological problems not associated with intellectual deficits (such as Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability;~~

~~(k) mild traumatic brain injury (such as minimal brain injury and post-concussion syndrome).~~

~~(6) Individuals who were admitted to an ICF/MR before August 27, 2009, are eligible for continued stay as long as they continue to meet the requirements in effect before that date. A resident who was admitted to an ICF/MR before August 27, 2009, is only required to meet the revised eligibility criteria when there has been a break in stay wherein the individual resided in a setting that is not a Medicaid certified ICF/MR, nursing facility, or hospital.~~

~~(7) Before admission to an ICF/MR, the facility must provide each potential resident with a two-sided fact sheet (Form IFS-10) that offers information about ICFs/MR as well as the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must contain an acknowledgement (Form IFS-20) signed by the resident or the resident's legal representative, which verifies that the facility provided the Form IFS-10 before admission.~~]

R414-502. Nursing Facility Levels of Care.

R414-502-1. Introduction and Authority.

This rule defines the levels of care provided in nursing facilities.

R414-502-2. Definitions.

The definitions in Section R414-1-2 and Section R414-501-2 apply to this rule.

R414-502-3. Approval of Level of Care.

(1) The Department shall document that at least two of the following factors exist when it determines whether an applicant has mental or physical conditions that require the level of care provided in a nursing facility or equivalent care provided through a Medicaid Home and Community-Based Waiver program:

(a) Due to diagnosed medical conditions, the applicant requires substantial physical assistance with daily living activities above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through a Medicaid Home and Community-Based Waiver program ; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of a Medicaid Home and Community-Based Waiver program .

(2) The Department shall determine whether at least two of the factors described in Subsection R414-502-3(1) exist by reviewing the following clinical documentation:

(a) A current history and physical examination completed by a physician;

(b) A comprehensive resident assessment completed, coordinated and certified by a registered nurse;

(c) A social services evaluation that meets the criteria in 42 CFR 456.370 and completed by a person licensed as a social worker, or higher degree of training and licensure;

(d) A written plan of care established by a physician;

(e) A physician's written certification that the applicant requires nursing facility placement; and

(f) Documentation which indicates that all less restrictive alternatives or services to prevent or defer nursing facility care have been explored.

(3) If the Department finds that at least two of the factors described in Section R414-502-3(1) exist, the Department shall determine whether the applicant meets nursing facility level of care and is medically-approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program. Meeting medical eligibility for nursing facility services does not guarantee Medicaid payment. Financial eligibility and other Home and Community-Based Waiver targeting criteria shall apply.

R414-502-4. Approval of Differential Levels of Care.

The Department shall pay nursing facilities a rate differential for residents who meet nursing facility level of care and any of the criteria listed in Sections R414-502-5 through R414-502-7.

R414-502-5. Criteria for Intensive Skilled Care.

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid reimbursement for intensive skilled care:

(1) The applicant meets the need for skilled services provided by a nursing facility certified pursuant to 42 CFR 409.20 through 409.35, or a swing bed hospital approved by the Centers for Medicare and Medicaid Services to furnish skilled nursing facility care in the Medicare program.

(2) The following routine skilled care does not qualify as intensive skilled care in making a determination under Section R414-502-5:

(a) Skilled nursing services described in 42 CFR 409.33(b);

(b) Skilled rehabilitation services described in 42 CFR 409.33(c);

(c) Routine monitoring of medical gases after a therapy regimen;

(d) Routine enteral tube and gastronomy feedings; and

(e) Routine isolation room and techniques.

(3) The applicant has exhausted Medicare benefits or has been denied by Medicare for other reasons other than level of care requirements.

(4) The applicant requires and receives at least five additional hours of direct licensed professional nursing care daily, including a combination of specialized care and services, and assessment by a registered nurse and 24-hour observation.

(5) The applicant meets criteria for intensive skilled care if the attending physician makes any one of the following determinations:

(a) There is no reasonable expectation that the applicant will benefit further from any care and services available in an acute care hospital that are not available in a nursing facility; or

(b) The applicant's condition requires physician follow-up at the nursing facility at least once every 30 days;

(c) An interdisciplinary team may indicate a therapeutic leave of absence from the nursing facility is appropriate either to facilitate discharge planning or to enhance the applicant's medical, social, educational, and habilitation potential; and

(d) Except in extraordinary circumstances, the applicant has been hospitalized immediately before admission to the nursing facility.

(6) The applicant has continuously required skilled care, either through Medicare or Medicaid, since admission to the nursing facility.

(7) If the attending physician has written and signed progress notes at the time of each physician visit that reflect the current medical condition of the applicant.

(8) An applicant who was previously approved for intensive skilled care and later downgraded to a lower care level may return to intensive skilled care instead of being hospitalized in an acute care setting if :

(a) A complication occurs that involves the condition for which the applicant was originally approved for intensive skilled care; and

(b) It has been less than 30 days since the termination of the previous intensive skilled care.

R414-502-6. Criteria for Behaviorally Complex Program.

In order for the Department to authorize Medicaid coverage for the Behaviorally Complex Program, a nursing facility must:

(1) Demonstrate that the resident has a history of persistent disruptive behavior that is not easily altered and requires an increase in resources from nursing facility staff as documented by one or more of the following behaviors:

(a) The resident engages in wandering behavior with no rational purpose, is oblivious to his needs or safety, and places his self and others at significant risk of physical illness or injury;

(b) The resident engages in verbally abusive behavior where he threatens, screams or curses at others;

(c) The resident presents a threat of hitting, shoving, scratching, or sexually abusing other residents.

(d) The resident engages in socially inappropriate and disruptive behavior by doing of one of the following:

(i) Makes disruptive sounds, noises and screams;

(ii) Engages in self-abusive acts;

(iii) Inappropriate sexual behavior;

(iv) Disrobes in public;

(v) Smears or throws food or feces;

(vi) Hoards; and

(vii) rummages through others belongings.

(e) The resident refuses assistance with medication administration or activities of daily living ; or

(f) The resident's behavior interferes significantly with the stability of the living environment and interferes with other residents' ability to participate in activities or engage in social interactions.

(2) Demonstrate that an appropriate behavioral intervention program has been developed for the resident.

(a) All behavior intervention programs shall:

(b) Be a precisely planned systematic application of the methods and experimental findings of behavioral science with the intent to reduce observable negative behaviors;

(c) Incorporate processes and methodologies that are the least restrictive alternatives available for producing the desired outcomes;

(d) Be conducted following only identification and, if feasible, remediation of environmental and social factors that likely precipitate or reinforce the inappropriate behavior;

(e) Incorporate a process for identifying and reinforcing a desirable replacement behavior;

(f) Include a program data sheet; and

(g) Include a behavior baseline profile that consists of all of the following:

(i) Applicant name;

(ii) Date, time, location, and specific description of the undesirable behavior;

(iii) Persons and conditions present before and at the time of the undesirable behavior;

(iv) Interventions for the undesirable behavior and their results; and

(v) Recommendations for future action.

(h) The interdisciplinary team shall include a behavior intervention plan that consists of all of the following:

(i) The applicant's name, the date the plan is prepared, and when the plan will be used;

(ii) The objectives stated in terms of specific behaviors;

(iii) The names, titles and signatures of persons responsible for conducting the plan; and

(iv) The methods and frequency of data collection and review.

R414-502-7. Criteria for Specialized Rehabilitative Services for Residents with Intellectual Disabilities.

A nursing facility must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an applicant for specialized rehabilitative services:

(1) The nursing facility must arrange for specialized rehabilitative services for clients with intellectual disabilities who are residing in nursing homes;

(2) The individual must meet the criteria for Nursing Facility III Level of Care (excluding residents who receive the intensive skilled or behaviorally complex rate);

(3) The individual must have a Preadmission Screening and Resident Review (PASRR) Level II Evaluation that indicates the resident needs specialized rehabilitation. The nursing facility must assure that needed services are provided under the written order of a physician by qualified personnel; and

(4) The nursing facility must document the need for specialized rehabilitative services in the resident's comprehensive plan of care.

(5) Specialized rehabilitative services include but are not limited to:

(a) Medication management and monitoring effectiveness and side effects of medications prescribed to change inappropriate behavior or to alter manifestations of psychiatric illness;

(b) The provision of a structured environment to include structured socialization activities to diminish tendencies toward isolation and withdrawal;

(c) Development, maintenance, and implementation of programs designed to teach individuals daily living skills that include but are not limited to:

(i) Grooming and personal hygiene;

(ii) Mobility;

(iii) Nutrition, health and self-feeding;

(iv) Medication management;

(v) Mental health education;

(vi) Money management;

(vii) Maintenance of the living environment; and

(viii) Occupational, speech, and physical therapy obtained from providers outside the nursing facility who specialize in providing services for persons with intellectual disabilities at the intensity level necessary to attain the desired goals of independence and self-determination.

(d) Formal behavior modification programs;

(e) Development of appropriate person support networks.

R414-502-8. Criteria for Intermediate Care Facility for Persons with Intellectual Disability.

An intermediate care facility for persons with intellectual disabilities (ICF/ID) must demonstrate that the applicant meets the following criteria before the Department may authorize Medicaid coverage for an individual who resides in an ICF/ID.

(1) The individual must have a diagnosis of:

(a) An intellectual disability in accordance with 42 CFR 483.102(b)(3); or

(b) A condition closely related to intellectual disability in accordance with 42 CFR 435.1010.

(2) For individuals seven years of age and older, the presence of a diagnosis alone is not sufficient to qualify for admission to an intermediate care facility for persons with intellectual disabilities. The diagnosis identified in Subsection R414-502-8(1) must result in documented substantial functional limitations in three or more of the following seven areas of major life activity that include:

(a) Self-care;

(i) The individual requires assistance, training and supervision to eat, dress, groom, bathe, or use the toilet.

(b) Receptive and expressive language;

(i) The individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of requests, or cannot follow two-step instructions.

(c) Learning;

(i) The individual has a valid diagnosis of an intellectual disability based on criteria found in the Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition, 1994.

(d) Mobility;

(i) The individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without an assistive device.

(e) Self-direction;

(i) The individual is seven through 17 years of age and significantly at risk in making age appropriate decisions. Or, in the case of an adult, cannot provide informed consent for medical care, personal safety, or for legal, financial, rehabilitative, and residential issues, and has been declared legally incompetent. The individual is a danger to himself or others without supervision.

(f) The capacity for independent living;

(i) The individual who is seven through 17 years of age cannot locate and use a telephone, cross the street safely, or understand that it is unsafe to accept rides, food or money from strangers, or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(g) Economic self-sufficiency (not applicable to children under 18 years of age);

(i) The individual receives disability benefits, cannot work more than 20 hours a week, or is paid less than minimum wage without employment support.

(3) The Department considers a child under the age of seven to be at risk for functional limitation in three or more areas of major life activity. The child may satisfy this criteria if the child has been with an intellectual disability or a condition closely related to intellectual disability. The Department does not require separate documentation of the limitations defined in Subsection R414-502-8(2) until the child turns seven years of age.

(4) To meet the criteria of a condition closely related to an intellectual disability, an individual must manifest the condition before the individual turns 22 years of age and the condition must be likely to continue. A diagnosis may qualify as a condition closely related to an intellectual disability only if the child meets the criteria defined in 42 CFR 435.1010. The following is a list of diagnoses the Department considers to be conditions closely related to an intellectual disability:

(a) Cerebral palsy. The Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate they have functional limitations as described in Subsection R414-502-8(2);

(b) Epilepsy. The Department does not require individuals to demonstrate an intellectual impairment for this diagnosis, but they must demonstrate they have functional limitations as described in Subsection R414-502-8(2);

(c) Autism Spectrum Disorder. The Department requires an individual to meet the following criteria under this category:

(i) Persistent deficits in social communication and social interaction across contexts, not accounted for by general developmental delays, and manifests by all three of the following:

(A) Deficits in social-emotional reciprocity, ranging from abnormal social approach and failure of normal back and forth conversation through reduced sharing of interests, emotions, and affect and response to total lack of initiation of social interaction;

(B) Deficits in non-verbal communicative behaviors used for social interaction, ranging from poorly integrated verbal and non-verbal communication through abnormalities in eye contact and body language, or deficits in understanding and use of non-verbal communication to total lack of facial expression or gestures;

(C) Deficits in developing and maintaining relationships appropriate to developmental level (beyond those with caregivers), ranging from difficulties adjusting behavior to suit different social contexts through difficulties in sharing imaginative play, and in making friends to an apparent absence of interest in people.

(ii) Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:

(A) Stereotyped or repetitive speech, motor movements, or use of objects (such as simple motor stereotypies, echolalia, repetitive use of objects, or idiosyncratic phrases);

(B) Excessive adherence to routines, ritualized patterns of verbal or non-verbal behavior, or excessive resistance to change (such as motoric rituals, insistence on same route or food, repetitive questioning or extreme distress at small changes);

(C) Highly restricted, fixated interests with abnormal intensity or focus (such as strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests);

(D) Hyper or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (such as apparent indifference to pain, heat and cold, adverse response to specific sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(iii) Symptoms must be present in early childhood (but may not become fully manifest until social demands exceed limited capacities).

(iv) Symptoms together limit and impair everyday functioning.

(d) Severe brain injury. May be the result of an acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis;

(e) Fetal alcohol syndrome;

(f) Chromosomal disorders such as Down syndrome, fragile x syndrome, and Prader-Willi syndrome;

(g) Other genetic disorders. Examples include Williams syndrome, spina bifida, and phenylketonuria.

(5) The following conditions do not qualify as conditions closely related to intellectual disabilities. Nevertheless, the Department may consider a person with any of these conditions if there is a simultaneous occurrence of a qualifying condition as cited in Subsection R414-502-8(1)(a) and (b):

(a) Learning disability;

(b) Behavior or conduct disorders;

(c) Substance abuse;

(d) Hearing impairment or vision impairment;

(e) Mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(f) Borderline intellectual functioning, a related condition that does not result in an intellectual impairment, developmental delay, or "at risk" designations;

(g) Physical problems such as multiple sclerosis, muscular dystrophy, spinal cord injuries, and amputations;

(h) Medical health problems such as cancer, acquired immune deficiency syndrome, and terminal illnesses;

(i) Neurological problems not associated with intellectual deficits. Examples include Tourette's syndrome, fetal alcohol effects, and non-verbal learning disability;

(j) Mild traumatic brain injury such as minimal brain injury and post-concussion syndrome.

(6) An individual who was admitted to an ICF/ID before August 27, 2009, is eligible for continued stay as long as the individual continues to meet the requirements in effect before that date. A resident who was admitted to an ICF/ID before August 27, 2009, is only required to meet the revised eligibility criteria when there is a break in stay wherein the individual resides in a setting that is not a Medicaid-certified ICF/ID nursing facility or hospital.

(7) Before admission to an ICF/ID, the facility must provide each potential resident with a two-sided fact sheet (Form IFS 10) that offers information about ICFs/ID and the Community Supports Waiver for People with Intellectual Disabilities and Other Related Conditions. Each resident's record must contain an acknowledgement (Form IFS 20) signed by the resident or legal representative, which verifies that the facility provided the Form IFS 10 before admission.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~August 27, 2009~~]2012
Notice of Continuation: August 27, 2009
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Insurance, Administration
R590-122
Permissible Arbitration Provisions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36577
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make changes for clarification purposes and to clean-up formatting errors in the rule.

SUMMARY OF THE RULE OR CHANGE: The changes: correct layout; clarify that policies subject to Rule R590-214 are exempt from this rule; alphabetize the definitions; and add a Severability Section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The changes are for clarification purposes and to clean-up formatting problems. They will not affect the revenues or expenditures of the department or state's budget.

♦ LOCAL GOVERNMENTS: This rule affects licensees of the department and will have not affect on local governments.

♦ SMALL BUSINESSES: The changes are for clarification purposes, to add a severability clause, and to clean-up formatting problems. They will have no fiscal impact on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes are for clarification purposes, to add a severability clause, and to clean-up formatting problems. They will have no fiscal impact on businesses of any kind or individual consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes are for clarification purposes, to add a severability clause, and to clean-up formatting problems. They will have no fiscal impact on businesses or individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on Utah businesses.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-122. Permissible Arbitration Provisions.
R590-122-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Section 31A-2-201(3).

R590-122-2. Purpose and Scope.

(1) This rule recognizes [~~the emergence of~~]arbitration as [~~a speedy and inexpensive~~]an acceptable method of alternative dispute resolution. The rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

[~~1.~~](a) define the term "permissible arbitration provision" as set forth in Sections 31A-21-313(3)(c) and 31A-21-314(2); and

[~~2.~~](b) provide guidelines upon which disclosure of a contract arbitration provision is to be made.[~~This~~]

(2)(a) Except as provided in (b), this rule is applicable to both individual and group contracts and to all classifications or lines of insurance.

(b) This rule does not apply to individual and group income replacement policies or health benefit plans that comply with R590-215.

R590-122-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in [~~Section~~]Sections 78B-11-102 and 31A-1-301, and [~~in addition~~]the following:

[~~1. Those certain definitions set forth in Section 78B-11-102 of the "Utah Arbitration Act."~~

~~2. "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.~~

~~3.~~](1) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

[~~4.~~](3) "Optional binding arbitration" means a contract provision requiring any party to an insurance contract to submit to arbitration as set forth in such contract at the election of any contracting party, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-122-4. Rule.

[~~1.~~](1) Compulsory non-binding arbitration is contrary to the public interest and is not a "permissible arbitration provision."

[~~2.~~](2) Optional binding arbitration at the exclusive election of an insured party is a "permissible arbitration provision," in which case the disclosure provisions in paragraph 5 below may not be applicable.

[~~3.~~](3) Both compulsory and optional binding arbitration at the election of either the insured or the insurer are "permissible arbitration provisions."

[~~4.~~](4) Policy forms containing optional binding arbitration provisions for the exclusive election of an insurer will be disapproved under [~~Section~~]Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed [~~under Section 31A-21-107~~] and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

[~~5.~~](5) Except as excluded in paragraph 2 above, each application or binder pertaining to an insurance policy which contains a permissible arbitration provision must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF (THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR), A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE

ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES IF ALLOWED BY STATE LAW AND MAY BE ENTERED AS A [~~JUDGEMENT~~]JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policy holder and, in the case of group insurance, shall be contained in the certificate of insurance or other disclosure of benefits.

[~~6.~~](6) Both compulsory binding arbitration provisions and optional binding arbitration provisions may not be construed to preclude any dispute resolution by any small claims court having jurisdiction.

[~~7.~~](7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act" (Title 78B, Chapter 11).

[~~8.~~](8) Any such agreement for arbitration may not obligate any insured to pay more than 50% of the advance payments required to begin the arbitration process.

[~~9.~~](9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-122-5. Severability.

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

KEY: insurance law
Date of Enactment or Last Substantive Amendment: [~~October 8, 1997~~]2012
Notice of Continuation: June 18, 2012
Authorizing, and Implemented or Interpreted Law: 31A-2-201

Insurance, Administration
R590-151
Records Access Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36578
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule allow for electronic GRAMA requests.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include renumbering to comply with rulemaking standards and to allow for electronic GRAMA requests.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-12-104 and Section 63G-2-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This will have no fiscal impact on the department's or state's budget. It will allow for individuals to communicate GRAMA requests to the department more quickly and in many instances receive a quicker response.
♦ LOCAL GOVERNMENTS: This rule and the amendments to it should have not fiscal impact on local governments since they deal solely with the department's constituents and licensees.
♦ SMALL BUSINESSES: The changes will allow constituents and licensees to contact the department with GRAMA requests and in many cases receive responses more quickly. The only impact these changes should have is to improve communication between the department and its constituents and licensees.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes will allow constituents and licensees to contact the department with GRAMA requests and in many cases receive responses more quickly. The only impact these changes should have is to improve communication between the department and its constituents and licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes will allow constituents and licensees to contact the department with GRAMA requests and in many cases receive responses more quickly. The only impact these changes should have is to improve communication between the department and its constituents and licensees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on businesses. They will improve access to the department.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-151. Records Access Rule.
R590-151-1. Authority.

This rule is adopted pursuant to the provisions of Chapter 2, Title 63G, the Government Records Access and Management Act (GRAMA), specifically Subsections 63G-2-204(2), and 63A-12-104(2).

R590-151-2. Purposes.

The purposes of this rule are to define how record requests are to be made to the Insurance Department, to designate the person who shall fulfill various functions pursuant to the requirements of GRAMA, and to define how an individual may contest the accuracy and completeness of records concerning that individual which are maintained by the department.

R590-151-3. Rule.

[~~A.~~](1) Making a Request for Access to Records.

[~~(1)~~](a) All record requests made under the provisions of GRAMA shall:

(i) be made in writing, email, or facsimile;

(ii) [~~and shall~~]comply with the requirements of Subsection 63G-2-204(1)[~~,~~]; and

(iii) indicate in the subject line "GRAMA REQUEST"; and[~~ shall~~]

(iv) be directed:

(A) in writing to the Records Officer, Utah Department of Insurance, State Office Building, Room 3110, Salt Lake City, Utah, 84114;

(B) via email to mdycrabb@utah.gov; or

(C) or via facsimile to the attention of Records Officer at (801)538-3829 .

[~~(2)~~](b) The department's response may be delayed if a submitted request does not comply with the requirements of Subsection (1).

(3) The department may, at its discretion, waive the requirement for a written request if the records requested are public and readily accessible, or for other good cause shown.

[~~B.~~](2) Appeals From Initial Decisions.

All appeals from an initial decision by the department, which denies access to a record, shall be addressed to the insurance commissioner and shall conform to the requirements of Section 63G-2-401. The authority to order disclosure or nondisclosure is delegated to the head of the division which maintains the record or to any other person the commissioner may designate from time to time.

[~~C.~~](3) Contesting Accuracy or Completeness of a Record.

[~~(1)~~](a) Any request pursuant to Subsection 63G-2-603(2) shall be directed to the records officer.

[~~(2)~~](b) Consideration of the request shall be conducted as an informal adjudicative proceeding unless converted to a formal adjudicative proceeding by the presiding officer.

[~~(3)~~](c) A request to amend findings of fact in any administrative proceeding where the time for appeal has expired shall be denied. These types of records shall be maintained in their original form to protect the public interest and the integrity of the Administrative Records. Section 63G-2-603, may not apply.

R590-151-4. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-151-5. Severability.

If any provision or clause of this rule or the application of it to any person[~~ is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances may not be affected~~] or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance records access
Date of Enactment or Last Substantive Amendment: [~~1994~~]2012
Notice of Continuation: July 25, 2007
Authorizing, and Implemented or Interpreted Law: 63G-2-204; 63A-12-104

Insurance, Administration
R590-154
Unfair Marketing Practices Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36596
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being updated to comply with changes made in H.B. 333, Unfair Inducements Related to Insurance Products, that was passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The following changes are being proposed in this rule: adding the new Section 31A-23a-402.5 Inducements, citation to the Authority Section of the rule; Definition Section adds "Arms length," "Discrimination testing," "Fair market value," and "Social courtesy," and eliminates a definition for "Producer;" Re-numbers the rule to comply with rulemaking guidelines; Eliminates section entitled "Inducements, Gifts and Merchandise Given in Connection with Solicitation or Sale of Insurance;" Adds new section entitled "Electronic Platform and Application Systems;" Amends Severability section to follow the wording we are now using in all of our new rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-402 and Section 31A-23a-402.5

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no fiscal impact on the department. They will not affect filings, workload, revenues to or costs of the department. The rule affects the relationship between agent/producer and the employers they insure.
♦ LOCAL GOVERNMENTS: This rule and its changes will have no fiscal impact on local governments since they deal solely with the department, their licensees and the licensee's clients.
♦ SMALL BUSINESSES: Prior to these changes, human resource services and legal services provided by an agency to a client were not allowed. The rule and law still consider such services as unfair inducements but allows them when producers charge a fair market value for them. If producers provide such services employers will be required to pay and if the producer stops providing such services they may lose business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Prior to these changes, human resource services and legal services provided by an agency to a client were not allowed. The rule and law still consider such services as unfair inducements but allows them when producers charge a fair market value for them. If producers provide such services employers will be required to pay and if the producer stops providing such services they may lose business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Prior to these changes, human resource services and legal services provided by an agency to a client were not allowed. The rule and law still consider such services as unfair inducements but allows them when producers charge a fair market value for them. If producers provide such services employers will be required to pay and if the producer stops providing such services they may lose business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Producers may lose business when they are no longer able to provide improper free services to employers they insure. Employers who received these free services will have the option to pay for them or find cheaper insurance coverage elsewhere to help defray the additional cost of the service they will now have to pay for. For those producers that did not provide services as an unfair inducement, there will probably be no impact, unless they see some business come their way from those employers looking for new coverage.

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 09/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 09/11/2012 11:00 AM, State Office Bldg, 450 N State Street, Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-154. Unfair Marketing Practices Rule.
R590-154-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and [~~Subsection~~]Sections 31A-23a-402[~~(8)~~] and 31A-23a-402.5, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition, and to prohibit them by rule.

R590-154-3. Definitions.

[~~A.~~](1) "Agency" means:

[~~1.~~](a) A person other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

[~~2.~~](b) An insurance organization licensed or required to be licensed under Section 31A-23a-301.

[~~B.~~](2) "Arm's length" means a transaction between two or more parties who are unrelated and unaffiliated by family, marriage or commercial enterprise. This transaction entails that the contract or price has been negotiated by parties, each party acting in his or her own self-interest, and that the sale price is based on fair market value.

(3) "Barter" means the sale of an insurance or annuity contract for anything of value other than cash or other negotiable instruments.

(4) "Discrimination testing" in 31A-23a-402.5(5)(b)(xii)(K) means either eligibility testing or utilization testing.

(a) Eligibility test results must demonstrate that eligibility is not limited to or weighted in favor of key or highly compensated employees. Self-funded plans (such as a cafeteria plan) may not exclude non-highly compensated employees from participating in favor of highly compensated or key employees. In accordance with Internal Revenue Service 26 USC 125(4) and 26 USC 410 the exclusion of certain groups of employees is allowed, including:

(i) employees with less than three years of service;

(ii) employees under age 25;

(iii) part-time or seasonal employees;
(iv) non-resident aliens;, and
(v) collective bargaining employees.
(b) Utilization test results must demonstrate that comparable benefits are utilized by a fair number of employees at all compensation levels and for all positions. See 26 CFR Part 1-41, REG-156518-04, RIN 1545-BE10.
(5) "Fair market value" means what a knowledgeable, willing, and unpressured buyer would pay for a product or service to a knowledgeable, willing, and unpressured seller in the open market without any connection to other goods, services or contracts sold by the licensee.
[~~C. "Producer" means a person licensed or required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. With regards to the selling, soliciting, or negotiating of an insurance product to an insurance customer or an insured:~~
~~1. "Producer for the insurer" means a producer who is compensated directly or indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer.~~
~~2. "Producer for the insured" means a producer who is compensated directly and only by an insurance customer or an insured and receives no compensation directly or indirectly from an insurer for selling, soliciting, or negotiating any product of that insurer to that insurance customer or insured.~~](6) "Social courtesy" means a respectful act or expression of generosity that is not connected with the sale or retention of an insurance product, the fair market value of which is less than or equal to $25.00.

R590-154-5. Producer, Limited Lines Producer or Consultant Agency Name.

[~~A.~~](1) An insurance producer, limited lines producer or consultant agency licensed under the laws of this state shall not use any name that is:

[~~(1)~~](a) misleading or deceptive;

[~~(2)~~](b) likely to be mistaken for another licensee already in business; or

[~~(3)~~](c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

[~~B.~~](2) A producer, limited line producer or consultant agency licensee shall comply with either of the following:

[~~1.~~](a) The agency shall include words such as "insurance agency" or "insurance consultant" or other similar words in the agency's name.

[~~(a)~~](i) Other similar words such as "insurance services", "insurance benefits", "insurance counselors", or "insurance advisors" may also be used.

[~~(b)~~](ii) "Insurance consulting," "insurance consultants" or similar words shall only be used if the agency is licensed as a consultant.

[~~2.~~](b) The agency shall state that the licensee is an insurance agency in any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed by the agency in the State of Utah.

R590-154-6. Individual Licensee Name.

[~~A.~~](1) An individual shall be licensed using the individual's full legal name - first name or initial, middle name or initial, last name, suffix, jr/sr/II/III/etc.

[~~B.~~](2) An individual may file with the department a preferred name or nickname to use in combination with the individual's full legal name.

R590-154-7. Sale, Solicitation, or Negotiation of Insurance.

[~~A.~~](1) An individual licensee and a producer, limited line producer or consultant agency licensee shall not mislead or deceive a person or organization through oral contact or through any letterhead, business cards, advertising, slogan, emblem, or other promotional material used or distributed in Utah by:

[~~1.~~](a) failing to disclose that the licensee is an individual insurance licensee or a producer, limited line producer or consultant agency licensee in every oral or written contact;[~~or~~]

[~~2.~~](b) using or implying license classifications not held by the individual licensee or natural persons designated to the producer, limited line producer or consultant agency licensee;[~~or~~]

[~~3.~~](c) using a name other than the exact name appearing on the producer, limited line producer or consultant agency license;[~~or~~]

[~~4.~~](d) using a name other than the individual licensee's full legal name exactly as filed with the department; or

[~~5.~~](e) using an individual's preferred name or nickname when the preferred name or nickname has not been filed with the department.[~~; and~~]

[~~B.~~](2) [~~the~~]The use of an initial letter, rather than the full first or middle name is not a violation of this section.

[~~C.~~](3) An individual may only use the name of a producer, limited line producer, or consultant agency that has its own separate agency license if the individual licensee is designated to act under that agency's license.

[~~D.~~](4) An individual may not sell, solicit, or negotiate insurance as a producer, limited line producer, or consultant agency; unless the individual has a separate producer, limited line producer, or consultant agency license, and the individual is designated to act under the agency's license.

R590-154-8. Claiming or Representing Department Approval.

[~~A.~~](1) A licensee may not represent, either directly or indirectly, that the department, the insurance commissioner, or any employee of the department, has approved, reviewed, endorsed, or in any way favorably passed upon any marketing program, insurance product, insurance company, practice or act.

[~~B.~~](2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-11. [~~Inducements, Gifts and Merchandise Given in Connection With Solicitation or Sale of Insurance.~~

~~A. A licensee may not give or offer to give any prizes, goods, wares, merchandise or item of value as an inducement to enter into any insurance or annuity contract or as an inducement to receive a quote, submit an application or in connection with any other solicitation for the sale of an insurance or annuity contract. However, anything with an acquisition cost of $3.00 or less shall not be considered an inducement.~~

~~B. Subsection A of this section does not prohibit the giving of promotional gifts or merchandise that is generally available to the public and not given in a manner to constitute an~~

~~inducement to receive a quote or other solicitation or to purchase any insurance or annuity contract, nor does it prohibit insurers from providing sales incentives to producers.~~

~~C. This section does not prohibit the usual kinds of social courtesies as long as they are not related to a particular transaction as stated in Subsection 31A-23a-402(2)(a). If the receiving of the social courtesy is dependent on obtaining a quote, submitting an application or purchasing a policy or contract, it is related to a particular transaction.~~

~~D. This section does not apply to title insurers or producers. Rule R590-153 is the applicable rule for the marketing of title insurance.~~]**Electronic Platform and Application Systems.**

Producers or agencies may provide electronic platforms that provide directly related services of the insurance products to the employer. Fair market value must be charged for items such as human resources and legal services whether electronic or paper.

R590-154-15. Use of Comparative Information.

[~~A.~~](1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

[~~B.~~](2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-16. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the name and address of the actual insurer.

R590-154-17. Enforcement Date.

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

R590-154-18. Severability.

If any provision of this rule or the application [~~thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstance shall not be affected thereby~~]to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance unfair marketing practices
Date of Enactment or Last Substantive Amendment: [~~August 7, 2002~~]2012
Notice of Continuation: April 9, 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-201; [~~31A-23-302;~~]31A-23a-402; 31A-23a-402.5

Insurance, Administration
R590-176
Health Benefit Plan Enrollment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36579
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being updated to comply with legislative changes created by the passage of H.B. 29 (2012 General Session), Insurance Amendments, and changes being made for clarification purposes.

SUMMARY OF THE RULE OR CHANGE: Changes include: code reference is being changed from that referring to the Basic Health Care Plan to the Utah NetCare Plan, as per H.B. 29; reducing requirement to quote NetCare Plan to when requested rather than to everyone as per H.B. 29; changing the term "insurer" to "carrier" to be consistent with Title 31A, Chapter 30; and changing the wording in the Severability Clause to be consistent with wording the department is now putting in new and amended rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-2-202(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no fiscal impact on the department. The rule will not require any increased filings or change in the revenues or expenses of the department or state budgets. The only substantive change that will affect procedures is that of insurers only being required to provide quotes on the NetCare Plan when requested to do so.
♦ LOCAL GOVERNMENTS: The changes to this rule will create no fiscal impact on local governments since the rule deals only with the department, their licensees and the licensees' consumers.
♦ SMALL BUSINESSES: This rule will have no effect on small businesses since it is focused on health insurers, all of which are large businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The change that requires insurers to only provide quotes on NetCare policies when requested will reduce an insurer's workload from that of offering the basic health care plan to everyone. Whether or not that will cause a reduction in staff is not known at this time and would vary from insurer to insurer based upon the amount of NetCare business they do.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change that requires insurers to only provide quotes on NetCare policies when requested will reduce an insurer's workload from that of offering the basic health care plan to everyone. Whether or not that will cause a reduction in staff is not known at this time and would vary from insurer to insurer based upon the amount of NetCare business they do.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is expected that the changes to this rule will have little, if any fiscal impact on health insurers. If a health insurer does a great deal of NetCare business in Utah it is conceivable that the change in this rule requiring them to provide quotes to only those that ask, instead of everyone, could reduce their workload, a reduction in their workforce due to the limited uptake of NetCare policies.

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 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-176. Health Benefit Plan Enrollment.
R590-176-4. General Provisions.

(1) Any attempt to selectively or unfairly delay, obstruct or otherwise hinder any person from obtaining coverage under Chapter 30 is a violation of Section 31A-30-108.

(2) Enrollment shall be equally available through all distribution systems, classes of business, and rating criteria categorizations.

(3) Enrollment is available to small employers without respect to whether any eligible employee or dependent is classified as uninsurable.

(4) The enrollment residency requirements do not supersede other dependent and child requirements of the Insurance Code.

(5) [~~A~~]When requested, a carrier must offer a [~~basic health care plan~~]Utah NetCare Plan in compliance with [~~Sections 31A-22-613.5 and~~]Section 31A-30-109.

(6) A carrier may not market or encourage producers to market individual or small employer health benefit plans in such a way that there is a lessened incentive to insure business with greater health risks.

(7) Commission schedules shall be structured in compliance with R590-207, Health Agent Commissions for Small Employer Groups.

(8) The carrier shall retain a signed statement from each covered small employer that the carrier offered to accept all eligible employees and their dependents at the same level of benefits under the health benefit plan provided to the employer.

(9) An individual or small employer is considered uninsured if the individual or small employer:

(a) does not have a health benefit plan; or

(b) health benefit plan is with a carrier that has made an election under Subsections 31A-8-402.3(3)(e), 31A-8-402.5(3)(e), 31A-22-721(3)(e), 31A-30-107(3)(e), or 31A-30-107.1(3)(e).

(10) All records regarding enrollment applications and underwriting determinations shall:

(a) be retrievable for examination by the time period the application was received;

(b) include all documents, indicating the applicable date, pertaining to the application and its underwriting; and

(c) be retained for the current year plus three years.

(11) The documents indicated in [~~subsection~~]Subsection (10)(b) would include:

(a) application and date received,

(b) notifications to the applicant and the date of notification;

(c) records used in underwriting and date received; and

(d) underwriting decision and date of decision.

R590-176-7. Individual Underwriting Criteria.

(1) Each carrier shall determine the number of individuals classified as uninsurable at initial enrollment. This determination shall be made in accordance with this rule.

(2) An individual insured by the Utah Comprehensive Health Insurance Pool is classified as uninsurable.

(3) (a) An individual may be classified as uninsurable if the individual has:

(i) one or more medical conditions; or

(ii) one or more prescriptions; and

(iii) the conditions, prescriptions, or both, are determined to have a total number of debit points equal to or greater than 99 debit points in the aggregate consistent with the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, taking into account;

(A) elapsed time;

(B) additional criteria; and

(C) exception criteria.

(b) A carrier may not take into account conditions for which coverage is not provided. This includes conditions excluded as a pre-existing condition for which treatment is expected during the exclusion period if the applicant would not be considered uninsurable after the treatment.

(4) Determinations made by [~~an insurer~~]a carrier under Subsection (3)(iii) will be audited by an experienced independent underwriter retained by the board of the Utah Comprehensive

Health Insurance Pool who will rely on the Milliman Health Cost Guidelines - Small Group Medical Underwriting, June 2008, to evaluate whether the debit points of the medical conditions, prescriptions, or both are equal to or greater than 99 debit points in the aggregate.

(5) A carrier may appeal a determination by the auditor under Section [~~3~~](4) that an individual has a combination of conditions, prescriptions, or both, that cause that individual to have debit points less than the number of debit points determined under Section (3) to the commissioner. The commissioner may appoint a designee to review these appeals.

(6) Only individuals enrolling under Subsection 31A-30-108(3) may be counted as uninsurable.

R590-176-8. Individual Carrier Enrollment Cap Calculation and Certification.

(1) Pursuant to Section 31A-30-110, an individual carrier may not decline enrollment until the carrier has:

(a) met its enrollment cap; and

(b) submitted a certification to the department in compliance with this section.

(2) An individual carrier may limit enrollment after submitting its certification.

(3) The commissioner may require additional enrollment after reviewing the certification.

(4) An officer of the individual carrier shall submit a certification that:

(a) lists the UC and CI as defined in Section 31A-30-103(28);

(b) lists the number of individual natural covered lives at the time of the certification;

(c) categorizes the UC into new applicants added to existing policies and newly issued policies;

(d) identifies the number of Comprehensive Health Insurance Pool participants; and

(e) identifies the qualifying conditions, prescriptions, or both that cause the persons making up the carrier's UC to be considered uninsurable under Section 31A-30-106(1)[~~(i)~~] and Rule R590-176.

(5) Carriers, whose coverage count exceeds 200% of the coverage count as of the end of the prior year, shall determine the uninsurable percentage using counts as of the end of the most recent calendar quarter.

R590-176-11. Severability.

[~~If a provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected thereby.~~]If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance
Date of Enactment or Last Substantive Amendment: [~~November 18, 2008~~]2012
Notice of Continuation: December 19, 2011
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202

Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36615
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended as a result of past legislative changes; H.B. 207, Health Insurance Amendments passed in the 2004 General Session, and S.B. 122, Insurance Law Amendments, passed in the 2002 General Session.

SUMMARY OF THE RULE OR CHANGE: The following are changes made as a result of legislation: updated references from Section 31A-22-703 to 31A-22-723. During the 2004 General Session, under H.B. 207, the legislature repealed Section 31A-22-703 and replaced it with Section 31A-22-723. Policies, procedures, and requirements remained the same with these changes. Updated reference from Subsection 31A-30-107(1)(f)(ii) to Subsections 31A-30-107(3)(e) and 31A-30-107.1(3)(e). Prior to 2002, Section 31A-30-107 applied to both individual and small employer health benefit plans. During the 2002 General Session, the legislature created two similar sections, one applying to small employer plans, Section 31a-30-107, and another section applying to individual plans, Section 31A-30-107.1. There was no fiscal impact. Policies, procedures, and requirements remained the same. Updated Subsection 31A-30-104(2) to 31A-30-104(4), they were renumbered due to S.B. 122, 2002 General Session. Updated applicable sections of Title 31A, Chapter 30. Since this rule was put into effect in 2003, numerous sections have been added to Title 31A, Chapter 30. None of these have created a fiscal impact on the state, businesses or consumers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-4-115

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The above noted changes have had no fiscal impact on the department's workload, revenues, or expenses. The changes simply move and re-arrange code text without changing policies, procedures, or requirements.

♦ LOCAL GOVERNMENTS: The changes to this rule have had no impact on local governments since the changes deal solely with the relationship between the department and its licensees.
♦ SMALL BUSINESSES: The changes to this rule have had no fiscal impact on the insurance industry or their clients. The changes simply move and re-arrange code text without changing policies, procedures, or requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule have had no fiscal impact on the insurance industry or their clients. The changes simply move and re-arrange code text without changing policies, procedures, or requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule have had no fiscal impact on the insurance industry or their clients. The changes simply move and re-arrange code text without changing policies, procedures, or requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes have had not fiscal impact on industry.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
R590-199-5. Plan of Orderly Withdrawal.

(1) A covered carrier and each affiliate of a covered carrier that elects to nonrenew coverage under a health benefit plan in Utah must file a plan of orderly withdrawal with the Utah insurance commissioner explaining the process of nonrenewal. The plan must be filed with the Utah insurance commissioner at the time advance notice is given under Subsection 31A-30-107(3)(e) and 31A-30-107.1.(3)(e) and must be accompanied by a $50,000 withdrawal fee or proof of placement or assumption of all business to another carrier. This fee is to be made out to the Utah Comprehensive Health Insurance Pool. The plan of orderly withdrawal is to include the following information:

(a) name and telephone number of company representative to contact regarding the nonrenewal;

(b) list of all policy forms affected by the withdrawal;

(c) number of group or individual policies, or both, that are currently in force;

(d) number of covered lives, include insured, spouse and dependents, under individual health benefit plan policies;

(e) number of covered lives, include insured, spouse and dependents, under small employer health benefit plans;

(f) number of COBRA or state extension policies and the number of covered lives for each;

(g) copy of conversion plan and rates that will be offered in accordance with Section [~~31A-22-703~~]31A-22-723;

(h) copy of notice required by [~~Subsection 31A-30-107(1)(f)(ii)~~]Subsections 31A-30-107(3)(e) or 31A-30-107.1(3)(e). Such notice must inform the insured of their portability rights and responsibilities;

(i) service or coverage areas within the state, which indicates withdrawal areas;

(j) list of all types of all insurance coverages offered in Utah by line of business and the premium volume generated in the prior year;

(k) any reinsurance ceding arrangements relating to the health benefit plans being nonrenewed;

(l) information relating to any waiver provided under [~~Subsection 31A-30-104(3)(a)~~]Section 31A-30-104(5);

(m) list of all affiliated carriers as described in [~~Subsection 31A-30-104(2)~~]Section 31A-30-104(4);

(n) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with [~~Sections 31A-30-101 through 31A-30-112~~]31A-30, as applicable, at the time the election to withdraw is filed;

(o) certification executed by the president of the company that its individual enrollment cap has been exceeded, if applicable;

(p) loss ratios for each form issued in Utah and the methodology by which the loss ratio was calculated, including a description of all assumptions made;

(q) certified actuarial analysis from a qualified actuary of the impact that the withdrawal or nonrenewal will have on the individual and small employer market in Utah;

(r) certified actuarial analysis from a qualified actuary of the impact that withdrawal or nonrenewal will have on the Utah Comprehensive Health Insurance Pool;

(s) actuarial certification from a qualified actuary certifying to the level of liability related to the policies;

(t) detailed explanation of all efforts made to place business that is to be nonrenewed with other carriers;

(u) any plans to nonrenew any other line of business in Utah in the future;

(v) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and

(w) demonstrate that all liabilities relating to the policies that will be nonrenewed are fully satisfied or adequately reserved.

(2) Submit two copies of the plan of orderly withdrawal, one copy to be filed and a second set to be returned to you, and a self addressed return envelope.

(3) If both the written notice and a complete plan of orderly withdrawal are not received, the partial submission will be returned and not considered to have been received by the department.

R590-199-6. Implementation of Withdrawal.

(1) A covered carrier and all its affiliates that elect to withdraw from the market or to nonrenew a health benefit plan issued to covered insureds must provide written notice of the decision to do so to all affected insureds and to the insurance commissioner in each state in which an affected insured resides.

(2) Each insured must be given at least 180-days notice prior to the nonrenewal date.

(3) The Utah insurance commissioner is to receive written notice of the decision to withdraw or nonrenew any health benefit plan at least three working days prior to the mailing of the notice to affected covered insureds.

(4) The carrier must include with the notice to the Utah insurance commissioner its certificate of authority which will be modified to prohibit the writing of business which the carrier has elected to nonrenew or withdraw from the market.

(5) The carrier is prohibited from writing new business in the individual and small employer health benefit plan market for a period of five-years from the date of notice to the Utah insurance commissioner.

(6) The covered carriers affiliates, as defined in Subsection [~~31A-30-104(2)~~]31A-30-104(4), may also be required to withdraw as determined by the commissioner.

(7) Each plan submitted to the commissioner must provide that the nonrenewal of any coverage under a health benefit plan will occur on the annual renewal date of each policy or plan. Nonrenewal can only occur on the annual renewal date.

KEY: health insurance
Date of Enactment or Last Substantive Amendment: [~~March 14, 2003~~]2012
Notice of Continuation: May 20, 2010
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-4-115; 31A-30-106; 31A-30-107

Natural Resources, Water Rights
R655-10-7A
Review of Design

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36505
FILED: 07/18/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice. The statutory obligation continues and there is a continuing need for the rules to provide guidance for dam safety, classifications, approval procedures and independent reviews.

SUMMARY OF THE RULE OR CHANGE: The following rule is established under the authority of Title 73, Chapter 5a. The procedures constitute minimum requirements for dams. Additional procedures may be required to comply with any other governing statute, federal law, federal regulation, or local ordinance. This rule applies to any dam constructed in the state with the exception of those specifically exempted by Section 73-5a-102. Some dams may have an abbreviated approval process as outlined in Section 73-5a-202.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-5a-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No cost involved--Clarification of processing does not require a dollar figure.
♦ LOCAL GOVERNMENTS: No cost involved--Clarification of processing does not require a dollar figure.
♦ SMALL BUSINESSES: No cost involved--Clarification of processing does not require a dollar figure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost involved--Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs involved--Prior procedure processes encompassed funds and therefore does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No physical impact--Clarification of process procedures does not require a dollar figure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WATER RIGHTS
ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2012

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.
R655-10. Dam Safety Classifications, Approval Procedures and Independent Reviews.
R655-10-7A. Review of Design.

The following situations will require an independent consultant review of the design of a new dam or significant enlargement of an existing dam.

1. Any dam that in the opinion of the State Engineer warrants additional review due to the large size or complexity of the dam and/or reservoir, or to supplement the technical expertise of the design engineer.

2. Any high or moderate hazard dam which, in the opinion of the State Engineer, has a unique problem requiring additional review.

3. Any high or moderate hazard dam whose design is not typical of dams normally built in the state and is thus beyond the technical abilities of the State Engineer's dam safety staff.

4. If the owner's engineer and the State Engineer cannot reach an agreement on the design of a dam.

5. If the owner specifically requests an independent consultant review.

KEY: dam safety, dams, reservoirs.
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2012
Notice of Continuation: April 14, 2011
Authorizing, and Implemented or Interpreted Law: 73-5a

Natural Resources, Water Rights
R655-11-5A
Geological and Seismic Study

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36507
FILED: 07/18/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: The current rule requires clarification and update to current industry practice. The statutory obligation continues and there is a continuing need for the rules to provide guidance for requirements for the design, construction, and abandonment of dams.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-5a-203

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No cost involved--Clarification of processing does not require a dollar figure.
♦ LOCAL GOVERNMENTS: No cost involved--Clarification of processing does not require a dollar figure.
♦ SMALL BUSINESSES: No cost involved--Clarification of processing does not require a dollar figure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost involved--Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost involved--Clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No physical impact--Clarification of process procedures does not require a dollar figure.

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NATURAL RESOURCES
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ROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2012

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.
R655-11. Requirements for the Design, Construction and Abandonment of Dams.
R655-11-5A. Geological and Seismic Study.

A review of the seismic or earthquake history of the region will be performed to establish the relationship of the site to known faults and epicenters. This will be based primarily on review of existing maps and technical literature and should include major earthquakes during historic time, epicenter locations and magnitudes, and the location of any major or regional fault traces. Geologic conditions at or near the dam site that might indicate recent fault or seismic activity should be included. Resulting design earthquakes and associated site ground motion parameters will be selected considering all available evidence including tectonic and seismological history. The ground motion parameters to be selected for the site will consist of those that are needed by the analyses that are appropriately selected for design and may include peak accelerations, velocities, displacements, response spectra, and acceleration time histories. Both the Maximum Credible Earthquake (MCE) and the Operating Basis Earthquake (OBE) will

need to be investigated for all projects. The MCE should be evaluated from the following analyses:

1. A deterministic analysis from active faults in the region surrounding the dam will be performed to estimate magnitude and ground motion parameters. High and moderate hazard dams will be evaluated using ground motion parameters that are at least equal to mean plus 1 standard deviation predictions (84th percentile). At the discretion of the State Engineer, these values may be reduced to mean (50th percentile) for moderate hazard dams. Low hazard dams will be evaluated using ground motion parameters that are at least equal to mean (50th percentile) predictions. Magnitude estimates will consider the potential for multi-segment rupture for segmented faults.

2. [~~Unless otherwise required by the State Engineer, the random or background event will consist of a minimum magnitude 6.5 event having a peak horizontal site acceleration obtained from a map, herein incorporated by reference, produced by the USGS and entitled "Peak Accelerations (%g) with 5,000 Year Return Time, no fault-specific sources." Alternatively,~~]A probabilistic analysis will be performed. The most recent United States Geological Survey (USGS) Interactive Deaggregation tool found on the USGS website, using a 5,000 year return interval, can be used to identify magnitude and peak ground motions. [s]Site specific evaluations may be performed to define ground motions for this event if the methods used and assumptions made are acceptable to the State Engineer. Unless waived by the State Engineer, the minimum earthquake magnitude shall be 6.5. At the discretion of the State Engineer, the OBE requirement may be waived.

3. The OBE will be determined by probabilistic methods acceptable to the State Engineer and may include the use of the Deaggregation tool on the USGS website with a 200 year return interval.

KEY: dams, earthquakes, floods, reservoirs
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2012
Notice of Continuation: April 14, 2011
Authorizing, and Interpreted or Implemented Law: 73-5a

Natural Resources, Water Rights
R655-11-5C
Method of Analysis

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36508
FILED: 07/18/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The current rule requires clarification and update to current industry practice.

SUMMARY OF THE RULE OR CHANGE: The current rule requires clarification and update to current industry practice. The statutory obligation continues and there is a continuing need for the rules to provide guidance for requirements for the design, construction, and abandonment of dams.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-5a-203

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No cost involved--Clarification of processing does not require a dollar figure.
♦ LOCAL GOVERNMENTS: No cost involved--Clarification of processing does not require a dollar figure.
♦ SMALL BUSINESSES: No cost involved--Clarification of processing does not require a dollar figure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost involved--Clarification of processing does not require a dollar figure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost involved--Clarification of processing does not require a dollar figure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact--Clarification of process procedures does not require a dollar figure.

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THIS RULE MAY BECOME EFFECTIVE ON: 10/22/2012

AUTHORIZED BY: Michael Styler, Executive Director

R655. Natural Resources, Water Rights.
R655-11. Requirements for the Design, Construction and Abandonment of Dams.
R655-11-5C. Method of Analysis.

A. Procedures are available for selecting design earthquakes and associated site-specific motions and for assessing the resistance of dams to these earthquake motions. Procedures and techniques for evaluating the effects on dams from estimated earthquake ground motions range from simplified concepts to

comprehensive dynamic analyses. When the degree of sophistication of analytical procedures is far advanced, however, uncertainty is produced in the results by imperfect knowledge of input parameters obtained through field exploration and laboratory testing programs.

B. The extent or scope of studies, investigations, tests and analyses which may be required to adequately determine the seismic safety of a dam will vary from site to site. In general, the following physical factors will indicate a high priority and a greater degree of investigations and analysis:

1. Proximity to known active faults.

2. Indications of low-density materials in the dam or foundation.

3. Zones of high pore pressures or potential liquefaction.

4. Indications of marginal static stability.

5. Lack of adequate construction records for existing dams.

C. Regardless of these factors, however, one of the major considerations will be the "consequences of a failure". High and moderate hazard structures with permanent pools which could result in loss of life or extensive property damage from a failure will, in general, require a greater scope of investigation and analyses.

D. Following are the general analysis requirements, unless otherwise stipulated by the State Engineer, for MCE design earthquakes:

1. Embankments, foundations, and abutments not subject to liquefaction or significant strength loss:

a. For a maximum acceleration of 0.2g or less, or a maximum acceleration of .35g or less if the embankment consists of clay on a clay or bedrock foundation, a pseudo-static coefficient which is at least 50 percent of the maximum peak bedrock acceleration at the site should be used in the stability analysis. The minimum factor of safety in an analysis should be 1.0.

b. For a maximum peak acceleration greater than indicated above, a deformation and settlement analysis should be performed to estimate anticipated total crest movement. The evaluation should consider the potential for excess pore pressure generation and be performed for both the upstream and downstream slopes of the dam. Total crest movement should consider settlement and potential accumulation of movement from both sides. The minimum factor of safety against overtopping should be 2.[~~5~~]0.

2. Embankment, foundation, or abutment soils subject to liquefaction or significant strength loss:

a. A liquefaction/strength loss analysis should be completed with enough detail to establish the boundaries of the liquefiable/strength loss soils and the physical characteristics of the soil during and immediately following the design earthquake[~~liquefaction~~].

b. A post earthquake stability analysis should be performed to show that the embankment is stable after liquefaction/strength loss occurs with a minimum factor of safety of 1.2. The potential for excess pore pressure generation will be considered.

c. Calculated deformation and settlement of the embankment total crest movement should result in a minimum factor of safety, against overtopping, of 3.0. Analyses will consider liquefaction/strength loss and the potential for excess pore pressure generation.

3. Other more sophisticated analytical procedures may be required at the discretion of the State Engineer, where conditions warrant greater detailed studies.

E. In addition to analysis of deformation and liquefaction, it will be necessary to assess the potential for internal erosion and cracking. Judgment must be used to decide whether or not erosion would tend to be self-healing as a result of filtering.

F. Construction of dams on active faults will not be allowed unless evidence is presented to, and approved by, the State Engineer that the dam can safely withstand the anticipated offset.

G. Evaluation of a dam under OBE conditions should be completed by similar methods to those described for the MCE. Under the OBE loading conditions the dam should experience no significant damage.

KEY: dams, earthquakes, floods, reservoirs
Date of Enactment or Last Substantive Amendment: [~~September 12, 2011~~]2012
Notice of Continuation: April 14, 2011
Authorizing, and Implemented or Interpreted Law: 73-5a

Pardons (Board of), Administration
R671-202
Notification of Hearings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36558
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures regarding notification of hearings. Agency action, and this administrative rule, are authorized and required by Subsections 63G-3-201(2) and 77-27-7(1). The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq., and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures regarding notification of hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Subsection 63G-3-201(2) and Subsection 77-27-7(1) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012, at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.
R671-202-1. Notification.

An offender will be notified of the date, time and place of [~~the~~]a personal appearance hearing at least seven calendar days in advance of the[~~any~~] hearing[~~ where personal appearance is involved~~], except in extraordinary circumstances, and will be [~~specifically~~]advised as to the purpose of the hearing.

In extraordinary circumstances, the hearing may be conducted without the seven day notification, or the offender may waive this notice requirement.

Public notice of Board hearings will also be posted one week in advance [~~at the Board's offices~~]on the Board's website (www.bop.utah.gov).

Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.

KEY: parole, inmates
Date of Enactment or Last Substantive Amendment: [~~October 10, 2007~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(2); 77-27-7(1); 77-27-9(4)(a)

Pardons (Board of), Administration
R671-203
Victim Input and Notification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36560
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedure for notifying victims of hearings in accordance with state laws. Agency action, and this administrative rule, are authorized and required by Utah Constitution, Art I, Sec 28; Sections 77-27-9.5, 77-37-3, 77-37-4, and 77-38-1 et seq.; and Subsection 63G-3-201(3). The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedure for notifying victims of offender hearings, as well as setting up victim impact hearings, in accordance with state laws.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art I, Sec 28 and Section 77-27-1 et seq. and Section 77-27-9.5 and Section 77-37-3 and Section 77-37-4 and Section 77-38-1 et seq. and Subsection 63G-3-201(3) and Subsection 77-27-9(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012, at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. General Provisions.

Pursuant to statute, the Department of Corrections shall provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Pursuant to statute, the prosecutor of the case, and upon request of the Board, any other law enforcement official responsible for offender's arrest, conviction, and sentence, shall forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

If a victim does not wish to give testimony or is unable to do so, a victim representative may be appointed by the victim, or if the victim is a minor, by the victim's parent(s) or lawful guardian or custodian, to speak on the victim's behalf. A family member of the victim may also testify if the victim is deceased as a result of the offense or if the victim is a child.

"Victim" for purposes of this Rule means:

A. [~~a~~]Any person, of any age, against whom an offender committed a felony or class A misdemeanor offense either personally or as a party to the offense, for which a prison sentence was imposed or for which the hearing is being held;

B. [~~i~~]In the discretion of the Board, any person, of any age, against whom a related crime or act is alleged to have been perpetrated or attempted;

C. [~~a~~]Any victim originally named in an allegation of criminal conduct who is not a victim of the offense to which the defendant entered a negotiated plea of guilty; and

D. [~~a~~]Any victim representative and family member as provided herein.

"Victim Representative" means a person who is designated by the victim or designated by the Board, who represents the victim in the best interests of the victim.

A victim or victim representative, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the individual presiding at the hearing.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include [~~a—~~]picture identification, appropriate dress, and no contraband. Contraband for this purpose

includes but is not limited to purses/bags, cell phones, and other electronic devices. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

R671-203-2. Notification.

A. Notice of an offender's original parole hearing shall be timely sent to the victim at his most recent address of record with the board. The notice shall include:

(1) the date, time, and location of the hearing;

(2) a clear statement of the reason for the hearing, including all offenses involved;

(3) the statutes and rules applicable to the victim's participation in the hearing;

(4) the address and telephone number of an office or person the victim may contact for further explanation of the procedure regarding victim participation in the hearing;

(5) specific information about how, when, and where the victim may obtain the results of the hearing; and

(6) notification that the victim must maintain current contact information with the Board in order to receive future notifications of hearings affecting the offender's incarceration or parole.

B. If the victim is [~~dead~~]deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to notify the victim's immediate family of the hearing.

C. Following the notice of the original hearing, a victim may elect to receive notice of any future parole grant hearing, parole revocation hearing or re-hearing. In order to do so, the victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.

D. For victims who elect to receive future notices, the Board will mail such notice to the victim's last current address of record or most recent contact information as provided to the Board.

R671-203-3. Right to Attend; Right to Testify.

As used in this section, "hearing" means a hearing for a parole grant or revocation, or a rehearing of either of these if the offender is present.

A victim may attend any hearing regarding the offender. A victim may testify during any hearing regarding the impact of the offense(s) upon the victim, and may present any[~~his views concerning~~] concerns or statements regarding any decision to be made regarding the offender.

The victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

R671-203-4. Victim Statements and Testimony.

A. A victim, victim representative or victim's family member (if the victim is a child, deceased or unable to attend due to physical incapacity), may testify regarding the impact of the offense(s) upon the victim, and may present any[~~his views concerning~~] concerns or statements regarding any decision to be made regarding the offender.

B. The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

C. Oral testimony at hearings will be limited to five minutes in length per victim or representative. If a family member testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

D. [~~The~~]A victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony, however, the offender may be able to hear the victim speak, depending on the facility where the hearing is conducted. The victim's testimony will be recorded or otherwise made available to the offender. At the conclusion of the testimony, the offender will be returned to the hearing room, and the Board will allow the offender to respond. A separate hearing will not be scheduled to allow for testimony outside the presence of the offender.

E. Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated.

F. Victims or representatives should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

G. In cases where multiple victims desire to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all victims. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors required to return.

R671-203-5. Victim Impact Hearings.

A. In any case where an offender's original parole hearing is set by Board administrative determination more than three years from the offender's commitment to prison, the victim, as defined by R671-203-1, may request that the Board conduct a victim impact hearing, in order to preserve victim impact testimony and victim statements for future use and reference by the Board.

B. The sole purpose of a victim impact hearing is to afford an opportunity for victim impact testimony and victim statements to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing. A victim impact hearing is not a substitute for an original hearing. A victim impact hearing will not result in a review, re-scheduling or re-determination of an original hearing date.

C. Victims who request, and for whom victim impact hearings are conducted, retain all rights afforded pursuant to constitutional provision, statute or Board rule, including: the right to notice of the original hearing and any future hearings, as provided by R671-203-1 and R671-203-2; the right to attend any hearing for the offender, as provided by R671-203-1 and R671-203-3; and the right to testify and make future statements to the Board at ant hearing for the offender, as provided by R671-203-1 and R671-203-4.

D. Upon such a request from a victim, the Board shall schedule and conduct a victim impact hearing. In scheduling and conducting a victim impact hearing:

(1) All notice provisions of R671-202-1 and R671-203 et seq. shall apply.

(2) All victim appearance, testimony and statement provisions of R671-203 shall apply.

(3) The offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony or statement. However, this is not an opportunity for the offender to discuss his/her conviction or potential release.

(4) The victim impact hearing shall be recorded, pursuant to the provisions of R671-304.

KEY: victims of crimes
Date of Enactment or Last Substantive Amendment: [~~September 27, 2007~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: Art. I, Sec. 28; 77-27-9.5; 77-37-3; 77-37-4; 77-38-1 et seq.; 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)[~~77-27-13; 64-13-20~~]

Pardons (Board of), Administration
R671-301
Personal Appearance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36568
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for personal appearance at offender hearings. Agency action, and this administrative rule, are authorized and required by Subsections 63G-3-201(3) and 77-27-7(2). The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures for personal appearance at offender hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Subsection 63G-3-201(3) and Subsection 77-27-7(2) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-301. Personal Appearance.
R671-301-1. Personal Appearance.

A. By statute, the Board or its designee is required to convene at least one public hearing for all offenders except those serving life without parole or a death sentence. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

B. An offender has the right to be present at a parole grant, rehearing, or parole violation hearing if in the state (UCA 77-27-7). The offender may speak, present documents, ask, and answer questions. In the event an offender waives this right to appear, or refuses to personally attend the hearing, the Board may proceed with the hearing and issue[~~issuance of~~] a decision.

C. If an offender is housed out of state, the Board may [~~elect one of the following procedures~~]proceed as follows:

1. The offender may waive the right to be present, and the Board may then conduct the hearing in absentia.

2. The Board may [~~R~~]request the [~~Warden~~]Department of Corrections to return the offender to the state for the hearing.

3. The Board may seek that [~~A~~]a courtesy hearing [~~may~~] be conducted by the appropriate paroling authority of the custodial state. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

4. An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

5. A hearing may be conducted by [~~way of~~]videoconference or conference telephone call.

KEY: inmates, parole
Date of Enactment or Last Substantive Amendment: [~~November 21, 2002~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201((3);[~~ 77-27-2;~~] 77-27-7(2); 77-27-9(4)(a)[~~; 77-27-29~~]

Pardons (Board of), Administration
R671-302
News Media and Public Access to Hearings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36569
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for news media and public access to hearings. Agency action, and this administrative rule, are authorized and required by Subsection 63G-3-201(3). The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures for news media and public access to hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-302. News Media and Public Access to Hearings.
R671-302-2. Limited Seating.

When the number of people wishing to attend a hearing exceeds the seating capacity of the room [~~where~~]in which the hearing will be conducted, priority for admission and seating shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender.
5. Officials designated or approved by the Board.

[~~5.~~]6. Up to five members of the news media as allocated by the Board or its designee[~~(see RESERVED MEDIA SEATING)~~].

[~~6.~~]7. Members of the public and media on a first[-]come[~~, first served~~] basis.

R671-302-3. Security and Conduct.

All attendees are subject to prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. All persons granted admission to a hearing must have a picture [~~I~~]identification and subject themselves to the security regulations of the custodial facility.

R671-302-4. Executive Session.

Board [~~E~~]executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

R671-302-5. News Media Equipment.

(a) Subject to prior approval by the Board or its designee[~~(see APPROVING EQUIPMENT)~~], [~~the~~]news agency representatives will be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

(b) When it is determined by the Board or its designee, that any such equipment or operators of that equipment are causing a disturbance, are interfering with, or have the potential to cause a disturbance or interfere with [~~the holding of~~]an orderly, fair and impartial hearing, [~~or are causing a disturbance or interfering with the holding of a fair and impartial hearing,~~]restrictions may be imposed to eliminate those problems.

(c) Any instant uploading of images recorded at the site of a hearing, or while a hearing is in progress, must be approved by the Board or its designee in advance of the hearing.

Photographing, recording and/or transmitting the image of a victim testifying before the Board [~~will be~~]is prohibited unless approved by the victim and the individual presiding over the hearing.

R671-302-7. Approving Equipment.

[~~If the request is to use photographic, recording or transmitting equipment, at least 48 hours prior to a regularly scheduled hearing and 96 hours prior to a Commutation Hearing, it will be the responsibility of a representative of the news agency making the request to confer with the designated staff member of the Board to work out the details. If the designated staff member is unfamiliar with the equipment proposed to be used, he may require that a demonstration be performed to determine if it is likely to be intrusive, cause a disturbance or will inhibit the holding of a fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.~~

~~Video tape or "on air" type cameras and still cameras shall be deemed to be approved equipment.~~](a) Requests to use photographic, recording or transmitting equipment, must be made at least forty-eight (48) hours prior to a regularly scheduled hearing and ninety-six (96) hours prior to a Commutation Hearing.

(b) It is the responsibility of the news agency, or their representative, making the request to contact and confer with the Board's designee in order to work out logistical, access and all other details of such use.

(c) If the Board's designee is unfamiliar with the equipment proposed to be used, he or she may require that a demonstration be performed to determine if it is likely to be intrude, disturb or inhibit the orderly, fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.

(d) Digital cameras and recording equipment are approved equipment.

(e) If [~~the~~]equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designee.[~~designated staff member and it~~] Any approved equipment will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.[

~~There will be no artificial light used.~~]

(f) No artificial lighting may be used during a hearing, or in the hearing room, in conjunction with the use of any photographic, recording or transmitting equipment.

(g) If there are multiple requests for the same type of equipment, [~~the~~]news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached regarding pooling arrangements, [~~on who the pool representative will be,~~]the Board, or its designee, will [~~draw a name at random~~]make the determination and assignment.[~~All those wishing to be a pool representative must make their request known in advance, identifying the specific hearing and agree to fully cooperate with all pool arrangements.~~] Any news agency or representative so designated and assigned as the pool representative shall promptly provide all photographs, recordings or footage to all other media agencies and personnel who are deemed a part of the pool.

R671-302-8. Reserved Media Seating.

(a) If [~~there are~~]five or fewer requests for media seating are received prior to the deadline, [~~the~~]all requests will be approved. If more than five requests for media seating are received[~~are made~~], the Board's designee will allocate the seating based on a pool arrangement. Each media category will select its own representative(s). If no agreement can be reached regarding pool[~~on who the~~] representative(s)[~~will be~~], the Board's designee will [~~draw names at random~~]make the determination and assignment. [~~All those~~]Any person wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

(b) One seat will be allocated to each of the following media categories:

1. Local daily newspapers with statewide circulation;
2. Major wire services with local bureaus;
3. Local television stations with regularly scheduled daily newscasts;
4. Local radio stations with regularly scheduled daily newscasts;
5. [~~Daily, weekly or monthly publications (in that order) with priority given to the area where the offense occurred~~]Web-based media.
6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).
7. If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

KEY: news agencies
Date of Enactment or Last Substantive Amendment: [~~November 21, 2002~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)(a)

Pardons (Board of), Administration
R671-304
Hearing Record

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36570
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for the creation of hearing records. Agency action, and this administrative rule, are authorized and required by Subsections 63G-3-201(3) and 77-27-8(1). The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedure for creating records of hearing proceedings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Section 77-27-8 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-304. Hearing Record.
R671-304-1. Hearing Record.

The Board will cause a record to be made of all public hearings and dispositions.

R671-304-2. Procedure.

A record will be made of all board hearings pursuant to UCA 77-27-8 (1). The record will be kept at the Board of Pardons and Parole offices for five (5) years. Upon written request a copy of the record may be purchased.[~~Copies will be provided at no cost to petitioner in accordance with ACA 77-28.8 (3).~~]

KEY: government hearings
Date of Enactment or Last Substantive Amendment: [~~November 21, 2002~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-8; 77-27-9(4)(a)

Pardons (Board of), Administration
R671-305
Notification of Board Decision

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36571
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for Board decisions and orders. Agency action, and this administrative rule, are authorized and required by Art VII, Sec 12; Subsection 63G-3-201(3) and Section 77-27-10. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures for Board decisions and orders.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-27-1 et seq. and Section 77-27-10 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-305. [~~Notification of Board Decision~~]Board Decisions and Orders.
R671-305-1. [~~Notification of Board's Decision~~]Board Decisions and Orders.

[~~(a) Decisions of the Board shall be reached by a majority vote and reduced to a written decision and order. Copies of the decision and order shall be sent to the offender, and the Department of Corrections. The Board shall publish results of Board decisions.~~

~~(b) The Board shall also provide a Rationale for Decisions and Orders for all Original Hearings; Re- Hearings and for Parole Violation Hearings where a decision and order for parole, termination or expiration has been made.~~]Decisions of the Board will be reached by, or ratified by, a majority vote and reduced to writing, including a brief rationale for the decision. The Board's written decisions and orders are public documents. Copies of the Board's decision shall be provided or mailed to the offender who is the subject of the decision. The Board shall maintain a copy of all decisions rendered in each case. The Board may publish its decisions on its website or other forum or in other forms, at its discretion and convenience.

KEY: government hearings
Date of Enactment or Last Substantive Amendment: [~~March 26,~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: [~~77-27-9.7~~]Art VII, Sec 12; 63G-3-201(3); 77-27-9(4)(a); 77-27-10

Pardons (Board of), Administration
R671-309
Impartial Hearings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36572
FILED: 07/31/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for holding impartial hearings to ensure due process. Agency action, and this administrative rule, are authorized and required by Subsection 63G-3-201(3), and Sections 77-27-5 and 77-27-7. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures for holding impartial hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Section 77-27-5 and Section 77-27-7 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-309. Impartial Hearings.
R671-309-1. [~~Impartial Hearings.~~]Ex-Parte Communications.

Offenders are entitled to an impartial hearing before the Board. The Board discourages any direct outside contact with individual Board Members regarding specific cases. This also applies to Hearing Officers designated to conduct the hearing. Any such contact should be made with the Board's designated staff member.

All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to [~~the~~]a staff member designated by the Board who [~~may~~]is not [~~be~~] directly involved in hearing the case. If circumstances dictate, the designated Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's rule on Victim Input and Notification shall apply.

No board member and no hearing officer assigned to a case shall initiate, permit, or consider ex-parte communications concerning the substance of a pending or impending matter.

In situations where such ex-parte communication does occur, the Board member or hearing officer shall immediately take steps to terminate the communication, and shall thereafter reduce the substance of the communication to a written memorandum for the Board file, including copies of any writings that formed any part of the ex-parte communication. Such memorandum shall thereafter be disclosed to the parties.

[~~If a contact, or prior knowledge of a case or individuals involved, is such that it may affect the ability of a Board Member or designated Hearing Officer to make a fair and impartial decision in a case, the Board Member or designated Hearing Officer shall decide whether to participate in the hearing. Should the offender request that a board member or hearing officer not participate, such a request is not binding in any way, but shall be weighed along with all other factors in making a final decision regarding participation in the hearing.~~]

This rule shall not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of an individual Board Member on any particular case or hearing.

R671-309-2. Recusal.

A Board Member or other hearing official or officer shall recuse themselves in a proceeding in which the official's impartiality might reasonably be questioned. However, a potentially disqualified or recused hearing official may disclose the basis of the potential recusal to the offender, who, after disclosure, may waive disqualification or recusal. If the offender waives the recusal or disqualification and agrees that the hearing official need not be disqualified, the hearing official may conduct the proceeding. The offender's waiver shall be entered on the record and memorialized in the case file.

KEY: parole, inmates
Date of Enactment or Last Substantive Amendment: [~~November 22, 2002~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-7; 77-27-9(4)(a)

Pardons (Board of), Administration
R671-311
Special Attention Hearings and Reviews

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36573
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes procedures for special attention hearings and reviews. Agency action, and this administrative rule, are authorized and required by Art VII, Sec 12; Subsection 63G-3-201(3); Sections 77-27-5, 77-27-6, 77-27-7, 77-27-10, and 77-27-11. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq., and Subsections 77-27-9(4)(a) and 77-27-10(2)(b).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies procedures for special attention hearings and reviews.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-27-1 et seq. and Section 77-27-11 and Section 77-27-5 and Section 77-27-6 and Section 77-27-7 and Subsection 63G-3-201(3) and Subsection 77-27-10(2)(b) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-311. Special Attention Hearings and Reviews.
R671-311-1. General.

In exceptional circumstances the [~~b~~]Board may adjust its prior decisions through a special attention review or hearing. This type of review or hearing may be used to adjust parole conditions, review board decisions, and grant relief when exceptional circumstances exist, or upon board initiative action. This process is initiated by the receipt of a written request explaining the special circumstances for which relief may be warranted. Exceptional circumstances may include, but are not limited to, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, exceptional family circumstances, verified opportunity for employment and information that was not previously considered by the Board. The board may request the Department of Corrections to review and make a recommendation on requests not submitted by the Department.

Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offenders file without formal action or response.

R671-311-2. Special Attention Hearing.

A Special Attention Hearing [~~will~~]may be convened or conducted when, [~~in the opinion of~~] the Board determines, a personal appearance [~~is in the best interest to resolve~~]will assist the Board in resolving the issue. Special Attention Hearings are open to the public, are hearings of record and the offender should receive seven[~~7~~] days notice of the purpose, place, date and time of the hearing.

R671-311-3. Special Attention Review.

A Special Attention Review will be processed administratively based on written reports supplied to the Board without the personal appearance of the offender.

KEY: parole, inmates
Date of Enactment or Last Substantive Amendment: [~~October 25, 2007~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-6; 77-27-7; 77-27-9(4)(a); 77-27-10(2)(b); 77-27-11

Pardons (Board of), Administration
R671-313
Commutation Hearings (Non-Death Penalty Cases)

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 36555
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Board previously did not have a rule which dealt with non-death penalty commutation hearings, so this rule establishes a procedure for handling these cases. Agency action, and this administrative rule, are authorized and required by Utah Constitution, Art VII, Sec 12; Subsection 63G-3-201(3); and Sections 77-27-1 et seq., 77-27-5, and 77-27-9. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rules establishes hearing procedures for non-death penalty commutation hearing cases.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-27-1 et seq. and Section 77-27-5 and Section 77-27-9 and Subsection 63G-3-201(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule will have no fiscal impact and will impose no cost or savings to local government. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this proposed rule, and finds that there is no fiscal impact on businesses because of this rule. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule on Monday, 07/16/2012, at 8:00 a.m. No person attended the hearing to comment on this proposed rule, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-313. Commutation Hearings (Non-Death Penalty Cases).
R671-313-1. Applicability.

(1) For purposes of this Rule and the decisions, determinations and orders of the Utah Board of Pardons and Parole (Board), acting under its powers as authorized by the Utah Constitution, commutation may mean the change or reduction of the severity of a crime; the change or reduction of an imposed sentence; or the change or reduction of the type or level of offense. Commutation is an act of clemency. Commutation is not a conditional or unconditional pardon.

(2) No person has a right, privilege or entitlement to commutation or clemency.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes and Utah Administrative Code, Rule R671-312.

(4) All other petitions seeking commutation of a Utah conviction or sentence shall be governed by applicable state constitutional provisions and statutes, and by this administrative rule.

(5) As used in this Rule, "subject" means the person whose conviction(s) or sentence(s) are sought to be commuted by the filing of a commutation petition with the Board.

(6) Any person, individually or through counsel, who has been convicted of any felony, Class A misdemeanor or Class B misdemeanor offense in this State, may petition the Board for commutation of such conviction(s) or sentence(s) entered or imposed in this state, except for cases of treason or impeachment.

(7) The Utah Attorney General; Assistant Attorneys General, as authorized by the Attorney General; any County Attorney or District Attorney; or any Deputy County or District Attorney as authorized by their elected County or District Attorney; may petition the Board, on behalf of any convicted person, for commutation of any such conviction or sentence entered or imposed in this state, except for cases of treason or impeachment.

(8) Any document, pleading, notice, attachment or other item which is submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator, at the Board's offices.

(9) A commutation petition, any response thereto, and any subsequent pleading, submission or document submitted to the Board for consideration in relation to a commutation petition are considered public documents, unless the document is determined by the Board to be controlled, protected or private, pursuant to any other statute, law, rule or prior case law.

(10) Any order issued by the Board relating to a commutation petition is a public document.

R671-313-2. Eligibility.

(1) No commutation petition regarding a traffic citation, an infraction or a Class C misdemeanor will be considered by the Board.

(2) No petition seeking a posthumous commutation of any offense will be considered by the Board.

(3) A petition for commutation may be filed with the Board anytime after the sentencing court has issued a Judgment and Commitment; a Sentence; or a Conviction. The Board may delay it's consideration of any petition where there is or remains pending any appeal or post-conviction litigation regarding the conviction(s) or sentence(s) which are the subject of the commutation petition.

(4) Failure of any petitioner or counsel to comply with this Rule, any other Board rule or any Board directive or order, may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-313-3. Petition Requirements.

(1)(a) The commutation petition shall be signed under oath. If the petitioner is not the subject of the petition, the subject of the petition shall also sign the petition.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Utah Administrative Code, Rule R671-103 - Attorneys.

(2) The commutation petition shall include:

(a) the petitioner's name, address, telephone number and e-mail address;

(b) the subject's name, address, telephone number and e-mail address;

(c) the name, address, telephone number and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(d) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(e) a statement specifying whether or not the conviction for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction for which commutation is petitioned was the subject of any complaint, petition or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeus corpus or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation.

(g) a copy of all police reports, pre-sentence reports, post-sentence reports and court dockets for the convictions and/or sentence for which commutation is petitioned;

(h) a certified copy of the subject's Utah and NCIC criminal history reports (obtained from the Utah Department of Public Safety);

(i) a statement wherein the subject and petitioner certify that no criminal cases or charges are pending against the subject in any court. If the subject has any pending criminal cases or charges,

the statement shall identify and explain all criminal cases or charges pending in any State, Federal or local court and the nature of the cases pending. If such proceedings are pending, the statement must identify the court in which such cases are pending; explain the nature of the proceedings and charges; and note the status of the proceedings.

(j) a statement of the reasons and grounds which petitioner believes support commutation.

(k) copies of all written evidence upon which petitioner intends to rely at the hearing, along with the names of all witnesses whom petitioner intends to call and a summary of their anticipated testimony.

(l) a statement specifying whether any of the stated reasons or grounds for commutation have been reviewed by a court(s); and shall include copy of any court decision entered or made by such a reviewing court;

(m) if the grounds for commutation are based upon post-conviction, newly discovered evidence, the petition shall include a statement explaining why such evidence is considered new, why the purportedly new evidence was not or could not have been reviewed during the judicial, appellate or post-conviction process, and why the purportedly new evidence is not currently subject to judicial review.

(3) If subject is currently on probation or parole, the petition shall include, as an attachment, a report from Adult Probation and Parole which summarizes and explains the subject's progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(4) If the subject is currently incarcerated, the petition shall include, as an attachment, an updated and current Institutional Progress Report from the Department of Corrections, which summarizes and explains the subjects progress while under supervision; and which includes a detailed report of progress toward completing all supervision requirements, treatment requirements, alternative events while under supervision, and fulfillment of restitution, fine, fee and other financial obligations.

(5) If the subject has ever applied for and been denied commutation, the petition shall set forth what, if any, new, significant and previously unavailable information exists which supports commutation and the reasons this information was not previously submitted to the Board, and why this information supports commutation.

(6) At any time following submission of a commutation petition, the Board may seek additional information from the petitioner, the subject or counsel.

R671-313-4. Petition Procedures.

(1)(a) Within six months of receipt of the petition, the Board may either deny the commutation petition without a hearing; request a response from the original prosecuting agency, Attorney General's Office, or the person whose conviction(s) or sentence(s) are sought to be commuted; or grant a commutation hearing in order to further consider the petition. The Board may, on it's own motion, extend the time for preliminary consideration of the petition.

(b) There is no right to a commutation hearing, and the Board retains complete and absolute discretion to determine whether to grant a hearing on the commutation petition.

(2) The Board, after considering the commutation petition, may deny the petition without further pleadings, response, hearing or submissions. If the Board denies a commutation petition without hearing, it shall notify the petitioner and counsel, if represented, and the original prosecuting agency, either by mail or electronic mail.

(3) Upon receipt of a commutation petition, filed by the subject or counsel, the Board may request a response to the petition from the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction and sentence for which commutation is sought; and from any Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to any appeal or post-conviction litigation regarding any conviction or sentence which is the subject of the commutation petition (hereinafter referred to as the "State's response").

(4) If requested prior to the Board scheduling a commutation hearing, the State's response shall be filed with the Board within sixty (60) days of the Board's request, and shall clearly specify whether the responding agency opposes or supports the relief requested in the petition. The State's response shall also include all statements and arguments which form the basis of any opposition to the petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the subject or the State to provide additional information.

(5) The Board, after considering the original commutation petition, and any requested response, may grant a commutation hearing, or may deny the petition without further pleadings, response, hearing or submissions. If after receiving the State's response, the Board denies a commutation petition without hearing, it shall notify the petitioner, counsel, and responding counsel, either by mail or electronic mail.

(6) If the Board grants a commutation hearing:

(a) Within ten calendar days of receiving the Board's order granting a commutation hearing, the subject or his counsel shall serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office or agency originally prosecuted the count(s), charge(s) or case resulting in the conviction for which commutation is sought.

(b) If any appeal from the conviction was filed, the subject or his counsel shall also serve a copy of the commutation petition and all attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented the prosecuting agency or office in relation to the appeal.

(c) If any post-conviction litigation was pursued on behalf of the petitioner or which challenged the conviction or sentence for which commutation is petitioned, the subject or his counsel shall also serve a copy of the commutation petition and all

attachments upon the Attorney General, District Attorney, County Attorney or City Attorney whose office represented State, county or municipality in relation to the post-conviction litigation.

(d) Proof and verification of all service of pleadings as required herein shall be filed with the Board within seven calendar days of accomplishing such service.

(7)(a) The original prosecuting agency, and any other office which represented the State, a county or a municipality in relation to the conviction, sentence, appeal or post-conviction litigation regarding the conviction or sentence which are the subject of the commutation petition may, within sixty (60) days of receiving a copy of the petition, file a response to the commutation petition with the Board.

(b) The State's response shall be delivered, either by mail, electronic mail or hand delivery to the petitioner and his counsel, if represented. Proof of such service shall be filed with the Board within seven calendar days of accomplishing such service.

(c) The State's response to the petition shall clearly specify if the responding agency opposes or supports the relief requested in the commutation petition. The response shall also include all statements and arguments which form the basis of any opposition to the commutation petition; and shall include all written evidence; the names of all witnesses; and a summary of the anticipated testimony upon which the responding agency intends to rely to challenge or oppose the petition. Following receipt of the State's response, the Board may request either the petitioner or the State to provide additional information.

(8) If the Board grants a commutation hearing, the Board Chair or designee will schedule and hold a pre-hearing conference at which time the Board, after hearing from the parties, will schedule the commutation hearing; identify and set the witnesses to be called; clarify the issues to be addressed; and take any other action deemed necessary and appropriate to conduct the commutation proceedings.

R671-313-5. Commutation Hearing.

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to the victim of, and the police agency which investigated the offenses for which commutation has been petitioned, pursuant to applicable statutes, rules or practices of the Board. Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(3) If not otherwise called as a witness, a victim representative, as defined by Utah Administrative Code, Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Administrative Rule R671-203-4(A-C, and F).

(4) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, the subject of the petition and the subject's counsel. The Utah Rules of Evidence do not apply to a commutation hearing.

(5) In conducting the commutation hearing:

(a) The Board will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Utah Code Ann. Subsection 77-27-8(2).

(c) Administrative Rule R671-302 "News Media and Public Access to Hearings" will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

R671-313-6. Commutation Decision.

(1) The Board shall determine by majority decision whether and under what conditions, if any, to grant the petition, in whole or in part, and to commute a conviction or sentence.

(2) The decision of the Board regarding the grant or denial of commutation following a hearing shall be delivered by mail or electronic mail to the parties, and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court which entered the sentence or conviction which are the basis of the commutation petition.

(4) If a sentence or conviction is commuted, the Board will also cause a copy of the commutation order to be delivered to the Utah Department of Public Safety -- Bureau of Criminal Information and the Federal Bureau of Investigation.

KEY: commutation, pardons, punishment
Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-9

Pardons (Board of), Administration
R671-315
Pardons

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36574
FILED: 07/31/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes pardon procedures. Agency action, and this administrative rule, are authorized and required by Art VII, Sec 12; Subsection 63G-3-201(3), and Sections 77-27-5 and 77-27-9. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies pardon procedures.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 77-27-1 et seq. and Section 77-27-5 and Section 77-27-9 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

A pardon is a discretionary act of executive clemency granted by the Board of Pardons and Parole, which forgives the wrongdoer and absolves the wrongdoer of all direct and/or collateral legal consequences of the crime(s) of conviction.

A. The Board may consider a petition for a pardon from [~~an~~]any individual who was convicted or sentenced for an offense in the state of Utah. [~~whose sentence(s) were under the board's jurisdiction and~~]The Board generally accepts and considers pardon petitions only when the sentence [~~have~~]has been terminated or expired for at least five years.

1. The [~~b~~]Board's designee shall obtain and provide relevant information that shall include but not be limited to[~~,~~]:

(a) a completed application on a form approved by the Board;

(b) all police reports for the crime(s) for which the applicant is seeking a pardon;

(c) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any crime(s) for which the applicant is seeking a pardon;

(d) all inmate files[~~,~~];

(e) a recent BCI report[~~,~~];

(f) the applicant's employment history[~~,~~];

(g) [~~restitution report if applicable~~]verification that all imposed restitution, fines, fees or surcharges have been paid in full[~~,~~]; and

(h) verification that the applicant completed therapy programs ordered by the [~~b~~]Board.

2. The [~~b~~]Board's designee shall summarize this information and upon review the [~~b~~]Board may request additional information. The [~~b~~]Board designee shall provide this information to the [~~b~~]Board within sixty[~~60~~] days from the date the completed petition and all required information and documentation was received.

3. The Board shall consider the petition and all available information relevant to it and vote to grant or deny a hearing.

(a) If a pardon hearing is granted the hearing should[~~shall~~] be held within sixty[~~60~~] days, or as soon thereafter as practicable, of the [~~b~~]Board's decision to grant a pardon[~~hold the~~] hearing.

4. [~~The Board may publish the petition in the legal notices section of a newspaper of general circulation and invite~~

~~comment from the public.~~]The Board shall publish notice of the pardon hearing on its web site and on the Utah Public Notice website.

[~~B. When the petition involves cases that were not under the board's jurisdiction, the applicant shall provide all relevant information including, but not limited to, a current BCI, police report(s) of the crime(s) for which the applicant is seeking a pardon, court order(s) for said crime(s) and if applicable verification that all restitution has been paid in full. The Board's designee shall review and summarize the applicant's submission of information. Upon review of this information, the board may request additional information from the applicant or in the alternative it may direct its designee to verify and gather additional information. The Board shall consider the petition and all available information relevant to it and vote to grant or deny a hearing. If a pardon hearing is granted the hearing shall be held within 60 days of the board's decision to hold the hearing.~~

] [~~C~~]B. [~~The Board may deny a pardon by majority vote without a hearing.~~]If the Board decides to consider the granting of a pardon, a hearing will be scheduled with appropriate notice given to victim(s) of record if they can be located, the chief law enforcement officer of the arresting agency, the presiding judge where the conviction was entered, and the County, District or City Attorney where the case was prosecuted.[~~Notice may also be posted in a public place in the jurisdiction where the conviction occurred~~].

C. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

D. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

E. The Board may dispense with any requirement created by this [~~policy~~]Rule if good cause exists.

KEY: pardons
Date of Enactment or Last Substantive Amendment: [~~October 25, 2007~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: Art VII Sec 12; 77-27-1 et seq.; [~~77-27-2;~~]77-27-5; 77-27-9

Pardons (Board of), Administration
R671-316
Redetermination

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36575
FILED: 07/31/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes rehearing procedures. Agency action, and this administrative rule, are authorized and required by Subsection 63G-3-201(3), and Sections 77-27-5 and 77-27-9. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies rehearing procedures.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Section 77-27-5 and Section 77-27-9 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012 at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-316. Redetermination.
R671-316-1. Redetermination Review.

A redetermination is a petition filed by an offender in which the offender requests that the Board of Pardons and Parole reconsider an earlier decision, if and when the offender's current release date is more than five years in the future or the decision was for expiration of a life sentence.

A. Applications for redetermination must originate with and be signed by the offender. Preferably the applications will be routed through the offender's case worker. However the offender may route the petition directly to the Board.

1. A petition that is submitted through a caseworker shall include a current progress report and a recommendation with supporting rationale.

2. If the petition is submitted directly from the offender the Board shall request the same information as required in paragraph A. (1). The Department of Corrections shall submit the requested information to the Board within 30 calendar days.

B. Offenders without a natural life decision may apply for a redetermination five years after the Board's decision and in five year intervals thereafter. Offenders with a natural life decision are eligible to petition in ten year intervals.

C. The Board can make a decision with or without a hearing. All decisions are final and non-appealable.

~~[Offenders are eligible to apply for redetermination at five-year intervals from the last time-related decision. A time-related decision is defined as a personal appearance hearing or redetermination review dealing with release or rehearing dates. Offenders who have been given a decision of natural life in prison will be eligible for redetermination at ten year intervals.~~

~~When applying for redetermination, the offender waives personal appearance and accepts that the Board may reduce the time served, request psychological or other assessment, change conditions of release, make no change or increase the time to be served.~~

~~Applications for redetermination must originate with and be signed by the offender. Applications may be routed directly to the Board or preferably be submitted through the offender's caseworker. In either event, the Board will request a written progress report to include rationale and recommendation based on the Department of Corrections' assessment. The Department of Corrections should provide these materials to the Board in a timely manner.~~

]

KEY: parole, inmates
Date of Enactment or Last Substantive Amendment: [~~February 18, 1998.~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-5; 77-27-9

Pardons (Board of), Administration
R671-402
Special Conditions of Parole

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36556
FILED: 07/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule outlines guidelines for adding special conditions of parole. Agency action, and this administrative rule, are authorized and required by Subsection 63G-3-201(3), and Sections 77-27-1 et seq., 77-27-5 through 6, and 77-27-9 through 77-27-11. The Board has statutory authority to enact administrative rules, pursuant to Section 77-27-1 et seq. and Subsection 77-27-9(4)(a).

SUMMARY OF THE RULE OR CHANGE: This rule change establishes and clarifies guidelines for adding special conditions of parole.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-1 et seq. and Section 77-27-1 et seq. and Section 77-27-10 and Section 77-27-11 and Section 77-27-5 and Section 77-27-6 and Section 77-27-9 and Subsection 63G-3-201(3) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to the state budget. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.
♦ LOCAL GOVERNMENTS: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to local governments. The Board determined that

there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ SMALL BUSINESSES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to small businesses. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Enactment of this rule amendment will have no fiscal impact and will impose no cost or savings to any other person. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. The Board determined that there is no cost or savings because this rule is just a written articulation of an already-functioning internal Board procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Chairman of the Board of Pardons and Parole has considered this rule amendment, and finds that there is no fiscal impact on businesses because of this rule amendment. Interested persons may present their views on the rule pursuant to Division of Administrative Rules process and procedures. A public meeting was scheduled, noticed, and held regarding this rule amendment on Monday, 07/16/2012, at 8:00 a.m. No person attended the hearing to comment on this rule amendment, and no comments have been received by the Board.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.
R671-402. Special Conditions of Parole.
R671-402-1. General.

A. The Board may add special conditions to a standard parole agreement. Special conditions are generally intended to help hold an offender accountable or to help rehabilitate an offender.

B. At any time during an offender's incarceration or parole, the Board may amend the parole agreement on its own initiative, at the request of the Department of Corrections, or other interested parties. The offender shall be afforded a personal appearance hearing to discuss the proposed changes, unless the hearing is waived.

[~~The Board will order special conditions as part of a parole agreement on an individual basis and only if such conditions can be reasonably related to rehabilitation of the offender, the protection of society, or compensation of the victim. The offender will be given an opportunity to respond to proposed special conditions.~~

~~At any time, the Board may review an offender at its own initiative or upon recommendation by the Department of Corrections or others and add any special conditions it deems appropriate. The offender shall be afforded a personal appearance before the Board or a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived.~~

]

KEY: parole
Date of Enactment or Last Substantive Amendment: [~~February 18, 1998~~]2012
Notice of Continuation: January 31, 2012
Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-5; 77-27-6; 77-27-9; 77-27-10; 77-27-11

Public Safety, Driver License
R708-41-4
Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36503
FILED: 07/17/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The requirement for driver education to obtain a Utah driver license was modified by H.B. 266 during the 2012 General Session. The change to this rule simply brings the rule text in line with the statutory amendment.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies that an applicant for a Utah driver license does not need to provide documentation for a driver education course if they are 19 years of age or older.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-3-204(1)(a) and Subsection 53-3-210.5(6)(c)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This change will not result in a cost or savings to the state budget because the state does not offer private driver education courses.
♦ LOCAL GOVERNMENTS: This change will not result in a cost or savings to local government because local government does not offer private driver education courses.
♦ SMALL BUSINESSES: This rule change simply brings the text of the rule in line with the amendment to statute. The loss of business for private driver education providers is the result of a change to statute. For further information, please refer to the fiscal note attached to H.B. 266 from the 2012 General Session.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule change simply brings the text of the rule in line with an amendment to Utah statute. The savings for individuals 19 years of age or older for not having to complete a driver education course is the result of a change to statute. For further information, please refer to the fiscal note attached to H.B. 266 from the 2012 General Session.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the amendment simply removes a documentation requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change simply brings the text of the rule in line with the amendment to the statute. The loss of business for private driver education providers is the result of a change to the statute. For further information, please refer to the fiscal note attached to H.B. 266 from the 2012 General Session.

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 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jill Laws by phone at 801-964-4469, by FAX at 801-964-4482, or by Internet E-mail at jlaws@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Lance Davenport, Commissioner

R708. Public Safety, Driver License.
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.
R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card.

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or

(b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or

(c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and

(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and

(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country <u>if younger than 19 years of age</u>.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original limited-term CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country <u>if younger than 19 years of age</u>.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country <u>if younger than 19 years of age</u>.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

KEY: acceptable documents, identification card, license certificate, limited-term license certificate
Date of Enactment or Last Substantive Amendment: [~~July 12, 2011~~]2012
Notice of Continuation: March 25, 2010
Authorizing, and Implemented or Interpreted Law: 53-3-104; 53-3-205; 53-3-214; 53-3-410; 53-3-804

Tax Commission, Administration
R861-1A-12
Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36546
FILED: 07/26/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment deletes language that is contained in statute; clarifies the treatment of certain commission hearings and orders; and clarifies information the commission may disclose regarding a delinquency.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provides that hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation are open to the public, and clarifies that all other hearings before the commission are confidential tax matters and not open to the public; provides that orders resulting from enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation are public information, and clarifies when all other commission orders may be disclosed to persons other than the named parties; deletes language regarding the sharing of information with political subdivisions and the Multistate Tax Commission that are sufficiently covered in statute; defines "delinquent taxpayer" and clarifies the information the commission may disclose regarding delinquent taxpayers; and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-209 and Section 59-1-210 and Section 59-1-403 and Section 59-1-405

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact; the other proposed changes match current practice.
♦ LOCAL GOVERNMENTS: None--Changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact; the other proposed changes match current practice.
♦ SMALL BUSINESSES: None--Changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact; the other proposed changes match current practice.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact; the other proposed changes match current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact; the other proposed changes match current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposals create no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. [~~Section~~]Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

[~~This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.~~

~~A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.~~

~~1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant~~

~~competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.~~

~~2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.~~

] [~~B.~~](1) [~~Other Tax Orders.~~]Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) [~~Written~~]Except as provided in Subsections (2)(b) through (e), written orders signed by the [~~Commission~~]commission [~~relating to all tax appeals other than property tax matters will also~~]will be mailed to the [~~appropriately~~]named parties in accordance with [~~the Commission rules of procedure~~]commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except [~~for~~]under the following circumstances:

[~~1.~~](i) [~~if the Commission determines that~~] the parties have affirmatively waived any claims to confidentiality; or

[~~2.~~](ii) [~~if the Commission determines that~~] the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information [~~attributable to a return filed with the Commission~~]that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

[~~C. Imposition and Waiver of Penalty and Interest.~~

~~1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:~~

~~(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or~~

~~(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.~~

] [~~D.~~](3) Commission Notes and Workpapers.

[~~1.~~](a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the [~~Commission~~]commission, are [~~to be considered confidential~~]protected, and access to the specific material is restricted to employees of the [~~Commission~~]commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

[~~2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.~~

] [~~E.~~](4) Reciprocal Agreements.

(a) [~~Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission~~]The commission may enter into individual reciprocal agreements to share specific tax

information with authorized representatives of the United States Internal Revenue Service[,—]or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with [~~tax officials of~~]the federal government, other states, and [~~representatives of local governments~~]political subdivisions within and without the state [~~of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service~~]if the political subdivision, state, or federal government grant substantially similar privileges to this state.

[~~F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.~~

~~G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.~~

] [~~H.~~](5) Statistical Information. The [~~Commission~~]commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be [~~prepared by the various divisions of the Commission and~~]made available after review and approval of the [~~Commission~~]commission.

[~~I.~~](6) [~~Public Record Information.~~]Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) [~~Pursuant to Utah Code Ann. 59-1-403(3)(e), the Commission~~]The commission may publicize the following information relating to a delinquent taxpayer:

(i) name[~~, and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their~~];

(ii) [~~addresses,~~]address;

(iii) the amount of money owed by tax type[~~, as well as~~]; and

(iv) any legal action taken by the [~~Commission~~]commission, including charges filed[,]and property seized[~~, etc. No information will be released which is not part of the existing public record~~].

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~June 14,~~]2012
Notice of Continuation: January 3, 2012
Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

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Tax Commission, Motor Vehicle
R873-22M-42
Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36547
FILED: 07/26/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 260 (2012 General Session) creates a "nonrepairable certificate" for certain vehicles and requires the Tax Commission to make rules establishing how an insurance company shall prove it meets the statutory requirements to receive a nonrepairable certificate.

SUMMARY OF THE RULE OR CHANGE: The proposed section indicates the documents and information an insurance company must submit with an application for a nonrepairable certificate to prove that it meets the statutory requirements to receive a nonrepairable certificate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-1005.5

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impact was considered in S.B. 260 (2012 General Session).
♦ LOCAL GOVERNMENTS: None--Any fiscal impact was considered in S.B. 260 (2012 General Session).

♦ SMALL BUSINESSES: None--Any fiscal impact was considered in S.B. 260 (2012 General Session).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact was considered in S.B. 260 (2012 General Session).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule indicates the documents and information an insurance company must submit with an application for a nonrepairable certificate to prove that it meets the statutory requirements to receive a nonrepairable certificate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal in response to legislative action creates no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
MOTOR VEHICLE
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-42. Issuance of Nonrepairable Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.5.

(1) Subject to Subsection (3), an insurance company shall receive a nonrepairable certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a nonrepairable vehicle; and

(b) a copy of the check issued to the registered owner of the vehicle; and

(c)(i) the properly endorsed certificate of title, or other evidence of ownership acceptable to the Motor Vehicle Division; or

(ii) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle and any lien holder of that vehicle requesting:

(A) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(B) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a nonrepairable certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

KEY: taxation, motor vehicles, aircraft, license plates
Date of Enactment or Last Substantive Amendment: [~~August 11, 2011~~]2012
Notice of Continuation: January 3, 2012
Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

Transportation, Preconstruction, Right-of-Way Acquisition
R933-2
Control of Outdoor Advertising Signs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36608
FILED: 08/01/2012

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to clarify the Department of Transportation's authority to maintain "effective control" of outdoor advertising as required by the Federal Highway Beautification Act, by defining critical terms and making other stylistic and grammatical changes.

SUMMARY OF THE RULE OR CHANGE: This rule change defines the word "contiguous", defines the concept of a "unified commercial development", and specifies what constitutes completed roadway construction for purposes of

issuing outdoor advertising permits. These changes will prevent the department from being pressured into making permitting decisions before the final highway configuration is determined, and clarify the legal distinction between what constitutes on-premise verses off-premise advertising. These changes will help the department maintain operational effectiveness of its outdoor advertising control program and help ensure compliance with the Federal Highway Beautification Act so that eligibility for federal funding is not jeopardized. The proposed changes also remove fee amounts that are included in the Utah Code, clarifies that permits are transferable, clarifies how and for what time period fees are collected, and makes other stylistic and grammatical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Sections 72-7-501 through 72-7-516

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Failing to maintain "effective control" of outdoor advertising can trigger a ten percent reduction in total federal highway monies received by the state. This is currently estimated to be in the tens of millions of dollars. Additionally, litigation costs are unknown, but expected to be substantial in order to defend against applicants claiming inverse commendation for takings arising out of the department not issuing outdoor advertising permits in locations where highway design is considered incomplete. Enacting this rule change will help prevent these costs.
♦ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government because the rule only applies to outdoor advertising regulated by the state.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the rule change only clarifies terms used in the rule to help the department comply with the Federal Highway Beautification Act except those associated with a possible delay in advertising revenue for persons seeking an outdoor advertising permit along a highway construction project until design of the project is completed and a permit can be issued.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule change only clarifies terms used in the rule to help the department comply with the Federal Highway Beautification Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons except those associated with a possible delay in advertising revenue for persons seeking an outdoor advertising permit along a highway construction project until design of the project is completed and a permit can be issued.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses except those associated with a possible delay in advertising revenue for businesses seeking an outdoor advertising permit along a highway construction project until design of the project is completed and a permit can be issued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 08/27/2012 01:00 PM, Calvin Rampton Complex, 4501 S 2700 W, First Floor, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: John Njord, Executive Director

R933. Transportation, Preconstruction, Right-of-Way Acquisition.
R933-2. Control of Outdoor Advertising Signs.
R933-2-1. Purpose.

The purpose of this[~~these~~] rule[~~s~~] is to implement the Utah Outdoor Advertising Act Sections 72-7-501 through 72-7-516[~~et seq~~]. Nothing in [~~these~~]this rule[~~s~~] shall be construed to permit outdoor advertising that would disqualify the [~~S~~]state for [~~F~~]federal participation of funds under the applicable [~~F~~]federal standards or conflict with the Utah Outdoor Advertising Act[~~applicable~~]. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on the current Interstate System and Federal Aid Primaries as of June 1, 1991[~~interstate and primary highway systems~~].

R933-2-3. Definitions.

All references in [~~these~~]this [~~R~~]rule[~~s~~] to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned [~~S~~]sign" means any controlled sign[~~, the sign facing~~] of which the sign face has been partially obliterated, dilapidated, has unsafe conditions or [~~been painted out, ~~]has remained blank [~~or has obsolete advertising matter~~]for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. On-ramps and off-ramps are part of the interchange and shall not be considered an acceleration or deceleration lane under the Act or this[~~ese~~] rule[~~s~~].

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, [~~which~~]and the message is designed, intended, or used to advertise or inform, and the[~~which~~] message is visible from any place on the main travel-way of a controlled route[~~the interstate or primary highway system~~].

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

[~~(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.~~

] [~~(7)~~](6) "Conforming [~~S~~]sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and this[~~ese~~] rule[~~s~~].

(7) "Contiguous" means a property that shares a common property line with another property.

(8) "Controlled route" means any interstate, primary system, federal aid primary highway existing as of June 1, 1991, the national highway system, and designated scenic byways meeting any of these classification criteria, where outdoor advertising control is mandated by the Utah-Federal Agreement R933-5-2, or other state law.

[~~(8)~~](9) "Controlled [~~S~~]sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of a controlled route[~~any interstate or federal-aid primary highway in this State~~].

[~~(9)~~](10) "Destroyed [~~S~~]sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

[~~(10)~~](11) "Feeder systems" are secondary roads that bring traffic to the main-traveled way.

[~~(11)~~](12) "Freeway" means a divided highway for through traffic with full control access.

[~~(12)~~](13) "Grandfather [~~S~~]status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and this[~~ese~~] [~~R~~]rule[~~s~~]. Signs only, and not sign sites, may qualify for Grandfather Status.

[~~(13)~~](14) "H-1" means highway service zone as defined in the Act.

[~~(14)~~](15) "Lease or [~~C~~]consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

[~~(15)~~](16) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

[~~(16)~~](17) "Nonconforming [~~S~~]sign" means a sign that was lawfully erected, but that does not conform to [~~S~~]state law or rules enacted[~~passed or made~~] at a later date or that later fails to comply with [~~S~~]state legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

[~~(17) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.~~

~~(18) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.~~

] [~~(19)~~](18) [~~"Parkland"~~]"Public park" means any publicly owned land that is designed or used as a [~~public park,~~]recreation area, wildlife or waterfowl refuge, or historical site.

[~~(20)~~](19) "Point of the [~~G~~]gore" means the point of the area delineated by two solid white lines that is between a permanently constructed continuing lane of a through-roadway and a permanently constructed lane used to enter or exit the continuing lane, including similar areas between merging or splitting highways. The point of gore does not include solid white lines on one or more temporary lanes during a road construction project. The point of gore is not permanently constructed during the time when road construction occurs within the point of gore area.

[~~(21) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.~~

] [~~(22)~~](20) "Sale or [~~L~~]lease [~~S~~]sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon

which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

[~~(23)~~](21) "Scenic [~~A~~]area" as used in the Act includes a scenic byway.

(22) "Sign location" means the center most point of the primary support pole, beam, or column, where it is physically attached to the property. In cases other than single monopole construction, the sign location is determined as the center point between the two outermost support poles, beams, or columns where they are physically attached to the property.

[~~(24)~~](23) "Transient or [~~T~~]temporary [~~A~~]activity" means any industrial or commercial activity, not otherwise herein excluded, that does not have a prior continuous history for a period of six months.

(24) "Unified commercial development" means a multiple parcel commercial development that will be considered contiguous for purposes of on-premise advertising in accordance with the Outdoor Advertising Act if all of the following requirements are met.

a. There is a common development and ownership plan that includes common and/or limited common areas such as sidewalks, roadways, gardens, parking, storage and service areas, to which all constituent businesses have irrevocable shared ownership and use rights, and for which they have irrevocable shared obligations.

b. The unified commercial development operates through an underlying common association or other entity, actively managed and maintained, through which all owners have irrevocable rights and obligations with respect to the unified commercial development and its common areas or limited common areas.

c. The contiguity requirement is met because no part of the development is separated from the other parcel(s) by a state highway as defined in Section 72-7-502. All parts of the unified commercial development are on the same side of a state highway and are contiguous except for roadways or driveways that provide access to the development and these roadways are not state highways.

d. The common areas or limited common areas of the unified development have necessary and true value to the constituent businesses' regular operations. The common areas or limited common areas are not created solely for the purpose of establishing eligibility for on-premise advertising or other non-operational purposes.

e. A development that mainly involves reciprocal easements or use agreements among individual properties does not meet these requirements. Based upon the requirements above, the unified commercial development satisfies the contiguous criteria for on-premise advertising in the Outdoor Advertising Act. If the owners in a unified commercial development subdivide or change the use to one that does not meet these requirements, the advertising may not be considered on-premise advertising.

[~~(25) "Un-zoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.~~

] [~~(26)~~](25) "V-Type [~~S~~]sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

[~~(27)~~](26) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

(27) "Written notification" as described under Subsection 72-7-506(2)(a) is further defined to include email notification.

R933-2-4. Permits.

(1) All controlled outdoor advertising signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, must have a permit. This includes off-premise signs located on the side of or on top of any fixed object or building and visible from the main traveled way of a controlled route[~~an interstate or federal-aid primary highway~~].

(2) All outdoor advertising-related fees shall be determined in accordance with Section 63J-1-504 and be contained within the department's legislatively approved fee schedule.

[~~(2)~~](3) Anyone preparing to erect a controlled sign shall apply for the permit before beginning construction of the sign. The applicant must submit a completed application as determined by the department. Until the application is considered complete by the department, the department cannot process the application. Except for sign relocations caused by department construction projects, an application is not considered complete until the point of gore can be determined as described in R933-2-3(19). However, if an application is submitted during construction occurring on a controlled route, the department will use the project design plans to determine the point of gore if the design plans are complete for that area. Permits shall be issued in the manner prescribed in the Act. Permits may be issued only for signs that are to be erected in commercial or industrial zones or in unzoned commercial or industrial areas, as defined by the Act. Insomuch as a sign cannot lawfully be constructed or maintained unless there is legal access to the property on which the sign is proposed to be located, a permit shall[~~may~~] not be issued if the applicant does not have legal access to the[~~that~~] property.

[~~(3)~~](4) Permits may be issued only for signs already lawfully erected or to be lawfully erected[~~within 90 days from the date of the issuance of the permit~~]. New construction must commence within 180 days of permit issuance and must be completed within 365 days from permit issuance per Section 72-7-507(5)(c). The sign owner is responsible for the proper placement of the sign permit (plate) on the sign within 30 days after delivery by the department to the permit holder, or within 30 days of the installation date of the sign structure.[~~Within 30 days from the date of issuance, the permit must be affixed to the completed sign for which the permit was issued as provided in Subsection R933-2-4(5).~~]

[~~(4)~~](5) A permit affixed to a sign other than the sign for which it was issued is unlawful, and remedial action shall be taken by the permittee by the proper affixing of the permit to the correct sign within 30 days of notice to the permittee.

[~~(5)~~](6) Permits shall be permanently attached to the sign in a position to be readily visible from the nearest highway in the direction of travel to the sign faces. If the sign is a single-face cross-highway reader, then the permit must be attached to the sign

in a position readily visible from the nearest traveled portion of the highway. The permittee is responsible for the proper placement of the permit on the sign.

[~~(6)~~](7) If a sign permit is lost or destroyed, the sign owner must submit a new permit application and appropriate fee to the department to obtain a new permit[~~Sign permits that have been lost or destroyed must be replaced, and new permits for signs otherwise lawful shall be issued upon the payment of a $25 fee for each sign and the completion of a new permit application~~].

[~~(7)~~](8) Permits shall be valid for five years from the date of issuance, or until the department reaches its scheduled billing cycle every fifth year (whichever is shorter),[~~issued on a one year fiscal basis,~~] and must[~~shall~~] be renewed on or before the first day of July during designated billing cycle years[~~of each year~~].

[~~(8) The fee for a new permit is $100 for the one-year fiscal period or any part thereof. The permit expires June 30 of the fiscal year. The fee for permit renewal is $25 for the one-year fiscal period or any part thereof. Notwithstanding the specification in Subsections R933-2-4(8),(12), and (13)(a) of a $100 fee for a sign permit, the fee for the sign permit for a non-profit public service sign shall be $25, and the fee for renewal of the permit for that non-profit public service sign shall be $10.~~

] (9) The fee for permits[~~issued within a one-year fiscal period~~] shall not be prorated.

(10) [~~One-year p~~]Permit renewals shall be made on renewal forms prepared by the [~~D~~]department. Completion of the renewal application and obtaining[~~of~~] the renewal permit prior to the expiration of the existing permit shall be the sole responsibility of the sign owner. The renewal may be applied for no sooner than 60 days prior to the first day of July[~~1~~] of the year in which the permit is to be renewed.

(11) Written proof of lease, easement, ownership, or consent from the property[~~site~~] owner to erect or maintain an outdoor advertising sign must be furnished by the applicant at the time of application for an original permit. [~~This p~~]Proof may consist of a[~~n~~] notarized affidavit showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county. On renewal of the permit the applicant must certify that the sign site is still under valid lease, easement, or consent to the applicant, or ownership of the applicant.

(12) When[~~If~~] a [~~one-year~~]permit on a conforming sign is not renewed on or before the first day of July [~~1~~]of the designated billing cycle year[~~of its term~~], a new permit application shall be required for a new permit, along with the appropriate fee[~~a fee of $100~~].

(13) A permit is [~~non~~]transferable in accordance with Section 72-7-507(7)[~~, and the permittee shall be liable for any violation of the law regarding the permitted sign~~]. No new permit may be issued for a sign for which a permit has already been issued, except as follows:

(a) Transfer of ownership of a permitted sign shall require the holder of the valid permit to release, in writing, any[~~his~~] rights to continue to maintain the[~~his~~] sign or use the[~~his~~] location for outdoor advertising. The new owner applicant shall then submit to the [~~Utah D~~]department [~~of Transportation~~]the written release and proof of having obtained sign ownership, and a valid lease, easement or consent for the remainder of the permit term. The appropriate[~~A $100~~] fee shall accompany the application and both application and fee must be submitted to the department[~~received~~] within 30 days of the ownership transfer.

(b) A conforming sign with an expired permit[~~that is unlawful and~~] forfeited by the permittee may be acquired and permitted, providing the new sign applicant submits the completed permit application and proof of ownership, possession of a valid land lease, easement, or consent to maintain a sign at the described location and providing the new application and the sign are otherwise lawful.

(14) A supplemental application fee [~~of $100~~]shall be charged to cover administrative and inspection costs for every sign that was erected without a sign permit[~~,~~] Form R-299, or altered without prior written approval of the department[~~,~~] on Form R-407. This supplemental fee is in addition to the regular[~~ $100~~] permit fee.

(15) Each application for a new permit must be accompanied by a valid and[~~the~~] approved building permit of the local governing authority, or a written statement from that authority indicating that building permit[~~s~~] [~~are~~]is not required under its ordinances for the proposed sign.

(16) Where local authority has issued a building permit for construction of a sign, but construction is contrary to the Utah Outdoor Advertising Act, the action of the local authority does not require the [~~S~~]state to issue a permit.

(17) Federal agencies, [~~S~~]state agencies, counties, cities and towns that use outdoor advertising signs along the interstate or a controlled route[~~primary highway systems~~] shall have a permit for each controlled sign as provided in the Act and this[~~these~~] rule[~~s~~].

R933-2-5. Sign Changes, Repairs, and Maintenance.

(1) Sign changes or repairs[~~, including those for signs in a commercial or industrial zone,~~] are subject to the following requirements:

(a) The face of a controlled sign may be removed for maintenance and renovation or change of advertising copy using basically the same face material. The shape and size of advertising space may not be changed except as provided in this[~~these~~] rule[~~s~~]. Replacement of the sign face must be accomplished within a 60 calendar day period from the date of its removal.

[~~(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.~~

] [~~(c)~~](b) [~~A conforming~~]As allowed by the Act a sign may be reshaped or modified as to height or size, or relocated upon proper written request[~~,~~] on Form R-407, provided the change is in compliance with the Act and this[~~these~~] rule[~~s~~]. Any change shall be completed within 60 calendar days from the date of the approval of the request. An appropriate fee [~~of $100~~]shall accompany the R-407 application to change the sign, in addition to any applicable fee under Subsection R933-2-4(14).

[~~(d) A conforming sign that is damaged by vandals, storms, wind, or acts of nature can be re-erected or changed, or both, upon proper written request and approval on Form R-407.~~

~~(e) A nonconforming sign that is damaged but not destroyed by vandals or acts of nature may be repaired to the same size or shape upon proper written application and approval. Normal maintenance may be included in the repair, but no structural changes affecting the sign's value may be allowed. The sign may be purchased by the State if agreement is reached by the State and the~~

~~sign owner. The compensation to the sign owner shall be the depreciated value of the sign immediately before damage, less cost of re-erection or repair.~~

] [~~(f)~~](c) Repairs and ordinary maintenance may be made on conforming and nonconforming signs so long as repairs do not alter the basic advertising space or illumination, or change the material of the sign structure.

[~~(g) Nonconforming signs destroyed by natural disaster are not eligible for compensation, unless at the time of destruction they have been appraised and committed for removal and the State has approved a purchase agreement.~~

] (2) [~~The following provisions govern maintenance:~~]Signs shall be properly maintained.

[~~(a) A legally permitted nonconforming sign may remain standing subject to the provisions of the Act and these rules so long as it is not changed, except for advertising copy, and is not purchased or condemned pursuant to law.~~

] [~~(b)~~](a) [~~Signs shall be properly maintained.~~]Improper maintenance includes[~~is considered~~]:

(i) [~~P~~]paint faded or peeling extensively;

(ii) [~~M~~]message not visible or illegible;

(iii) [~~S~~]sheets or panels loose or sagging;

(iv) [~~S~~]structural damage, [~~supports~~]or leaning; or

(v) [~~A~~]abandonement[~~d~~].

[~~(c)~~](b) A sign with any of the deficiencies listed in Subsection R933-2-5(2)[~~(b)~~](a) is not in a reasonable state of repair, is in violation of the law, and is subject to permit revocation and removal.

[~~(d)~~](c) The crossing of a right-of-way line of any [~~S~~]state highway at other than an established access approach to erect or maintain a sign without the written permission of the d[~~D~~]epartment, is unlawful.

~~[R933-2-6. Commercial and Industrial Usage: Limitations in Zoned or Unzoned Areas.~~

~~(1) Controlled signs in zoned or unzoned industrial or commercial areas are subject to the following zoning and usage requirements:~~

~~(a) Commercial or industrial usage must be visible from a traveled portion of the highway and must be situated within 600 feet of the sign site, measured from the outer edge of the regularly used buildings, parking lot, storage or processing area of the activity.~~

~~(b) The sign site must be zoned commercial or industrial or be in an unzoned commercial or industrial area.~~

~~(2) Airport runways or parking or aircraft tie down areas are not zoned or unzoned commercial or industrial areas.~~

~~(3) Mining operations and related activities, including gravel pits are not zoned or unzoned commercial or industrial areas unless they are:~~

~~(a) Where the final and concentrated processing of mined or extracted minerals is effected; or~~

~~(b) Where the mined material which has been processed is regularly stored or held for sale or shipment.~~

~~(4) Farming or ranching areas or related dairy farm facilities, of whatever nature, are not zoned or unzoned commercial or industrial areas.~~

~~(5) Municipal or private golf courses or cemeteries are not zoned or unzoned commercial or industrial areas.~~

~~(6) A trailer or mobile home park, court, or facility does not qualify under Subsection 72-7-504(1)(d) or (e) regardless of the local zoning. An RV Park does not qualify under either of those subsections unless at least 3/4 of the total available trailer parking spaces are not occupied or reserved for rental on a month-to-month basis.~~

~~(7) Where an occupied residence is located along the highway right of way within 600 feet of a commercial or industrial activity, no controlled sign may be erected closer than 100 feet of the residence unless the owner of the residence expressly waives in writing the foregoing restriction. The waiver must be submitted with the permit application prior to the erection of a new sign.~~

~~(8) Where the width of the right of way in a commercial or industrial area is more than 300 feet, and there is commercial activity on only one side of the highway, that activity does not qualify the opposite side of the highway as commercial or industrial usage for the purpose of erecting new outdoor advertising signs.~~

]**R933-2-[~~7~~]6. Spacing For Permitted Signs.**

[~~(1) Spacing of permitted signs shall be as follows:~~

~~(a) Signs in unincorporated areas may not be spaced less than 500 feet apart on the interstate and federal-aid primary system, as measured parallel to the highway right of way. Any sign allowed to be erected in a highway service zone H-1 may not be less than 500 feet from an existing controlled sign adjacent to an interstate highway or primary highway except that signs may be erected less than 500 feet from each other if the sign faces on the same side of the interstate highway or limited access primary highway are not simultaneously visible.~~

~~(b) No sign may be erected more than 100 feet on the perpendicular from the edge of the right of way of an interstate or primary highway except where a non-controlled highway or railroad right of way runs contiguous and adjacent to the edge of the controlled highway. The 100-foot corridor shall then be measured from a point on the perpendicular not to exceed 200 feet from the edge of the right of way of the interstate or primary highway. In no case may the outer edge of the corridor exceed 350 feet from the controlled right of way.~~

] [~~(c)~~](1) Any sign located within the controlled area of both the interstate system and a controlled route[~~primary system~~] must meet the spacing requirements of both highway systems.

[~~(d)~~](2) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

[~~(2)~~](3) Height Above Highway[~~:~~]. No new structure, including the sign face, may exceed the height limitations as specified under Sections 72-7-505(2) and 72-7-510.5[~~be more than 50 feet in height above the elevation of the edge of the traveled surface of the highway~~]. Where local zoning requirements or ordinances are in effect, the stricter of any applicable zoning requirements or ordinances apply.

R933-2-[8]7. Removal of Illegal Signs.

(1) Removal Costs[~~:~~]. The cost for the removal by [~~the Utah D~~]department [~~of Transportation~~]of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(2) Storage Charges[~~:~~]. Illegal or abandoned signs that have been removed by the d[~~D~~]epartment after proper notice to the sign and site owner or occupant of the land shall be stored at the nearest department shed. An appropriate fee shall be charged for storage[~~There shall be a charge of $25 per month levied as the storage charges~~]. The storage charges shall be in addition to the costs of the removal of the illegal or abandoned sign.

(3) Redemption and Disposal[~~:~~]. If the illegal or abandoned sign has not been claimed and redeemed within 30 calendar days from the date of removal, notice to the sign owner, property[~~site~~] owner, and occupant of the land shall be given. If the sign is not redeemed within 30 calendar days thereafter, a designated [~~D~~]department official in the area in which the sign is stored shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for department[~~Utah Department of Transportation maintenance~~] purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the [~~D~~]department.

R933-2-[~~9~~]8. Termination of Non-Conforming Use Status.

(1) The non-conforming use status of a controlled sign shall terminate under the following conditions:

(a) [~~F~~]failure of the sign owner to apply for a renewal permit on or before the date on which the permit expires;

[~~(b) Structural alteration or change of the sign as to height, size, location or direction of sign face not constituting ordinary maintenance or a change of advertising matter;~~

~~(c) Destruction by storm, wind, act of nature, fire or vandalism;~~

] [~~(d)~~](b) [~~A~~]abandonment;

[~~(e)~~](c) [~~F~~]failure to correct after receiving proper notice pursuant to Section 72-7-508, or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, or failure to file a written response as required by law, or failure to appeal from an adverse decision of the [~~D~~]department, or exhaustion of all legal remedies under Section 72-7-508;[~~-~~]

[~~(f)~~](d) [~~P~~]purchase by the [~~D~~]department under Section 72-7-510;[~~-~~] or

[~~(g)~~](e) [~~A~~]acquisition at any time by the [~~D~~]department for highway construction.

[~~R933-2-10. Conforming Sign Becoming Nonconforming -- Removal.~~

~~(1) Any legal conforming sign that becomes nonconforming after May 9, 1967, by reason of law or route classification, may not be required to be removed under the Utah Advertising Act until after the end of the fifth year after it had become nonconforming, except as otherwise provided for by law or contract.~~

]**R933-2-[~~11~~]9. On-Premise Signs -- Illegal Status - Removal.**

An on-premise sign loses its on-premise status when the business or activity it advertises has ceased to exist for a period of [~~at least~~]12 months at the site of the sign, [~~the sign is located within 1,000 feet of a controlled highway, ~~]and the message thereon is visible to the traveling public from that controlled route[~~highway~~]. [~~This sign~~]The advertising copy on signs meeting this criteria may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

R933-2-[~~12~~]10. Directional Signs.

(1) Directional signs shall conform to federal standards concerning the lighting, size, number, and spacing of the signs. There are no zoning or usage requirements for directional signs.

(2) The following standards apply only to directional signs that are erected and maintained adjacent to the interstate and federal-aid primary highway system, and that are visible from the main traveled way.

(a) A directional sign allowed under Section[~~s 72-7-502 and~~] 72-7-504 is subject to the following restrictions[~~:~~].

(i) No sign may exceed the following limits where all dimensions include border and trim, but exclude supports:

(A) [~~M~~]maximum area - 150 square feet;

(B) [~~M~~]maximum height - 20 feet; and

(C) [~~M~~]maximum length - 20 feet.

(ii) A sign may be illuminated, subject to the following:

(A) [~~S~~]signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or a controlled route[~~ primary highway~~], or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited[~~-~~]; and

(B) [~~N~~]no sign may be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(iii) Each location of a directional sign must be approved by the [~~D~~]department and is subject to the following restrictions:

(A) [~~N~~]no directional sign may be located within 2,000 feet of an interchange or intersection at grade within the interstate system or other freeways or controlled routes[~~ the primary system~~], measured from the nearest point of pavement widening at the exit from or entrance to the main traveled way[~~-~~];

(B) [~~N~~]no directional sign may be located within 2,000 feet of a rest area, parkland, or scenic areas[~~-~~];

(C) [~~D~~]directional signs facing the same direction of travel shall be spaced no less than one mile apart[~~-~~];

(D) [~~N~~]no more than one directional sign per activity facing the same direction of travel may be erected along a single route approaching the activity[~~-~~]; and

(E) [~~S~~]signs adjacent to the interstate or a controlled route [~~primary system~~]shall be located within 15 air miles of the activity they advertise.

(iv) Any area of historical interest shall be approved by the Utah Historical Society before consideration for approval as an area for a directional sign.

(b) The following directional signs are prohibited:

(i) [~~S~~]signs advertising activities that are illegal under [~~F~~]federal or [~~S~~]state law in effect at the location of those signs or activities;

(ii) [~~S~~]signs positioned in any manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;

(iii) [~~S~~]signs erected or maintained upon trees or painted or drawn upon rocks, or other natural features;

(iv) Obsolete signs;

(v) [~~S~~]signs that are structurally unsafe or in disrepair;

(vi) [~~S~~]signs that contain or are illuminated by any flashing or moving light or animated by moving parts; and

(vii) [~~S~~]signs located in rest areas, parklands, or scenic areas.

(3) Any directional sign erected or maintained under the Act and this[~~these~~] rule[~~s~~] may at any time be removed for cause upon order of the [~~D~~]department after notice and hearing, if requested and timely pursued, under Section 72-7-508.

R933-2-[~~13~~]11. Official Signs.

(1) Prerequisites for erection and maintenance[~~:~~].

(a) Prior to erection of an official sign the public agency shall submit to the d[~~D~~]epartment in the [~~R~~]region where the sign is to be located, a completed permit application form R-299 along with:

(i) Content[~~Facsimile~~] of the sign message to be erected;

(ii) [~~S~~]statement of the official duty or responsibility being performed; and

(iii) [~~Certified~~]copy of the statute, resolution, or ordinance from the public body showing official action authorizing erection and maintenance of the sign.

(b) The sign must be erected off the highway right-of-way, owned and maintained by the public agency, and located within the zoning jurisdiction of the public agency.

([~~e~~]2) Standards, Criteria and Restrictions[~~:~~].

([~~i~~]a) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

([~~ii~~]b) The sign must be within the zoning jurisdiction of the city, town, or other public agency designated by the sign.

([~~iii~~]c) No city, town or other subdivision of the [~~S~~]state may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

([~~iv~~]d) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate [~~or primary~~]highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

([~~v~~]e) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

([~~vi~~]f) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or other controlled route[~~primary highway~~], or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

[~~(vii) No sign may be located within 500 feet of a rest area, parkland, cemetery, or scenic area or other official sign.~~

~~(viii) No sign may be erected at a site prohibited under local zoning. The stricter commercial and industrial zoning and usage requirements applicable to controlled outdoor advertising signs do not apply to official signs, though all other relevant rules apply.~~

~~(ix) No sign message may be altered without prior written approval by the department.~~

] ([~~x~~]g) Any official sign erected or maintained under the Act and this[~~ese~~] [~~R~~]rule[~~s~~] may at any time be removed for cause and without compensation after notice and hearing, if required. The owner of any official sign shall remove the sign at its own cost and expense.

R933-2-[~~14~~]12. Department Hearings.

Any hearing regarding the legality of a sign shall be held in [~~the region where the sign is located, and shall be held in~~] accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1 unless specifically stated otherwise in a governing statute.

KEY: signs
Date of Enactment or Last Substantive Amendment: [~~March 31, 2006~~]2012
Notice of Continuation: November 14, 2011
Authorizing, and Implemented or Interpreted Law: Title 72, Chapter 7, Part 5; 72-1-201

Transportation, Preconstruction, Right-of-Way Acquisition

R933-3-4

When Access is Controlled

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36606
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to delete a sentence which is inconsistent with Rule R930-6. The need for this amendment was pointed out by the Governor's Business Regulation Review Project.

SUMMARY OF THE RULE OR CHANGE: The rule concerns how access is controlled and/or granted on limited access facilities. Subsection R933-3-4(2) states in part, "Except for minor arterial highways adjacent to a freeway interchange, control shall not be established if the road is less than one mile in length." This statement conflicts with Rule R930-6 and, if not deleted, will prevent UDOT from exercising effective access control.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-102 and Section 72-1-201 and Section 72-7-102

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some saving to the state budget because the existing conflict between Rule

R930-6 and Rule R933-3 can contribute to increased staff costs when conflicting regulatory language becomes a catalyst, or driver, for an otherwise unnecessary administrative appeal hearing, or other legal review process.
♦ LOCAL GOVERNMENTS: Local governments may derive indirect benefits and cost savings through qualitative program improvements resulting from the removal of this conflicting regulatory language.
♦ SMALL BUSINESSES: Small businesses may derive indirect benefits and cost savings through qualitative program improvements resulting from the removal of this conflicting regulatory language.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the change only eliminates a conflict between existing rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the change only eliminates a conflict between existing rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the change only eliminates a conflict between existing rules, except to the extent businesses may derive indirect benefits and cost savings through qualitative program improvements resulting from the removal of this conflicting regulatory language.

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

TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: John Njord, Executive Director

R933. Transportation, Preconstruction, Right of Way Acquisition.
R933-3. Relocation or Modification of Existing Authorized Access Openings or Granting New Access Openings on Limited Access Highways.
R933-3-4. When Access is Controlled.

(1) Limited access control for classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in urban areas if the highway is being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible. Control in urban areas on existing alignment shall not be allowed unless approved by the Utah Transportation Commission.

(2) In addition to the limited access control of principal arterial highways, a limited mileage of high volume minor arterial highways may justify limited access control, especially on new alignment and if adjacent to a freeway interchange. [~~Except for minor arterial highways adjacent to a freeway interchange, control shall not be established if the road is less than one mile in length.~~] Access, if desirable and economically feasible, shall be determined on an individual basis and is subject to approval of Utah Transportation Commission.

(3) Under limited access control, the following limitations shall apply:

(a) The maximum feasible and economic access control shall always be obtained.

(b) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and inadequate public crossroads for property access.

(c) On other than bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Unless justified under this rule, accesses to property shall only be granted opposite to each other.

(d) Where any one property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile with the following exception: Where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, in which case access openings may be provided within the other stated limitations.

(e) No property access shall be closer than 500 feet from another property or public road access.

(f) In order to eliminate public road access, study shall be made in conjunction with local authorities as to feasibility of dead ending or rerouting of intersecting roads.

(g) The maximum size of private access openings shall be 16 feet for residences, 30 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(4) Exceptions to the above limitations shall only be made if a careful appraisal reveals extensive damage or if needed frontage roads would involve excessive right of way costs or, in

canyons, excessive construction costs. Detailed reports of costs and justification for variance shall be prepared and submitted to the assistant director for approval.

KEY: limited access highways
Date of Enactment or Last Substantive Amendment: [~~1990~~]2012
Notice of Continuation: November 14, 2011
Authorizing, and Implemented or Interpreted Law: 72-1-102; 72-1-201; 27-12-114; 72-7-102

Workforce Services, Employment Development
R986-900-902
Options and Waivers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36621
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to modify the exemptions from the employment and training (E&T) requirements for food stamps.

SUMMARY OF THE RULE OR CHANGE: Currently the Department exempts eligible food stamp clients from the employment and training requirements if the client earns an amount equal to minimum wage for 80 hours per month. The option is being changed to allow the exemption for eligible clients who have earned income during the month, regardless of how much the client earns. The current option is difficult to administer and the Department has found that if a client is working, the client meets the requirements as to number of hours or income. This is not likely to impact many recipients and only waives the E&T requirements, it does not make an otherwise ineligible recipient eligible.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-103 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.
♦ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to the local government.
♦ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs to persons other than small businesses, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-902. Options and Waivers.

The Department administers the Food Stamp Program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in 7 USC 2014(e)(7)(C)(iii) as amended by 2002 H.R. 2646 known as Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification or if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(i) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(j) A client may waive his or her right to an administrative disqualification hearing.

(k) A client may deduct actual, allowable expenses from self employment, or may opt to deduct 40% of the gross income from self employment to determine net income.

(l) The Department has opted to align food stamps with FEP in determining how to count educational assistance income. That income is counted for food stamps as provided in R986-200-235(3)(q).

(m) The Department has opted to do simplified reporting as provided in 7 CFR 273.12(a)(1)(vii).

(n) The Department has opted to operate a Mini Simplified Food Stamp Program under 7 CFR 273.25. Under this option, a client receiving food stamps and FEP or FEPTP, must participate as required in R986-200-210. A client found ineligible due to non-compliance under R986-200-212 will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

(o) Effective July 1, 2010, the Department will count the full income of an ineligible alien household member for both the gross and net income tests and for determining the level of benefits. The deductible expenses of the ineligible alien household member will no longer be prorated and the full value of all assets will continue to be counted. This also applies to ineligible aliens who are unable or unwilling to provide documentation of their alien status. This does not apply to the following ineligible aliens:

(i) An alien who is lawfully admitted as a permanent resident.

(ii) An alien who is granted asylum under Section 208 of the INA.

(iii) An alien who is admitted as a refugee under Section 207 of the INA.

(iv) An alien who is paroled in accordance with Section 212(d)(5) of the INA.

(v) An alien whose deportation or removal has been withheld in accordance with Section 243 of the INA.

(vi) An alien who is aged, blind or disabled and is admitted for temporary or permanent residency under Section 245A(b)(1) of the INA.

(vi) An alien who is a special agricultural worker admitted for temporary residence under Section 210 (a) of the INA.

For an ineligible alien listed in this subparagraphs (i) through (vi), a prorated share of the ineligible alien's income and expenses will be counted for purposes of applying the gross and net income tests and to determine the level of benefits. The full amount of the ineligible alien's assets will count.

(p) The Department allows the following exemptions from the Employment and Training (E and T) program for individuals who:

(i) are Refugee Cash Assistance (RCA) participants;

(ii) are on a temporary layoff from their place of employment;

(iii) are unemployed for less than 6 months;

(iv) live more than 35 miles from an employment center;

(v) lack child care, either because it is not available or the customer is not eligible for child care assistance;

(vi) are not appropriate for E [~~&~~]and T as determined by a manager or designee;

(vii) are age 47 through the month of their 60th birthday;

(viii) are low functioning/have developmental disabilities/are socially dysfunctional and who have obvious functional limitations that are a substantial handicap to employment;

(ix) have current domestic violence issues;

(x) have limited language skills or individuals whose primary language is other than English;

(xi) lack public and/or private transportation;

(xii) are in the application or appeals process for SSI;

(xiii) have earned income,[~~work 80 hours a month~~] regardless of the amount earned;

[~~(A) if the individual is working less than 80 hours a month but is making at least minimum wage times 80 hours per month, the individual is considered to be meeting the 80 hours per month exemption~~

~~(B) if an individual is self-employed and working less than 80 hours a month, the gross income before expenses must be minimum wage times 80 hours a month. An individual working but being paid in-kind does not meet this exemption.~~

] (xiv) have no fixed address;

(xv) do not have a GED or high school diploma;

(xvi) are pregnant regardless of trimester;

(xvii) are on probation or parole who are required to complete court ordered activities such as work release and drug court; or

(xvii) are participating in a program with a Department partner such as case management by Vocational Rehabilitation, or are participating in a Title V or Choose to Work program.

(q) Beginning July 1, 2012, individuals who meet the requirements of an exemption will no longer be allowed to receive services on a voluntary basis or receive a work reimbursement.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(b) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(c) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(d) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(e) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(f) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within ten days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(g) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah quarterly wage data as the primary verification of income when calculating overpayments.

(h) The Department will hold disqualification hearings by telephone.

(i) All initial interviews, and recertification interviews for households certified for 12 months or less, will have their initial or recertification interviews conducted by telephone, rather than in person, unless the household requests an in-person interview or the Department determines that an in-person interview is necessary to resolve issues that would be better facilitated face-to-face.

(j) The federal regulation that requires all interviews be scheduled for a specific date and time is waved for initial telephone interviews. This allows clients to call anytime Monday through Friday from 8 a.m. to 5 p.m. to complete the required initial interview. Households selected for the "Assessment of the Contributions of an Interview to the Supplemental Nutrition Assistance Program (SNAP) Eligibility and Benefits Determinations" study, also known as the No Interview Pilot, will be exempt from the interview requirement. Customer contact may be needed to complete the application and/or recertification process. This waiver will be in place September 1, 2012 - November 30, 2013.

(k) To meet the student work exemption. a student enrolled in post-secondary education half-time or more must work an average of 20 hours per week. The work hours must be averaged over the 30 days immediately prior to the date of application or recertification.

KEY: food stamps, public assistance
Date of Enactment or Last Substantive Amendment: September 21, 2012
Notice of Continuation: September 8, 2010
Authorizing, and Implemented or Interpreted Law: 35A-3-103

Workforce Services, Unemployment Insurance
R994-201-101
General Definitions and Acronyms

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36613
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct the definition of covered wages.

SUMMARY OF THE RULE OR CHANGE: The Department's current definition of covered wages is inaccurate and does not follow federal law. Railroad employment is covered by a different unemployment law and wages earned working for a railroad cannot be considered covered employment under the unemployment insurance administered by the Department. This proposed amendment corrects that oversight and makes the definition of when military wages can be used more precise.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This will have no impact on the state budget or on any employer. The Department knows of no case where railroad wages were used as covered wages in determining eligibility for unemployment benefits so it is not anticipated this will save the state budget. The definition for military wages is the same definition which has always been used just more clearly stated.
♦ LOCAL GOVERNMENTS: This will have no impact on any employer, including any local government acting as an employer. By not including railroad wages it would theoretically save employers money but since the Department

has never used railroad wages as covered wages in determining eligibility for unemployment benefits, it is not anticipated this will save any employer. The definition for military wages is the same definition which has always been used just more clearly stated.

♦ SMALL BUSINESSES: This will have no impact on any small business. The rates paid by small businesses will not go up or down as a result of this proposed change. The Department knows of no instance where railroad wages were used as covered wages in determining eligibility for unemployment benefits so it is not anticipated this will change unemployment rates. The definition for military wages is the same definition which has always been used just more clearly stated.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed change will have no impact on any business or local government entities as it is not anticipated this will impact contribution rates for employers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons as there are no compliance costs associated with these proposed changes. Railroad employees will not be affected as they are covered under a different unemployment system.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.
R994-201. Definition of Terms in Employment Security Act.
R994-201-101. General Definitions and Acronyms.

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws[~~, including laws pertaining to railroad unemployment and active military duty,~~] which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used if the ex-servicemember was honorably discharged and completed his or first full term of service, or if the separation meets the requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I through (IV) and 20 CFR 614.[~~, even if the duty was for less than 90 days, if the claimant was released under honorable conditions. National Guard or Reserve wages may be used only if the claimant has completed 90 consecutive days of active duty and if the claimant was released under honorable conditions.~~]

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association.

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

KEY: unemployment compensation, definitions
Date of Enactment or Last Substantive Amendment: [~~November 16, 2004~~]2012
Notice of Continuation: May 20, 2008
Authorizing, and Implemented or Interpreted Law: 35A-4-201

Workforce Services, Unemployment Insurance
R994-403
Claim for Benefits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36619
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct and clarify certain provisions of the rule.

SUMMARY OF THE RULE OR CHANGE: Currently a claimant cannot use unused wage credits unless the claimant has requalifying wages and received benefits on the earlier claim. This proposed change would allow the wages to be used only if the claimant did not receive benefits on the earlier claim. This is done in the interest of fairness to claimants and employers. If a claimant fails to provide information as required or register for a workshop as required, current rule gives the claimant a "reasonable period of time" to comply. A "reasonable period" has been considered 21 days. This proposed change will set 7 days as a reasonable period of time to comply. This change will give claimants enough time to comply without disadvantaging employers. This proposed amendment attempts to standardize the language used to define good cause and adds agent to the provision concerning employers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget. It is not anticipated that contributions paid by employers, including the state, will go down an appreciable amount. Those rates will not go up as a result of these proposed changes.
♦ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government. It is not anticipated that contributions paid by employers, including the local governments, will go down an appreciable amount. Those rates will not go up as a result of these proposed changes.
♦ SMALL BUSINESSES: This is a federally-funded program so there are no costs or savings to small businesses. It is not anticipated that contributions paid by employers, including small businesses, will go down an appreciable amount. Those rates will not go up as a result of these proposed changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any other persons other than small businesses, businesses, or local governmental entitles as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employers contribution rate. Claimants will be given adequate notice of the time necessary to comply. Claimants currently comply within an average of 5.5 days. It is not believed any claimant will be affected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.
R994-403. Claim for Benefits.
R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) [~~Before payment can be made on a subsequent claim using those unused wages, ~~]With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.[e] Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower[~~;~~].

[~~(d) the claimant must have actually received benefits during the preceding benefit year; and~~

~~(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.~~

] (3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and [~~ends with the~~]will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within [~~a reasonable amount of time~~]7 calendar days of the decision date.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause [~~for nonparticipation is established if the claimant can show:~~]is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

[~~(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or~~

~~(b) that the failure to participate was reasonable or beyond the claimant's control.~~

] (3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (6) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

[~~(6) If the disqualification results from the claimant's failure to complete, sign, and return the Direct Deposit or Eppicard Authorization Form, the disqualification will be reversed once the completed and signed form is received by the Department. The claimant does not need to show good cause for his or her failure to provide the Direct Deposit or Eppicard Authorization Form in a timely manner.~~

]

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause[~~, as it applies to this section of the rule, may be established if the claimant or employer.~~] is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

[~~(1) made reasonable attempts to provide the information within the time frame requested, or~~

~~(2) was prevented from complying due to circumstances which were compelling or beyond their control.~~

]

KEY: filing deadlines, registration, student eligibility, unemployment compensation

Date of Enactment or Last Substantive Amendment: [~~January 17,~~]2012

Notice of Continuation: June 26, 2007

Authorizing, and Implemented or Interpreted Law: 35A-4-403(1)

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 September 14, 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 December 13, 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, Air Quality
R307-801
Utah Asbestos Rule

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 36176
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the public comment period, the Division of Air Quality received comments from various stakeholders, including representatives from the asbestos industry and the Office of the Legislative Research and General Council. These changes are in response to their comments.

SUMMARY OF THE RULE OR CHANGE: Many of the changes are to modify the rule to clearly represent the intent of the changes required by H.B. 189 (2012 General Session). Subsection R307-801-2(1)(d) is changed to clarify that the provision applies to contractors for hire. Two changes to definitions found in Section R307-801-3 are made. The definitions for "Asbestos-Containing Waste Material (ACWM)" and "Regulated Facilities" are changed. Subsection R307-801-5(1) is changed to clarify that all persons shall obtain a company certification before conducting work at a regulated facility. Section R307-801-6 is changed to clarify that all persons shall have individual certifications before doing regulated asbestos work in a regulated facility. Subsection R307-801-9(1) is changed by removing "working in a regulated facility" from the subsection. Changes in Section R307-801-10 are made to clarify that persons and laboratories who test for asbestos shall be accredited by a nationally recognized testing program. Other rule references are added to clarify the applicability of the rule. Subsection R307-801-14(1) is changed to clarify that persons conducting renovation work in regulated facilities shall follow the work practices of Section R307-801-14. Sections R307-801-16, R307-801-17, and R307-801-18 are changed to clarify that requirements of the subsections apply to regulated facilities. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenact that was published in the June 1, 2012, issue of the Utah State Bulletin, on page 39. 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 repeal and reenact 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: 40 CFR Part 61, Subpart M and 40 CFR Part 763, Subpart E and Subsection 19-2-104(1) and Subsections 19-2-104(3)(r) through (t)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings as the changes to the proposed rule are to simply clarify the applicability and definitions of the rule.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings as the changes to the proposed rule are to simply clarify the applicability and definitions of the rule.
♦ SMALL BUSINESSES: There are no anticipated costs or savings as the changes to the proposed rule are to simply clarify the applicability and definitions of the rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings as the changes to the proposed rule are to simply clarify the applicability and definitions of the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. These changes simply clarify the intent of the original proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this change in proposed rule. The changes are simply to clarify the intent of the original proposed rule.

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

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

THIS RULE MAY BECOME EFFECTIVE ON: 10/01/2012

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-801. Utah Asbestos Rule.

. . . . . .

R307-801-2. Applicability and General Provisions.
(1) Applicability.
(a) The following persons are operators and are subject to the requirements of R307-801:

(i) Persons who contract for hire to conduct asbestos abatement, renovation, or demolition projects in regulated facilities;

(ii) Persons who conduct asbestos abatement, renovation, or demolition projects in areas where the general public has unrestrained access; or

(iii) Persons who conduct asbestos abatement, renovation, or demolition projects in school buildings subject to AHERA or who conduct asbestos inspections in facilities subject to TSCA Title II.

(b) The following persons are subject to certification requirements:

(i) Persons required by TSCA Title II or R307-801 to be accredited as inspectors, management planners, project designers, renovators, asbestos abatement supervisors, or asbestos abatement workers;

(ii) Persons who work on asbestos abatement projects as asbestos abatement workers, asbestos abatement supervisors, inspectors, project designers, or management planners; and

(iii) Companies that conduct asbestos abatement projects, renovation projects, inspections, create project designs, or prepare management plans in regulated facilities.

(c) Homeowners or condominium owners performing renovation or demolition activities in or on their own residential facilities not subject to the Asbestos NESHAP are not subject to the requirements of this rule, however, a condominium complex of more than four units may be subject to the Asbestos NESHAP and R307-801.

(d) Contractors for hire performing renovation or demolition activities [~~in or on regulated facilities~~] are required to follow the inspection provisions[~~have inspections performed in accordance with the requirements~~] of R307-801-9 and [~~the procedures of~~]R307-801-10.[~~Contractors performing renovation or demolition activities in or on residential facilities are subject to the requirements of this rule when a tested sample contains greater than 1% asbestos.~~]

(2) General Provisions.

(a) All persons who are required by R307-801 to obtain an approval, certification, determination, or notification from the [~~executive secretary~~]director must obtain it in writing.

(b) Persons wishing to deviate from the certification, notification, work practices, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the [~~executive secretary~~]director.

R307-801-3. Definitions.

The following definitions apply to R307-801:

"Adequately Wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material is not adequately wet. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"AHERA Facility" means any structure subject to the federal AHERA requirements.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos Abatement Project" means any activity involving the removal, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than the small scale short duration (SSSD) amount.

"Asbestos Abatement Supervisor" means a person who is certified according to R307-801-6 and is responsible for ensuring work is conducted in accordance with the regulations and best work practices for asbestos abatement or renovation projects.

"Asbestos Abatement Worker" means a person who is certified according to R307-801-6 and performs asbestos abatement or renovation projects.

"Asbestos-Containing Material (ACM)" means any material containing more than 1% asbestos by the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is less than 10%, the asbestos concentration shall be determined by point counting using PLM or any other method acceptable to the [~~executive secretary~~]director.

"Asbestos-Containing Waste Material (ACWM)" means any waste generated from regulated asbestos-containing material (RACM) that contains any amount of asbestos and is generated by a source subject to the provisions of R307-801. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation projects, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos Inspection" means any activity undertaken to identify the presence and location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, by visual or physical examination, or by collecting samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos Inspection Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"Asbestos Removal" means the stripping of friable ACM from regulated facility components or the removal of structural components that contain or are covered with friable ACM from a regulated facility.

"Category I Non-Friable Asbestos-Containing Material" means asbestos-containing packings, gaskets, resilient floor coverings, or asphalt roofing products containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM).

"Category II Non-Friable Asbestos-Containing Material" means any material, excluding Category I non-friable ACM, containing more than 1% asbestos as determined by using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Condominium" means a building or complex of buildings in which units of property are owned by individuals and common parts of the property, such as the grounds, common areas, and building structure, are owned jointly by the condominium unit owners.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means friable or regulated asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments.

"Demolition Project" means the wrecking, salvage, or removal of any load-supporting structural member of a regulated facility together with any related handling operations, or the intentional burning of any regulated facility. This includes the moving of an entire building, but excludes the moving of structures, vehicles, or equipment with permanently attached axles, such as trailers, motor homes, and mobile homes that are specifically designed to be moved.

"Disturb" means to disrupt the matrix, crumble, pulverize, or generate visible debris from ACM or RACM.

"Emergency Abatement or Renovation Project" means any asbestos abatement or renovation project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the [~~executive secretary~~]director. This term includes operations necessitated by non-routine failure of equipment, natural disasters, fire, or flooding, but does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Friable Asbestos-Containing Material (Friable ACM)" means any asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Glove bag" means an impervious plastic bag-like enclosure, not more than 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"General Building Remodeling Activities" means the alteration in any way of one or more regulated structure components, excluding asbestos abatement, renovation, and demolition projects.

"Government Official" means an engineer, building official, or health officer employed by a jurisdiction that has a responsibility for public safety or health.

"High-Efficiency Particulate Air (HEPA)" means a filtration system capable of trapping and retaining at least 99.97% of all mono-dispersed particles 0.3 micron in diameter.

"Inaccessible" means in a physically restricted or obstructed area, or covered in such a way that detection or removal is prevented or severely hampered.

"Inspector" means a person who is certified according to R307-801-6, conducts asbestos inspections, or oversees the preparation of asbestos inspection reports.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who is certified according to R307-801-6 and oversees the preparation of management plans for school buildings subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structural member, or regulated facility component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from regulated facility structural members or components where the length and area could not be measured previously.

"NESHAP Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to the Asbestos NESHAP is not excluded, regardless of its current use or function.

"NESHAP-Sized Project" means any project that involves at least the NESHAP amount of ACM.

"Non-Friable Asbestos-Containing Material" means any material containing more than 1% asbestos, as determined using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Open Top Catch Bag" means either an asbestos waste bag or six mil polyethylene sheeting which is sealed at both ends and used by certified asbestos abatement workers, in a manner not

to disturb the matrix of the asbestos-containing material, to collect preformed RACM pipe insulation in either a crawl space or pipe chase less than six feet high or less than three feet wide. "Phased Project" means either an asbestos abatement, renovation, or demolition project that contains multiple start and stop dates corresponding to separate operations or areas where the entire asbestos abatement, renovation, or demolition project cannot or will not be performed continuously.

"Preformed RACM Pipe Insulation" means prefabricated asbestos-containing thermal system insulation on pipes formed in sections that can be removed without disturbing the matrix of the asbestos-containing material.

"Project Designer" means a person who is certified according to R307-801-6 and prepares a design for an asbestos abatement project in school buildings subject to AHERA or prepares an asbestos clean-up plan in a regulated facility where an asbestos disturbance greater than the SSSD amount has occurred.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I non-friable ACM that has become friable, Category I non-friable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II non-friable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation project operations.

"Regulated Facilities" means residential facilities, AHERA facilities, or NESHAP facilities where:

(a) A sample has been identified and analyzed to contain, or is assumed under R307-801-10(5) to contain, greater than 1% asbestos; and

(b) The material from where the sample was collected will be disturbed and rendered friable during the abatement, demolition, or renovation activities [~~, or residential facilities including residential property of four or fewer units when a sample has been collected and analyzed to contain greater than 1% asbestos~~].

"Regulated Facility Component" means any part of a regulated facility including equipment.

"Renovation Project" means any activity involving the removal, repair, salvage, disposal, cleanup, or other disturbance of greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, and the intent of the project is not asbestos abatement or demolition. Renovation Projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Renovator" means a person who is certified according to R307-801-6 and is responsible for ensuring work that is conducted on a renovation project is performed in accordance with the regulatory requirements and best work practices for a greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, where the intent of the project is to perform a renovation project and not to perform an asbestos abatement or demolition project. Renovation projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Residential Facility" means a building used primarily for residential purposes, has four or fewer units, and is not subject to the Asbestos NESHAP.

"Small-Scale, Short-Duration (SSSD)" means a project that removes or disturbs less than three square feet or three linear feet of RACM in a regulated facility.

"Strip" means to take off ACM from any part of a regulated facility or a regulated facility component.

"Structural Member" means any load-supporting member of a regulated facility, such as beams and load-supporting walls or any non-load supporting member, such as ceilings and non-load supporting walls.

"Suspect or Suspected Asbestos-Containing Material" means all building materials that have the potential to contain asbestos, except building materials made entirely of glass, fiberglass, wood, metal, or rubber.

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

"TSCA" means the Toxic Substances Control Act.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor-supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos abatement or renovation project covered by R307-801 whose act or process produces ACWM.

"Working Day" means weekdays, Monday through Friday, including holidays.

. . . . . .

R307-801-5. Company Certification.

(1) All persons shall operate under:

(a) A[~~n~~]n asbestos company certification before contracting for hire, at a regulated facility, to conduct asbestos inspections, create management plans, create project designs, or conduct asbestos abatement projects, or

(b) [~~and all persons shall operate under~~]Either a renovation or asbestos company certification before contracting for hire to conduct renovation projects at a regulated facility.

(2) To obtain an asbestos or renovation company certification, all persons shall submit a properly completed application for certification on a form provided by the [~~executive secretary~~]director and pay the appropriate fee (renovation company certification fee shall be $200.00 per year).

(3) Unless revoked or suspended, an asbestos or renovation company certification shall remain in effect until the expiration date provided by the [~~executive secretary~~]director.

R307-801-6. Individual Certification.

(1) All persons shall have an individual certification before [~~conducting~~]contracting for hire, at a regulated facility, to conduct asbestos inspections, create[~~ing~~] management plans,

create[~~ing~~] project designs, conduct[~~ing~~] renovation projects, or conduct[~~ing~~] asbestos abatement projects.

(2) To obtain certification as an asbestos abatement worker, asbestos abatement supervisor, inspector, project designer, renovator, or management planner, each person shall:

(a) Provide personal identifying information;

(b) Pay the appropriate fee (renovator certification fee shall be $100.00 per year);

(c) Complete the appropriate form or forms provided by the [~~executive secretary~~]director;

(d) Provide certificates of initial and current refresher training, if applicable, that demonstrate accreditation in the appropriate discipline. Certificates from courses approved by the [~~executive secretary~~]director, courses approved in a state that has an accreditation program that meets the TSCA Title II Appendix C Model Accreditation Plan (MAP), or courses that are approved by EPA under TSCA Title II are acceptable unless the [~~executive secretary~~]director has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801; and

(e) Complete a new initial training course as required by the AHERA MAP, or for the renovator certification, R307-801, if there is a period of more than one year from the previous initial or refresher training certificate expiration date.

(3) Duration and Renewal of Certification.

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall:

(i) Submit a properly completed application for renewal on a form provided by the [~~executive secretary~~]director;

(ii) Submit a current certificate of TSCA accreditation, or for the renovator certification, a training certificate from a renovator course accredited by the [~~executive secretary~~]director, for initial or refresher training in the appropriate discipline; and

(iii) Pay the appropriate fee (renovator recertification fee shall be $100.00 per year).

R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.

(1) An application for certification may be denied if the individual, applicant company, or any principal officer of the applicant company has a documented history of non-compliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates the Asbestos NESHAP, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The [~~executive secretary~~]director may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or the Asbestos NESHAP, including but not limited to:

(a) Falsifying or knowingly omitting information in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate of TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

R307-801-8. Approval of Training Courses.

(1) To obtain approval of a training course, the course provider shall provide a written application to the [~~executive secretary~~]director that includes:

(a) The name, address, telephone number, and institutional affiliation of the person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan (MAP) and R307-801 requirements for length of training in hours, amount and type of hands-on training, examinations (including length, format, example of examination or questions, and passing scores), and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) The names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement projects, inspections, project designs, management planning, or renovation projects ;

(f) An example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number; the name of the student; the name of the course completed; the dates of the course and the examination; an expiration date one year from the date the student completed the course and examination, or for the purposes of the renovator course, a progressive lengthening of the refresher training schedule of one year after the initial training, three years after the first refresher training, and five years after the second refresher training and all subsequent refresher training courses; the name, address, and telephone number of the training provider that issued the certificate; and a statement that the person receiving the certificate has completed the requisite training for TSCA or [~~executive secretary~~]director accreditation;

(g) A written commitment from the training provider to teach the submitted training course(s) in Utah on a regular basis; and

(h) Payment of the appropriate fee.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the [~~executive secretary~~]director with the names, government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 working days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the [~~executive secretary~~]director or authorized representative to attend, evaluate, and monitor any training course without receiving advance notice from the [~~executive secretary~~]director and without charge to the [~~executive secretary~~]director; and

(e) Notify the [~~executive secretary~~]director of any new course instructor ten working days prior to the day the new instructor presents or teaches any course for Renovator or TSCA Accreditation purposes. The training notification form shall include:

(i) The name and qualifications of each course instructor, including appropriate academic credentials and field experience in

asbestos abatement projects, inspections, management plans, project designs, or renovations; and

(ii) A list of the course(s) or specific topics that will be taught by the instructor.

(3) All course providers that provide an AHERA or Renovator training course or refresher course in the state of Utah shall:

(a) Notify the [~~executive secretary~~]director of the location, date, and time of the course at least ten working days before the first day of the course;

(b) Update the training notification form as soon as possible before, but no later than the original course date if the course is rescheduled or canceled before the course is held; and

(c) Allow the [~~executive secretary~~]director or authorized representative to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

(4) Renovator Certification Course. The renovator certification course shall be a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities, and shall include an examination of at least 25 questions that the student must pass with a 70% or greater proficiency rate. Instruction in the topics described in R307-801-8(4)(c), (d), and (e) shall be included in the hands-on portion of the course. The minimum curriculum requirements for the renovator certification course shall adequately address the following topics:

(a) The physical characteristics of asbestos and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of renovation project control options;

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, and latency period for diseases;

(c) Personal protective equipment, including selection of respirator and personal protective clothing, and handling of non-disposable clothing;

(d) State-of-the-art work practices, including proper work practices for renovation projects, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems, positioning of warning signs, lock-out of electrical and ventilation systems, proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure exhaust ventilation equipment, use of HEPA vacuums, and proper clean-up and disposal procedures and state-of-the-art work practices for removal, encapsulation, enclosure, and repair of ACM, emergency procedures for unplanned releases, potential exposure situations, transport and disposal procedures, and recommended and prohibited work practices. New renovation project techniques and methodologies may be discussed;

(e) Personal hygiene, including entry and exit procedures for the work area, methods of decontamination, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area, and methods to limit exposures to family members;

(f) Medical monitoring, including OSHA requirements for physical examinations, including a pulmonary function test, chest x-rays, and a medical history for each employee;

(g) Relevant federal and state regulatory requirements, procedures, and standards, including:

(i) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134);

(ii) OSHA Asbestos Construction Standard (29 CFR 1926.1101); and

(iii) UAC R307-801 Utah Asbestos Rule.

(h) Recordkeeping and notification requirements for renovation projects including records and project notifications required by state regulations and records recommended for legal and insurance purposes;

(i) Supervisory techniques for renovation projects, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices; and

(j) Course review, including a review of key aspects of the training course.

(5) Renovator Recertification Course. The renovator recertification course shall be a minimum of four hours, shall adequately address changes in the federal regulations, state administrative rules, state-of-the-art developments, appropriate work practices, employee personal protective equipment, recordkeeping, and notification requirements for renovation projects, and shall include a course review.

R307-801-9. Asbestos Abatement, Renovation, and Demolition Projects: Requirement to Inspect.

(1) Applicability. Owners of residential structures including condominium owners of four units or less not subject to the Asbestos NESHAP are not required to perform asbestos inspections. Owners of a condominium complex of more than four units may be subject to the Asbestos NESHAP and R307-801 and may be required to perform asbestos inspections. Contractors for hire [~~working in a regulated facility~~]are subject to the inspection requirements of R307-801-9.

(2) Except as described in R307-801-9(1) and 9(3), the owner and operator shall ensure that the regulated facility to be demolished, abated, or renovated is thoroughly inspected for asbestos-containing material by an inspector certified under the provisions of R307-801-6. An asbestos inspection report shall be generated according to the provisions of R307-801-10 and completed prior to the start of the asbestos abatement, renovation, or demolition project if materials required to be identified in R307-801-10(3) will be disturbed during that project. The operator shall make the asbestos inspection report available on-site to all persons who have access to the site for the duration of the renovation, abatement, or demolition project, and to the [~~executive secretary~~]director or authorized representative upon request.

(3) If the regulated facility has been ordered to be demolished because it is found by a government official to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator may demolish the regulated facility without having the regulated facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall:

(a) Ensure that all resulting demolition project debris is disposed of as asbestos-containing waste material (ACWM), according to R307-801-15. If the asbestos contaminated demolition project debris cannot be properly containerized, the operator shall:

(i) Obtain approval for an alternative work practice from the [~~executive secretary~~]director prior to disposing of the ACWM; or

(ii) Segregate the ACWM from non-ACWM debris under the direction of an inspector certified according to R307-801-6 working for a company certified according to R307-801-5.

(b) Clean and encapsulate non-porous debris as non-ACWM by asbestos abatement supervisors or asbestos abatement workers who are certified according to R307-801-6 and working for a company certified according to R307-801-5.

(4) Asbestos inspections older than three years shall be reviewed and updated, as necessary, by an inspector who is certified according to R307-801-6 and working for a company certified according to R307-801-5, and if applicable, shall be reviewed and updated prior to an asbestos abatement, renovation, or demolition project. If the inspection report is still accurate, then the inspector shall provide a letter of review, or some other form of documentation, stating that the inspection report is still accurate.

R307-801-10. Asbestos Abatement, Renovation, and Demolition Projects: Asbestos Inspection Procedures.

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of [~~regulated~~]facilities to be abated, demolished, or renovated:

(1) Determine the scope of the abatement, demolition, or renovation project by identifying which parts and how the [~~regulated~~]facility will be abated, demolished, or renovated (e.g. conventional demolition methods, fire training, etc.).

(2) Inspect the affected [~~regulated~~]facility or part of the [~~regulated~~]facility where the abatement, demolition, or renovation project will occur.

(3) Identify all accessible suspect asbestos-containing material (ACM) in the affected[~~regulated~~] facility or part of the [~~regulated~~]facility where the abatement, demolition, or renovation project will occur. Residential facilities[~~structures of four units or less~~] built on or after January 1, 1981, are only required to identify all accessible[~~inspect for~~] sprayed-on acoustical ceiling material, asbestos cement siding, vinyl floor tile, thermal-system insulation or tape on a duct or furnace, or vermiculite type insulation materials in the affected facility or part of the facility where the abatement, demolition, or renovation project will occur.

(4) Follow the sampling protocol in 40 CFR 763.86 (Asbestos-Containing Materials in Schools) or a sampling method approved by the [~~executive secretary~~]director to demonstrate that suspect ACM required to be identified by R307-801-10(3) does not contain asbestos.

(5) Asbestos samples are not required to be collected and analyzed if the certified inspector [~~A~~]assumes that all unsampled suspect ACM required to be identified by R307-801-10(3) contains asbestos and is ACM; and

(6) Complete an asbestos inspection report containing all of the following information in a format approved by the [~~executive secretary~~]director:

(a) A description of the affected area and a description of the scope of activities as described in R307-801-10(1);

(b) A list of all suspect ACM [~~identified~~]required to be identified by R307-801-10(3) in the affected area. For each suspect material required to be identified by R307-801-10(3), provide the following information:

(i) The amount of suspect ACM required to be identified by R307-801-10(3) in linear feet, square feet, or cubic feet;

(ii) A clear description of the distribution of the suspect ACM required to be identified by R307-801-10(3) in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and demonstrated to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A determination of whether the material is regulated asbestos-containing material (RACM), Category I non-friable ACM, or Category II non-friable ACM that may or will become friable when subjected to the proposed abatement, renovation, or demolition project activities.

(c) A list of all asbestos bulk samples required to be identified[~~collected~~] from suspect ACM by R307-801-10(3) in the affected area, including the following information for each sample:

(i) Which suspect ACM required to be identified by R307-801-10(3) the sample represents;

(ii) A clear description of each sample location;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect ACM required to be identified by R307-801-10(3) that were not accessible to inspect and that may be part of the affected area; and

(e) A list of all the asbestos inspector names, company names, and certification numbers.

(7) Floor plans or architectural drawings and similar representations may be used to identify the location of suspect ACM or samples required to be identified by R307-801-10(3).

(8) Analysis of samples shall be performed by[~~ persons or laboratories~~]:

(a) Persons or laboratories accredited[~~certified~~] by a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP), or[~~the National Institute for Standards and Technology (NIST),~~]

(b) Persons or laboratories that have been rated overall proficient by demonstrating passing scores for at least two of the last three consecutive rounds out of the four annual rounds of the Bulk Asbestos Proficiency Analytical Testing program[~~ the round robin for bulk samples~~] administered by the American Industrial Hygiene Association (AIHA)[~~;~~] or an equivalent nationally-recognized interlaboratory comparison[~~round robin testing~~] program.

(9) Inspection reports of residential facilities shall be submitted to the [~~executive secretary~~]director.

R307-801-11. Asbestos Abatement, Renovation, and Demolition Projects: Notification and Asbestos Removal Requirements.

(1) Demolition Projects.

(a) If the amount of regulated asbestos-containing material (RACM) in the regulated facility is the small scale short duration (SSSD) amount, the operator shall submit a demolition project notification form at least ten working days before the start of a demolition project.

(b) If the amount of RACM in the regulated facility is greater than the SSSD amount but less than the NESHAP amount, the operator shall submit a demolition project notification form at least ten working days before the start of the demolition project and

a less than NESHAP asbestos notification form at least one working day before commencing removal, and shall remove the RACM according to the work practice provisions of R307-801-14 and according to the certification requirements of R307-801-5 and 6 before the demolition project proceeds.

(c) If the amount of RACM in the regulated facility is greater than or equal to the NESHAP amount, the operator shall submit an asbestos abatement project notification form at least ten working days before the asbestos removal begins, and the demolition project shall not proceed until after all RACM has been removed from the regulated facility.

(d) If any regulated facility is to be demolished by intentional burning, the operator, in addition to the demolition notification form specified in R307-801-11(1)(a), (b), or (c), shall ensure that all ACM, including Category I non-friable asbestos-containing material (ACM), Category II non-friable ACM, and RACM is removed from the regulated facility before burning.

(e) If the regulated facility has been ordered to be demolished by a government official because it is found to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator shall submit a demolition project notification form, with a copy of the order signed by the appropriate government official, as soon as possible before, but no later than, the next working day after the demolition project begins. An extension of up to five working days may be requested by the sender for the government ordered demolition documentation upon written request.

(2) Asbestos Abatement and Renovation Projects.

(a) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is the SSSD amount, then no additional requirements are necessary prior to general building remodeling activities.

(b) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is greater than the SSSD amount, but less than the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least one working day before asbestos removal begins as described in R307-801-12, unless the removal was properly included in an annual asbestos notification form submitted pursuant to R307-801-11(2)(e);

(ii) Remove RACM according to asbestos work practices of R307-801-14, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-15 before performing general building remodeling activities.

(c) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement project is greater than or equal to the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least ten working days before asbestos removal begins as described in R307-801-12;

(ii) Remove RACM according to the asbestos work practices of R307-801-14, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-15 before performing general building remodeling activities.

(d) If the asbestos abatement or renovation project is an emergency asbestos abatement or renovation project, then the notification form shall be submitted as soon as possible before, but no later than the next working day after the emergency asbestos abatement or renovation project begins.

(e) The operator shall submit an annual asbestos notification form according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than ten working days before the first day of January of the year during which the work is to be performed in the following circumstances:

(i) The asbestos abatement projects are unplanned operation and maintenance activities;

(ii) The asbestos abatement projects are less than NESHAP-sized; and

(iii) The total amount of asbestos to be disturbed in a single NESHAP facility during these asbestos abatement projects is expected to exceed the NESHAP amount in a calendar year.

(3) Owners and operators of general building remodeling activities are not required to submit an asbestos abatement project or renovation notification form to the [~~executive secretary~~]director that do not disturb suspect asbestos containing materials, do not disturb building materials found to contain RACM by an inspector who is certified according to R307-801-6, or do not disturb materials that will become RACM as part of the general building remodeling activities.

(4) For notification purposes, asbestos abatement, renovation, or demolition projects shall be no longer than one year in duration.

R307-801-12. Asbestos Abatement, Renovation, and Demolition Projects: Notification Procedures and Contents.

(1) All notification forms required by R307-801-11 shall be submitted in writing on the appropriate form provided by the [~~executive secretary~~]director and shall be postmarked or received by the [~~executive secretary~~]director in accordance with R307-801-11, or shall be submitted using the Division of Air Quality electronic notification system and received by the [~~executive secretary~~]director in accordance with R307-801-11. The type of notification and whether the notification is original or revised shall be indicated.

(2) If the notification is an original demolition project notification form, an original asbestos abatement project notification form for a NESHAP-sized asbestos abatement project, or an original asbestos annual notification form, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received at the [~~executive secretary~~]director. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the [~~executive secretary~~]director.

(3) An original asbestos notification form for a less than NESHAP-sized asbestos abatement or renovation project or any revised notification may be submitted by any of the methods in R307-801-12(2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.

(4) All original notification forms shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility and of any contractor working on the project;

(b) Whether the operation is an asbestos abatement, demolition, or a renovation project;

(c) A description of the regulated facility that includes the size in square feet, the number of floors, the age, and the present and prior uses of the regulated facility;

(d) The names and certification numbers of the inspectors and companies;

(e) The procedures, including analytical methods, used to inspect for the presence of asbestos-containing material (ACM);

(f) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of each regulated facility being demolished or renovated;

(g) A description of procedures for handling the discovery of unexpected ACM, Category I non-friable ACM, or Category II non-friable ACM that has become friable or regulated;

(h) A description of planned asbestos abatement, demolition, or renovation project work, including the asbestos abatement, demolition, and renovation project techniques to be used and a description of the affected regulated facility components or structural members; and

(i) If the project has phases, then provide the date and times of each phase and the location and address of all regulated facilities to be abated, demolished, or renovated.

(5) In addition to the information in R307-801-12(4), an original demolition project notification form shall contain the following information:

(a) An estimate of the amount of Category I non-friable ACM and non-regulated ACM that will remain in the building during the demolition project;

(b) Disposal of Category I ACM that is left in place during demolition must comply with the waste shipment record and other requirements found in R307-801-15(4) and 29 CFR 1926.1101;

(c) The start and stop dates of the demolition project; and

(d) If the regulated facility will be demolished under an order of a government official, the name, title, government agency, and authority of the government official ordering the demolition project, the date the order was issued, and the date the demolition project was ordered to commence. A copy of the order shall be attached to the demolition project notification form.

(6) In addition to the information required in R307-801-12(4) and (5), an original demolition project notification form shall include:

(a) The start and stop dates for the entire project; and

(b) The start and stop dates for each phase of the project, if applicable.

(7) In addition to the information required in R307-801-12(4), (5), and (6), an original asbestos abatement project notification form shall include:

(a) An estimate of the amount of ACM to be stripped, including which units of measure were used;

(b) The start and stop dates for asbestos abatement project preparation;

(c) The times of day for every day that asbestos abatement project will be conducted;

(d) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or asbestos abatement project work site;

(e) The name and location of the waste disposal site where the ACWM will be disposed, including the name and telephone number of the waste disposal site contact;

(f) The name, address, contact person, and telephone number of the waste transporters; and

(g) The name, contact person, and telephone number of the waste generator.

(8) If an emergency asbestos abatement or renovation project will be performed, then the notification form shall include the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden.

(9) In addition to the information in R307-801-12(4) and (5), an original asbestos abatement project annual notification form shall contain the following information:

(a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used, if known;

(b) The start and stop dates of asbestos abatement project work covered by the annual notification, if known;

(c) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the asbestos abatement project work site;

(d) The name and location of the waste disposal site where the asbestos-containing waste material (ACWM) will be disposed, including the name and telephone number of the waste disposal site contact;

(e) The name, address, contact person, and telephone number of the waste transporters; and

(f) The name, contact person, and telephone number of the waste generator.

(10) A revised notification form shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, and any demolition, renovation, or asbestos abatement project contractor working on the project;

(b) Whether the operation is an asbestos abatement, a demolition, or a renovation project;

(c) The date that the original notification form was submitted;

(d) The applicable original start and stop dates for asbestos abatement, renovation, or demolition project;

(e) The revised start and stop dates and working hours, if applicable, for asbestos abatement, renovation, or demolition projects, for the entire project or for any phase of the project;

(f) The changes in the amount of asbestos to be removed during the project if the asbestos removal amount increases or decreases by more than 20%; and

(g) Any other changes.

(11) If the asbestos removal amount is increased in the revised notification form, then the appropriate fee shall be paid to the Division of Air Quality.

(12) If any project phase or an entire NESHAP-sized asbestos abatement, renovation, or demolition project that requires a notification form under R307-801-12(4) will commence on a date or work times other than the date and work times submitted in the

original or the most recently revised written notification form, the [~~executive secretary~~]director shall be notified of the new start date and work times by the following deadlines:

(a) If the new start date and work times are later than the original start date and work times, then notice by telephone, fax, or electronic means shall be given as soon as possible and a revised notice shall be submitted in accordance with R307-801-12(9) as soon as possible before, but no later than, the original start date.

(b) If the new start date is earlier than the original start date, submit a written notice in accordance with R307-801-12(9) at least ten working days before beginning the project.

(c) In no event shall an asbestos abatement, renovation, or demolition project covered by R307-801-12 begin on a date other than the new start date submitted in the revised written notice.

. . . . . .

R307-801-14. Asbestos Abatement and Renovation Project: Work Practices.

(1) Persons performing an[~~y~~] asbestos abatement or renovation project at a regulated facility shall follow the work practices in R307-801-14 [~~this subsection~~]. Where the work practices in R307-801-14(1) and (2) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet regulated asbestos-containing material (RACM) with amended water before exposing or disturbing it, except when temperatures are continuously below freezing (32 degrees F.), and when all requirements in 40 CFR 61.145(c)(7) are met.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-15.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to five microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment and waste bags so that no visible residue is observed before leaving the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using a high-efficiency particulate air (HEPA) vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist all surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable asbestos-containing material (ACM) and RACM according to the disposal provisions of R307-801-15.

(2) All operators of NESHAP-sized asbestos abatement projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of six mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present in the proposed work area prior to the start of a NESHAP-sized asbestos abatement project, the site shall be prepared by removing the debris using the work practice requirements of R307-801-14 and disposal requirements of R307-801-15. If the total amount of loose visible RACM debris throughout the entire work area is the SSSD amount, then site preparation may begin after the notification form has been submitted and before the end of the ten working day waiting period.

(c) A decontamination unit constructed to the specifications of R307-801-14(2)(h) shall be attached to the containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and all persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure and shall follow all procedures required by 29 CFR 1926.1101(j)(1)(ii).

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of six mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least two layers of four mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent;

(iv) Maintain the integrity of all enclosure barriers; and

(v) Where a wall or floor will be removed as part of the NESHAP-sized asbestos abatement project, polyethylene sheeting need not be applied to that regulated facility component or structural member.

(g) View ports shall be installed in the enclosure or barriers where feasible, and view ports shall be:

(i) At least one foot square;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least three chambers and meet all regulatory requirements of 29 CFR 1926.1101(j)(1)(i);

(iii) The clean room, which is the chamber that opens to the outside, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(iv) The shower room, which is the chamber between the clean and dirty rooms, shall have hot and cold or warm running water and be no less than three feet wide by three feet long by six feet high, when feasible;

(v) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(vi) The dirty room shall be provided with an accessible waste bag at any time that asbestos abatement project is being performed.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of six mil or thicker polyethylene walls and six mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least three feet long, three feet high, and three feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and shall include a water supply with a filtered drain, clean rags, disposable rags or wipes, and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining at least four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the regulated facility whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(3) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-14(2)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:

(a) When a pipe insulation removal asbestos abatement project is conducted the following may be used:

(i) Drop cloths extending a distance at least equivalent to the height of the RACM around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent;

(ii) Either the glove bag or wrap and cut methods may be used; and

(iii) RACM shall be adequately wet before wrapping.

(b) When the RACM is scattered ACM and is found in small patches, such as isolated pipe fittings, the following procedures may be used:

(i) Glove bags, mini-enclosures as described in R307-801-14(5)(c), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glove bags or a mini-enclosure, then non-glove bag or non-mini-enclosure building openings need not be sealed and negative pressure need not be maintained in the space outside of the glove bags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-14(5)(d) only if an attached decontamination unit is not feasible.

(c) When a preformed RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted, the following may be used:

(i) Drop cloths extending a distance at least six feet around all preformed RACM pipe insulation to be removed or extended to a wall and attached with duct tape or equivalent; or

(ii) The open top catch bag method.

(4) During outdoor asbestos abatement projects, the work practices of R307-801-14 shall be followed with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene drop cloth, or equivalent, large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-14(5)(d) may be used.

(5) Special work practices.

(a) If the wrap and cut method is used:

(i) The regulated facility component shall be cut at least six inches from any RACM on that component;

(ii) If asbestos will be removed from the regulated facility component to accommodate cutting, the asbestos removal shall be performed using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak-tight and shall consist of two layers of six mil polyethylene sheeting, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) The material to be removed can only be preformed RACM pipe insulation, and it shall be located in a crawl space or a pipe chase less than six feet high or less than three feet wide;

(ii) Asbestos waste bags that are leak-tight and strong enough to hold contents securely shall be used;

(iii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iv) All material stripped from the regulated facility component shall be placed in the bag;

(v) One asbestos abatement worker shall hold the bag and another asbestos abatement worker shall strip the ACM into the bag; and

(vi) A drop cloth extending a distance at least six feet around all preformed RACM pipe insulation to be removed, or extended to a wall and attached with duct tape or equivalent shall be used.

(c) If glove bags are used, they shall be under negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5)(iii) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-14(3)(b) or (4), or when approved

by the [~~executive secretary~~]director. The remote decontamination unit shall meet all construction standards in R307-801-14(2)(h) and shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or asbestos abatement workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of six mil or thicker polyethylene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as ACWM.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

(6) For asbestos-containing mastic removal projects using mechanical means, such as a power buffer, to loosen or remove mastic from the floor, in lieu of two layers of polyethylene sheeting on the walls, splash guards of six mil or thicker polyethylene sheeting shall be placed from the floor level a minimum of three feet up the walls.

(7) Persons who improperly disturb more than the SSSD amount of asbestos-containing material and contaminate an area with friable asbestos shall:

(a) Have the emergency clean-up portion of the project, including any portions not contained within a regulated facility or in common use areas that cannot be isolated, performed as soon as possible by a company or companies certified according to R307-801-5, and, asbestos abatement supervisor(s), and asbestos abatement worker(s) certified according to R307-801-6.

(b) Have an asbestos clean-up plan designed by a Utah certified asbestos project designer for the non-emergency portion of the project and have the asbestos clean-up plan submitted to the [~~executive secretary~~]director for approval. An asbestos clean-up plan is not required when the disturbance results from a natural disaster, fire, or flooding.

(c) Submit the project notification form required by R307-801-11 and 12 to the [~~executive secretary~~]director for acceptance no later than the next working day after the disturbance occurs or is discovered.

(d) Notify the [~~executive secretary~~]director of project completion by telephone, fax, or electronic means by the day of completion and before leaving the site.

R307-801-15. Disposal and Handling of Asbestos Waste.

(1) Owners and operators of regulated facilities[~~subject to R307-801~~] shall containerize asbestos-containing waste material (ACWM) while adequately wet.

(2) ACWM containers shall be leak-tight and strong enough to hold contents securely.

(3) Containers shall be labeled with the waste generator's name, address, and telephone number, and the contractor's name and address, before they are removed from the work area.

(4) Containerized regulated asbestos-containing material (RACM) shall be disposed of at a landfill which complies with 40 CFR 61.150.

(5) The waste shipment record shall include a list of items and the amount of ACWM being shipped [~~including Category I and Category II non-friable waste~~]. The waste generator originates and signs this document.

(6) Owners and operators of regulated facilities where an asbestos abatement or renovation project has been performed shall report in writing to the [~~executive secretary~~]director if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 working days from the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

R307-801-16. Records.

(1) Certified asbestos or renovation companies shall maintain records of all asbestos abatement or renovation projects that they perform at regulated facilities and shall make these records available to the director[~~executive secretary~~] or authorized representative upon request. The records shall be retained for at least five years. Maintained records shall include the following:

(a) Names and certification numbers of the asbestos abatement workers, asbestos abatement supervisors, or renovators who performed the asbestos abatement or renovation project;

(b) Location and description of the asbestos abatement or renovation project and amount of friable asbestos-containing material (ACM) removed;

(c) Start and stop dates of the asbestos abatement or renovation project;

(d) Summary of the procedures used to comply with applicable requirements including copies of all notification forms;

(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M; and

(f) Asbestos inspection reports associated with the asbestos abatement or renovation project.

(2) All persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos inspection reports for at least one year after asbestos abatement, renovation, or demolition projects have ceased, and shall make these reports available to the [~~executive secretary~~]director or authorized representative upon request.

R307-801-17. Certified Renovator Work Practices.

(1) Certified renovators are responsible for ensuring compliance with R307-801 at all renovation projects at regulated facilities to which they are assigned.

(2) Certified renovators working at regulated facilities shall:

(a) Perform all of the tasks described in R307-801-14(1) and shall either perform or direct workers who perform all tasks described in R307-801-14(1);

(b) Provide training to workers on the work practices required by R307-801-14(1) that will be used when performing renovation projects;

(c) Be physically present at the work site when all work activities required by R307-801-14(1)(b) are posted, while the work area containment required by R307-841-14(1)(b) is being

established, and while the work area cleaning required by R307-801-14(1)(i) is performed;

(d) Be on-site and direct work being performed by other individuals to ensure that the work practices required by R307-801-14(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Have with them at the work site their current Utah Renovator certification card; and

(f) Prepare the records required by R307-801-16.

R307-801-18. Asbestos Information Distribution Requirements.

(1) Utah Abatement/Renovation pamphlet. Utah asbestos abatement and renovation companies shall provide owners and occupants of regulated facilities with the Utah Abatement/Renovation Pamphlet "Asbestos Hazards During Abatement and Renovation Activities."

(2) No more than 60 days before beginning an abatement or renovation project in a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner of the regulated [~~residential~~] facility with the pamphlet, and comply with one of the following:

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

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project; and

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

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the regulated facility and that the company performing the abatement or renovation project has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification shall include the address of the unit undergoing abatement or renovation project, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the company performing the abatement or renovation project, and the date of signature; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project.

(3) Abatement or renovation projects in common areas. No more than 60 working days before beginning abatement or renovation projects in common areas of a regulated facility, the company performing the abatement or renovation project shall:

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

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

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each regulated facility and make the pamphlet available upon request prior to the start of abatement or renovation project. Such notification shall be accomplished by distributing written notice to each affected unit in the regulated facility. The notice shall describe the general nature and locations of the planned abatement or renovation project, the expected starting and ending dates, how the occupant can obtain the pamphlet and a copy of the required records at no cost to the occupants; or

(ii) Post informational signs describing the general nature and locations of the abatement or renovation project and the anticipated completion date while the abatement or renovation project is ongoing. These signs shall be posted in areas where they are likely to be seen by the occupants of all of the affected units in the regulated facility. The signs shall be accompanied by a posted copy of the pamphlet or information about how interested occupants can review a copy of the pamphlet or obtain a copy from the abatement or renovation company at no cost to occupants. The signs shall also include information about how interested occupants can review a copy of the required records from the abatement or renovation company at no cost to the occupants;

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

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

(4) Written acknowledgment. The written acknowledgments required by paragraphs R307-801-18(2)(a)(i), (2)(b)(i), and (3)(a)(i) shall:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of abatement or renovation project, or no later than the day after the start of an emergency abatement or renovation project, the address of the regulated facility undergoing an abatement or renovation project, the signature of the owner or occupant as applicable, and the date of signature;

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

(c) Be written in the same language as the text of the contract or agreement for the abatement or renovation project or, in the case of a non-owner occupied regulated facility, in the same language as the lease or rental agreement or the pamphlet.

KEY: air pollution, asbestos, asbestos hazard emergency response, schools
Date of Enactment or Last Substantive Amendment: 2012
Notice of Continuation: February 8, 2008
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(d); 19-2-104(3)(r) through (t); 40 CFR Part 61, Subpart M; 40 CFR Part 763, Subpart E

Public Service Commission, Administration
R746-313
Electric Service Reliability

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 36214
FILED: 08/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for change is based upon the Public Service Commission's consideration of comments received on the initial version of the rule published on 06/01/2012 and the desire to incorporate the 05/31/2012 version of Standard IEEE 1366-2012 Guide for Electric Power Distribution Reliability Indices (which was published after the initial 05/15/2012 filing deadline for the proposed rule) as the foundation for the rule. The changes provide more flexibility for an electric corporation to develop, manage and revise its electric service reliability program while requiring the electric corporation to meet Public Service Commission-approved levels of reliability.

SUMMARY OF THE RULE OR CHANGE: The rule was changed to: incorporate the most recent version of the standard upon which the rule is based (05/31/2012 version of Standard IEEE 1366 -- 2012 Guide for Electric Power Distribution Reliability Indices); delete duplicative/ unnecessary text and references; delete definitions which are provided in IEEE-1366 upon which the rule is based; delete the requirement for an electric corporation to have a Public Service Commission-approved electric service reliability program; add a requirement for an electric corporation to file for approval by the Public Service Commission reliability performance baselines for two electric service reliability indices (namely, System Average Interruption Duration Index and System Average Interruption Frequency Index) and identify associated filing requirements; add the requirement to report on deviations from approved reliability performance baselines; and overall reduce the amount of information required in an electric corporation's annual report on electric service reliability. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the June 1, 2012, issue of the Utah State Bulletin, on page 96. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-2 and Section 54-4-7

MATERIALS INCORPORATED BY REFERENCES:

- Updates 1366TM IEEE Guide for Electric Power Distribution Reliability Indices, published by The Institute of Electrical and Electronics Engineers (IEEE), Inc., 05/31/2012

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: This rule will have no cost effect on the state budget, however, to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided, the rule benefits the state and the state budget in general.
- LOCAL GOVERNMENTS: This rule will have no cost effect on local governments who operate their own municipal electric utility systems. This rule will have no cost effect on local governments who are supplied electricity via a rural electric cooperative or an investor-owned utility, however, to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided, the rule benefits local governments and their constituents.
- SMALL BUSINESSES: This rule will have no direct cost effect on small businesses. Small businesses benefit to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided.
- PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other than rural electric cooperatives and investor-owned electric utilities, this rule will have no direct cost effect on persons other than small businesses, businesses, or local government entities. Persons other than rural electric cooperatives and investor-owned electric utilities benefit to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided. This rule formalizes the practices, commitments and standards related to evaluating, tracking and measuring electric service reliability, which generally are currently being utilized by electric corporations and distribution electrical cooperatives which are also public utilities. Electric corporations could incur costs associated with penalties for violation of approved standards or electric service reliability program elements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule formalizes the practices, commitments and standards related to evaluating, tracking and measuring electric service reliability, which generally are currently being utilized by electric corporations and distribution electrical cooperatives which are also public utilities. Electric corporations could incur costs associated with penalties for deviations of approved performance baselines.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is important to ensure electric customers are provided electric service which is adequate, efficient, just and reasonable as required by Section 54-3-1. This rule will have

no fiscal impact on businesses and may provide a benefit in the form of electric service reliability. This rule benefits businesses in general as reliable electric service is one of the cornerstones for reliable business operations. Previously, commitments to electric service reliability by electric corporations were parts of voluntary merger commitments. This rule will ensure lasting requirements for electric service reliability which benefits businesses and the State of Utah in general.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 09/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/21/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.
R746-313. Electrical Service Reliability.
R746-313-1. Authority.

(1) This rule establishes electric service reliability and continuity requirements as provided for in Utah Code Sections 54-3-1, 54-4-2 and 54-4-7.

R746-313-2. Definitions.

(1) "Customer average interruption duration index" ("CAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(2) [~~"Customer" means, when used for reliability indices calculations, a metered electrical service point for which an active bill account is established at a specific location.~~

~~(3) "Day" means a 24-hour period beginning at midnight.~~

~~(4)~~]"Electric company" means an electrical corporation or a distribution electrical cooperative that is also a public utility, as defined in Utah Code 54-2-1(16).

([~~5~~]3) "Form 7 - Information on Service Interruptions" means:

(a) Part G of the United States Department of Agriculture Rural Utilities Service Form 7 Financial and Statistical Report,

(b) Part H of the National Rural Utilities Cooperative Finance Corporation Form 7 Financial and Statistical Report, or

(c) their equivalents.

([~~6~~]4) "Governing Authority" means:

(a) for a distribution electrical cooperative as defined in Utah Code 54-2-1(6), its board of directors; and

(b) for an electrical corporation as defined in Utah Code 54-2-1(7), the Public Service Commission of Utah, otherwise referred to as the commission.

([~~7~~]5) "The Institute of Electrical and Electronics Engineers Standard 1366" ("IEEE 1366") means the 20[~~03~~]12 edition of the IEEE Guide for Electric Power Distribution Reliability Indices.

([~~8) "Interruption" means the loss of electrical service to one or more customers connected to the distribution portion of the system. It is the result of one or more component outages, depending on system configuration.~~

~~(9~~]6) "Loss of power supply"

(a) "Loss of power supply - Distribution Substation" means the loss of the electrical power supply system due to an outage/failure of a distribution substation component.

(b) "Loss of power supply - Generation/Transmission" means the loss of the electrical power supply from the electric company's own electric generator or transmission system, including transmission lines and transmission substations, or from another electric company or electric corporation.

([~~10~~]7) "Momentary average interruption frequency index" ("MAIFI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

([~~11) "Major Event" means a designation given to an event that exceeds the reasonable design and or operational limits of the electric power system. As applicable to this rule, a major event includes at least one Major Event Day.~~

~~(12) "Major Event Day" or "med" means a day in which the daily system SAIDI exceeds a threshold value, T_{MED}.~~

~~(13~~]8) "Major event day identification threshold value" ("T_{MED}") has the same meaning as in IEEE 1366 or RUS 1730A-119.

([~~14~~]9) "Operating area" means a geographic subdivision of an electric company's Utah service territory that functions under the direction of an electric company office and as a separate entity used for reliability reporting within the electric company. An operating area may also be referred to as regions, divisions, or districts and may also be a reliability reporting area.

(1[~~5) "Person" means an individual, a corporation, a partnership, an association, a trust, a company or a regulatory agency.~~

~~(16~~]0) "Reliability" means the degree to which electric service is supplied without interruptions to customers.

(1[~~7~~]1) "Reliability indices" means the electric service interruption indices identified in IEEE 1366 or RUS 1730A-119, as applicable.

(1[~~8) "Reliability program" means a written electric service reliability program approved by the electric company's governing authority.~~

~~(19~~]2) "Reliability reporting area" means a grouping of one or more operating areas, for which the electric company calculates major event thresholds.

([~~20~~]13) "Reporting Period" means the 12-month period, based on the previous 365 days, or 366 days for leap years, for which an electric company is tracking and reporting reliability performance.

([~~21~~]14) "Rules" means the Electric Service Reliability [~~R~~]rules R746-313-1 through [~~9~~]8.

([~~22~~]15) "RUS 1730A-119" means the United States Department of Agriculture Rural Utilities Service Bulletin 1730A-119 entitled "Interruption Reporting and Service Continuity Objectives for Electric Distribution Systems," dated March 24, 2009.

([~~23~~]16) "System average interruption duration index" ("SAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

([~~24~~]17) "System average interruption frequency index" ("SAIFI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

~~([25) "Step restoration" means the process of restoring all interrupted customers in stages over time.~~

~~(26) "Sustained interruption" means an interruption lasting more than five minutes.~~

~~(27~~]18) "System-wide" means pertaining to and limited to the electric company's customers in Utah.

R746-313-3. Purpose, Scope, Applicability and Exceptions.

(1) This rule establishes requirements for each electric company to [~~have a program to ensure reliable electric service is provided to each electric service customer in accordance with the requirements of Utah Code 54-3-1~~]monitor and report on electric service reliability.

(2) Unless otherwise approved, [~~A~~]an electric company whose governing authority is the commission shall:

(a) follow the provisions of IEEE 1366 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If there is a conflict between any provision in IEEE 1366 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and "interruptions caused by events outside of the distribution system," as defined in IEEE 1366, in the electric company's record keeping, calculations, reporting, and filing as required by R746-313-4 through R746-313-[~~9~~]8.

(3) Unless otherwise approved, [~~A~~]an electric company whose governing authority is not the commission shall:

(a) follow the provisions of either IEEE 1366 or the RUS Bulletin 1730A-119 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If a conflict exists between any provision in IEEE 1366 or RUS 1730A-119 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and interruptions caused by events outside of the distribution system in the electric company's record keeping, calculations, reporting, and filing as required by the Electric Service Reliability Rules R746-313-4 through R746-313-[~~9~~]8.

(4) The commission may, upon written request and for good cause shown, waive or modify any provision of these rules in accordance with R746-100-15, Deviation from Rules.

R746-313-4. Electric Service Reliability[~~Program~~].

(1) [~~An electric company must use reasonable means in design, operations, and maintenance to ensure the reliability of electric service provided to each customer in accordance with Utah Code 54-3-1. Such means include, but are not be limited to, programs to minimize service interruptions.~~]An electric company must have a written reliability program.

(2) [~~When an interruption occurs, an electric company must reestablish service in a manner which minimizes the interruption duration consistent with the safety of its employees, its customers, and the public.~~]Within 3 months after the effective date of these rules an electric company whose governing authority is the commission must file for commission approval of reliability performance baselines for SAIDI and SAIFI reliability indices.

(3) [~~An electric company must have recordkeeping systems in place to determine, and track interruptions, facilitate interruption restoration, and collect and analyze interruption data.~~]The filing required by 746-313-4(2)must include, but is not limited to:

(a) the basis for the proposed SAIDI and SAIFI values; and

(b) identification of systems and description of internal processes to collect, monitor and analyze interruption data and events including:

(i) definitions of all parameters used to calculate the proposed standards and major event days, and the time-period upon which the proposed standards are based (e.g., 12-month rolling average, 365-day rolling average, annual average);

(ii) identification of all proposed deviations from IEEE 1366 used in the calculation of reliability indices and determination of major event days; and

(iii) a description of all data estimation methods used for the collection and calculation of SAIDI, SAIFI, CAIDI, and MAIFI.

[~~(4) By December 31, 2012, an electric company whose governing authority is not the commission shall have a written electric service reliability program, approved by its governing authority, to ensure service reliability to each customer and to minimize service interruptions.~~

~~(5) By November 1, 2012, an electric company whose governing authority is the commission shall file a written electric service reliability program for approval by the commission.~~

~~(a) The reliability program must:~~

~~(i) be based upon an evaluation of historic electric service reliability information and reliability indices, and service quality commitments; and~~

~~(ii) include both reliability program components as specified in R746-313-4(5)(b) and reliability program supporting information as specified in R746-313-4(5)(d).~~

~~(b) Reliability program components are those items and associated programs which establish the levels of electric service reliability to be achieved by the public utility. Reliability program components include but are not limited to:~~

~~(i) Service reliability performance objectives in the form of network reliability indices, customer guarantees, commitments, and the public utility's programs necessary for maintaining and/or achieving appropriate electric service and reliability (e.g., vegetation management program, improvement of worst performing circuits program, preventive maintenance programs);~~

~~(ii) identification and description of the electric company's internal processes, procedures, and/or efforts which support the achievement of performance objectives (e.g., vegetation management, capital investment, and maintenance spending targets; maintenance procedures and schedules; other such programs);~~

~~(iii) a plan of action to be implemented and penalties to be assessed in the event a service reliability performance objective or commitment is not met or achieved;~~

~~(iv) reporting and meeting commitments and schedules (e.g., semi-annual reports filed with the commission within 120 days after the end of the reporting period, meetings to discuss draft report with the commission within 90 days after the end of the reporting period with draft report to be provided to the commission 10 days before meeting, notification to the commission within 30 days of exceeding any reliability indices or commitments);~~

~~(v) a commitment by the electric company to discuss during a scheduled meeting:~~

~~(A) reporting period reliability performance, including the results of benchmarking studies in which the public utility has participated;~~

~~(B) changes to the reliability program components or supporting information; and~~

~~(C) other relevant electric service reliability topics as appropriate.~~

~~(vi) other commitments and/or program components an electric company determines appropriate.~~

~~(c) Modifications to reliability program components. All modifications to reliability program components must be approved by the commission prior to implementation.~~

~~(d) Reliability program supporting information consists of policies, procedures, methods, systems, and budgets which support the public utility's reliability program components. Reliability program supporting information includes but is not limited to:~~

~~(i) an explanation of the process or processes by which the electric company identifies and, where appropriate, corrects underperforming circuits or local areas of performance concerns;~~

~~(ii) general reporting formats and definitions of terms not addressed by these rules or IEEE 1366;~~

~~(iii) an explanation of how the electric company collects, maintains and verifies the data and determines the specific values used in the calculation of the reliability indices;~~

~~(iv) the method for determining the customer count as defined in IEEE 1366; and~~

~~(v) other information an electric company determines appropriate.~~

~~(e) Modifications to reliability program supporting information. An electric company must notify the Commission in writing of any modification to its reliability program supporting information identified in R746-313-4(5)(d) which would affect the consistency of the data being reported under the provisions of the rule at the next scheduled reporting period. The notification must explain the change, the reason for the change, and the effect the change will have on the data. All other modifications to reliability program supporting information must be reported in the electric service reliability report required in R746-313-8.~~

~~(f) All reliability indices identified in the electric company's reliability program shall be:~~

~~(i) calculated with all interruptions included and separately with major event interruptions excluded;~~

~~(ii) based upon and calculated on a 365-day rolling average (or 366-day in the event of a leap year);~~

~~(iii) reported on a system-wide basis and for each reliability reporting area, with the exception that associated circuit- and T_{MED}-related data shall be provided upon request.~~

]

R746-313-5. Electric Service Interruption Records.

(1) Except as provided in subsection ([~~3~~]4) of this Section:

(a) An electric company using predominantly non-automated methods for identifying outages and tracking reliability shall keep an accurate record of each sustained interruption of service that affects one or more customers.

(b) An electric company using an electronic outage management system for identifying electric service interruptions and/or tracking outages shall keep an accurate record of each interruption of service that affects one or more customers.

(2) Each record shall contain at least the following information:

(a) the operating area where the interruption occurred;

(b) the reference identification of the substation involved;

(c) the reference identification of the circuit involved;

(d) the date and time the interruption started or was reported. If the exact time is unknown, the beginning of an interruption is recorded as the earlier of an automatic alarm or the reported initiation time;

(e) the date and time service was restored;

(f) the duration of the interruption;

(g) the number of metering points affected by the interruption;

(h) the cause of the interruption;

(i) whether the interruption was planned or unplanned;

(j) the interrupting device that made the interruption, if known; and

(k) the component involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer, etc.).

(3) For interruptions where customers are not simultaneously restored, an electric company shall keep records that document the step-restoration operations.

(4) For major events where an electric company is unable to obtain accurate data, the electric company shall make reasonable estimates and explain these estimates in any report filed with its governing authority.

(5) An electric company shall retain the records associated with this rule in accordance with R746-310-10 Preservation of Records.

[~~**R746-313-6. Electric Service Reliability Calculations.**~~

~~(1) Using records collected in accordance with R746-313-5, each electric company must perform reliability index calculations required by its reliability program in conformance with IEEE 1366 or RUS1730A-119, as applicable.~~

~~(2) Each electric company must report the results of any required reliability index calculations for the reporting period in the electric company's report on electric service reliability as set forth in R746-313-8, and for each major event in the electric company's major event filings as set forth in R746-313-9.~~

~~(3) Data included in the above calculations shall include all interruptions associated with or related to high voltage components (above 600 volts).~~

]**R746-313-[~~7~~]6. Inquiries about Electric Service Reliability.**

(1) A customer may request a report from its electric company about the reliability of the electric service provided to the customer's own meter which the electric company must provide at no cost within 20 business days of the request. If a customer requests one or more additional reliability reports for the same meter within one year of the date of the first request, the electric company may charge the customer the cost of preparing the report(s).

(2) For an electric company whose governing authority is the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

(e) The general identification of the equipment serving the customer; and

(f) A chronological listing of interruptions to the customer including all associated interruption data required by R746-313-5[~~.~~](2) covering at least the 36 months preceding the date of the request, if available. If 36 months of data are not available, the chronological listing must include all available data.

(3) For an electric company whose governing authority is not the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

(e) The general identification of the equipment serving the customer; and

(f) A chronological listing of interruptions on the feeder serving the customer's meter including all interruption data required by R746-313-5([~~3~~]2) covering at least the 12 months preceding the date of the request[~~, and~~]. If 12 months of data are not available, the chronological listing must include all available data.

(4) Other than those inquiries specified in R746-313-[~~7~~]6(1)[~~through (3)~~], each electric company must have a written policy [~~in its reliability program~~]for consistent treatment of all other inquiries pertaining to electric reliability. At a minimum, the electric company must provide to the inquiring party, by electronic means, the electric company's most-recently filed [~~Annual R~~]report on [~~E~~]electric service [~~R~~]reliability required by R764-313-[~~8~~]7.

R746-313-[8]7. Reporting on Electric Service Reliability.

(1) An electric company must report deviations from the reliability performance baselines established in accordance with R746-313-4 within 60 days after the end of the month when the deviation(s) occurred.

([~~1~~]2) Beginning May 1, 2013, and [~~B~~]by May 1 of each succeeding year, an electric company shall file with the commission a report on electric service reliability for the [~~reporting period representing the~~]previous calendar year. The electric company must make electronic copies of the report available to the public upon request and may charge a reasonable cost for requested paper copies.

([~~2~~]3) For an electric company whose governing authority is the commission, the report on electric service reliability must contain at a minimum:

(a) [~~an executive summary including a summary of the electric service reliability program;~~

~~(b) sections addressing the status of all electric reliability performance objectives and supporting programs identified in the electric company's reliability program;~~

~~(c) ~~]the calculated SAIDI, SAIFI, CAIDI, and MAIFI reliability indices for the reporting period[~~required by the electric company's reliability program~~]. At a minimum, the electric company must report this information on a system-wide basis compared with the previous four years' performance and on an operating area compared with the previous four years' performance;

([~~d~~]b) [~~a summary~~]an analysis of the system-wide and reliability reporting area sustained interruption causes compared to the previous four-year performance. [~~At a minimum, o~~]Outages [~~must~~]may be categorized using the following cause categories:

(i) Loss of Supply - Generation/Transmission;

(ii) Loss of Supply - Distribution Substation;

(iii) Distribution - Environment (e.g., unpreventable contamination, corrosion, airborne deposits, flooding, fire/smoke not related to faults or lightning);

(iv) Distribution - Equipment Failure;

(v) Distribution - Lightning;

(vi) Distribution - Operational;

(vii) Distribution - Planned Outages;

(viii) Distribution - Public;

(ix) Distribution - Vegetation;

(x) Distribution -Weather (other than lightning);

(xi) Distribution -Wildlife;

(xii) Distribution - Unknown; and

(xiii) Distribution - Other.

([~~e~~]c) a listing of the major events experienced during the reporting period and a listing of significant events as defined by the electric company, their cause, and their effect on reliability performance during the reporting period;

([~~f~~]d) comparisons of [~~planned and achieved~~]budgeted and actual maintenance spending, maintenance activities, capital spending, vegetation management spending and vegetation management activities[~~ including identification of areas of greatest concern and a table summarizing new electrical connections~~];

(e) identification of areas whose reliability performance warrants additional improvement efforts.

([~~g~~]f) a listing of the T_{MED} values that will be used for each [~~reliability~~]reporting area for the forthcoming annual reporting period.

([~~h) a summary of the data collection systems and estimation methodologies covered by R746-313-5 for the collection of interruption data, calculation of reliability information, and facilitation of interruption restoration and mitigation;~~

~~(i~~]g) [~~a section addressing~~]a summary of the changes the electric company has made or will make [~~in~~]pertaining to the collection,[~~ of data and the~~] calculation, estimation, and reporting of electric service reliability information and changes in reliability reporting areas and/or operating areas[~~. The electric company must explain why the changes occurred and explain how the change affects the comparison of newer and older information~~]; and

([~~j~~]h) a map showing the reliability reporting areas and/or operating areas[~~;~~].

[~~(k) a listing of circuits by reliability reporting area and substation, indicating circuit voltage and number of customers connected;~~

~~(l) a list of annual reliability-related goals and/or targets set by the electric company for the reporting period addressed by the annual report and for the calendar year in which the report is being submitted;~~

~~(m) an explanation of any factors used in calculating reliability indices presented in the electric company's annual report and their justification;~~

~~(n) a table showing the number of customers by reliability reporting area and operating area, and an explanation of the method used in determining this number; and~~

~~(o) any other information required to be filed by the electric company's reliability program.~~

] ([~~3~~]4) For an electric company whose governing authority is not the commission, the report on electric service reliability must contain, at a minimum:

(a) The reliability indices listed in Form 7 - Information on Service Interruptions based upon the cause codes listed in RUS1730A-119 ; and

(b) A summary of any estimation methods and/or an explanation of any factors used in calculating reliability indices presented in the electric company's report on electric service reliability.

R746-313-[9]8. Major Event Reporting by Electric Utilities.

(1) Major event reporting for an electric company whose governing authority is the commission. Within 30 business days after the conclusion of each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366, the electric company shall file a major event report with the commission for its consideration. The major event report must include, at a minimum:

(a) a description of the major event, the interruption causes, and a summary of restoration efforts and factors that affected restoration of service;

(b) identification of reliability reporting area and geographic area affected;

(c) the total number of customers affected, and the number of customers without service at periodic intervals;

(d) the calculated SAIDI, SAIFI, MAIFI and CAIDI impacts (i.e., Event SAIDI, SAIFI, MAIFI, and CAIDI) associated with the major event to customers for each reliability reporting area and system-wide; and

(e) restoration of service information including resources used and cost[~~; and~~

~~(f) any other information required to be filed by the electric company as specified in its reliability program~~].

(2) Major event reporting for electric company whose governing authority is not the commission. Within a timely period after each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366 or RUS 1730A-119, as applicable, the electric company shall provide a major event analysis to its governing authority.

KEY: reliability, IEEE 1366, SAIDI / SAIFI, major event
Date of Enactment or Last Substantive Amendment: 2012
Authorizing and Implemented or Interpreted Law: 54-3-1; 54-4-2; 54-4-7

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Notice of Review and Statement of Continuation (Notice)**; or amend the rule by filing a **Proposed Rule** and by filing a **Notice**. By filing a Notice, the agency indicates that the rule is still necessary.

Notices are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **Notices** are effective upon filing.

Notices are governed by Section 63G-3-305.

Auditor, Administration
R123-3
State Auditor Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36506
FILED: 07/18/2012

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 enacted pursuant to Section 63G-4-102, which makes the Administrative Procedures Act applicable to all agencies of state government.

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 if an entity qualifies as an "agency of the state."

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

AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Betsy Ross by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Auston Johnson, State Auditor

EFFECTIVE: 07/18/2012

Auditor, Administration
R123-4
Public Petitions for Declaratory Orders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36509
FILED: 07/18/2012

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: Section 63G-4-503 requires "each agency" to issue rules providing for declaratory orders.

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 to the extent

that Section 63G-4-503 requires "each agency" to issue a rule addressing declaratory orders.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Betsy Ross by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Auston Johnson, State Auditor

EFFECTIVE: 07/18/2012

Auditor, Administration
R123-5
Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36510
FILED: 07/18/2012

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: Section 51-2a-301 requires the state auditor to adopt "guidelines, qualifications criteria, and procurement procedures for use in the procurement of audit services for all entities that are required by Section 51-2a-201 to cause an accounting report to be made".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because it is required by statute and there have been no comments in opposition to the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AUDITOR
ADMINISTRATION
ROOM E310 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2310
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Betsy Ross by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Auston Johnson, State Auditor

EFFECTIVE: 07/18/2012

Commerce, Securities
R164-9
Registration by Coordination

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36537
FILED: 07/25/2012

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: Section 61-1-9 of the Utah Uniform Securities Act establishes Registration by Coordination as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

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 defines key terms and establishes the specific procedures that an applicant for Registration by Coordination must adhere to in obtaining approval of its registration statement. The rule also coordinates registration procedures with Canada under the Multijurisdictional Disclosure System and should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-10
Registration by Qualification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36538
FILED: 07/25/2012

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: Section 61-1-10 of the Utah Uniform Securities Act establishes Registration by Qualification as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

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 defines key terms, sets forth filing and procedural requirements, and provides a comprehensive disclosure regimen for offerings registered by qualification and should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-11
Registration Statement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36539
FILED: 07/25/2012

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: Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter. Subsection 61-1-11(7)(b) authorizes the division to determine escrow and impounding requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 was established to ensure disclosure of material information, prevent fraud, and limit excessive promoter profits in registered securities offerings. In addition, the rule serves to establish procedures for fairness hearings and for the impound of funds in offerings registered by qualification until the division approves a release of those funds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
SECURITIES
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-12
Sales Commission

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36540
FILED: 07/25/2012

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: Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

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: As a protection for investors, this rule limits the amount of commission-related compensation that can be paid in connection with a public offering and should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-14
Exemptions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36541
FILED: 07/25/2012

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: Section 61-1-14 establishes the various exemptions from registration under the Utah Uniform Securities Act. Subsections 61-1-14(1)(i) and 14(2)(v) allow the division to exempt from registration by rule such securities or transactions as to which the division director finds that registration is not necessary or appropriate for the protection of investors.

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 aids the public in qualifying for exemptions from registration by setting forth in detail filing and qualification requirements for many of the statutory exemptions. It also establishes several additional exemptions by rule and should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-15
Federal Covered Securities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36542
FILED: 07/25/2012

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: Section 61-1-15.5 governs federal covered securities and states that the division may, by rule or order, require filing of documents relating to federal covered securities. Section 61-1-24 allows the division to make rules when necessary to carry out the provisions of the chapter.

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 should be continued as it prescribes the notice filing procedures authorized by Section 61-1-15.5. The operation of this rule helps to ensure that the division receives notice of federal covered securities offered to residents of this state.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Commerce, Securities
R164-26
Consent to Service of Process

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36543
FILED: 07/25/2012

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: Subsection 61-1-26(7) of the Utah Uniform Securities Act requires that every applicant for registration and every issuer shall consent to have the division or its director be its attorney to receive service of any lawful, noncriminal process. Section 61-1-24 authorizes the division to make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No 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 Act allows the division to accept service of process for individuals or companies registered under the Act. This rule outlines the process, and should be continued. For the service to be effective, the plaintiff in the action (whether the division or a private party) must send a copy of the process, by registered mail, to the defendant's or respondent's last address filed with the division. This creates an obligation for applicants and issuers to provide the division with current address information.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 07/25/2012

Education, Administration
R277-101
Utah State Board of Education Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36581
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary procedures to be followed by the Board in its conduct of the public's business.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-103
USOE Government Records and Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36582
FILED: 08/01/2012

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 63G-2-204 allows a government entity to make rules regarding the entity's records and Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary procedures for appropriate access to government records.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-110
Legislative Supplemental Salary Adjustment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36583
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Subsection 53A-17a-153(6) authorizes the Board to make rules regarding educator salary adjustments.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary procedures for providing educator salary adjustments consistent with state law.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-112
Prohibiting Discrimination in the Public Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36584
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary standards prohibiting discrimination in the public school system and, specifically, programs under the supervision of the Board.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-115
Material Developed with State Public Education Funds

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36585
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary procedures for use of material developed with state public education funds.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-116
Utah State Board of Education Internal Audit Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36586
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities and Subsection 53A-1-402(2)(e) directs the Board to develop rules and minimum standards regarding cost effectiveness measures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary criteria and procedures for internal audits of programs under the direction of the Board.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-400
School Emergency Response Plans

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36587
FILED: 08/01/2012

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: Subsection 53A-1-401(3) allows the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides

necessary procedures for emergency preparedness and emergency response plans required of public schools and school districts in the event of natural disasters or school violence emergencies.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-410
Accreditation of Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36588
FILED: 08/01/2012

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: Subsection 53A-1-402(1)(c)(i) directs the Utah State Board of Education (Board) to adopt rules for school accreditation and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 continued because it provides necessary procedures for public schools for which accreditation is required and for nonpublic schools which request accreditation.

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-411
Elementary School Accreditation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36589
FILED: 08/01/2012

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: Subsection 53A-1-402(1)(c) directs the Utah State Board of Education (Board) to adopt rules for school accreditation and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

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 is no longer necessary. The standards and procedures in this rule are incorporated into Rule R277-410. This rule is continued until it can be repealed through the regular rulemaking process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S

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

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

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

EFFECTIVE: 08/01/2012

Education, Administration
R277-412
Junior High and Middle School Accreditation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36590
FILED: 08/01/2012

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: Subsection 53A-1-402(1)(c) directs the Utah State Board of Education (Board) to adopt rules for school accreditation and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has 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 no longer necessary. The standards and procedures in this rule are incorporated into Rule R277-410. This rule is continued until it can be repealed through the regular rulemaking process.

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

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

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

EFFECTIVE: 08/01/2012

Environmental Quality, Water Quality
R317-6
Ground Water Quality Protection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36544
FILED: 07/26/2012

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: Subsection 19-5-104(3)(a) authorizes the Utah Water Quality Board to develop programs for the prevention, control, and abatement of new or existing pollution of waters of the state. Section 19-5-105 authorizes the Board to make rules which implement or effectuate the powers and duties of the Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No amendments have been made to this rule since the last five-year review. 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: The rule is required for the Water Quality Board to implement the state's Ground Water Protection Program. It provides ground water quality standards, defines ground water classes and protection levels, sets minimum requirements for ground water discharge permits, and should be continued.

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: 07/26/2012

Financial Institutions, Administration
R331-5
Rule Governing Sale of Securities by Persons Issuing Securities, Who Are Under the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36527
FILED: 07/20/2012

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 7-1-503 authorizes the Commissioner of Financial Institutions to regulate the sale by financial institutions of securities including the solicitation of deposit accounts which is restricted. Subsection 7-1-301(13) allows the commissioner to regulate the issuance, advertising, offer for sale, and sale of a security to the extent authorized by Section 7-1-503.

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 by the agency concerning 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 rule is necessary because it covers registration with the department, offering circular requirements, securities sale report, limitations on resale of "restricted securities", remuneration paid for solicitation or for sales, manipulative and deceptive devices, waivers, and penalties for violation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-7
Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36532
FILED: 07/20/2012

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 7-1-501 lists the persons and institutions subject to the jurisdiction of the department, and those under the jurisdiction of the department who must comply with supervision and examination including, as the rule states, "acceptable employment of deposits and other funds involved in leasing or leasing transactions."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning 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 rule clearly defines acceptable leases and leasing transactions, residual dependence restrictions, salvage powers, sales-type capital lease restrictions, sale-leaseback restrictions, leveraged lease restrictions, and account requirements and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-9
Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36528
FILED: 07/20/2012

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 7-1-309 expressly authorizes the Commissioner of Financial Institutions to conduct hearings relating to matters within his supervisory jurisdiction.

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 by the agency concerning 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: Section 7-1-301 affords the commissioner the functions, powers, duties, and responsibilities with respect to institutions, persons, or businesses subject to the jurisdiction of the department. The rule lists the types of hearings the commissioner may call in connection with any matter pending before the department and how those hearings should commence. It also covers confidential proceedings, pleadings, discovery, and subpoenas, and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-10
Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36529
FILED: 07/20/2012

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 7-1-301(7) authorizes the commissioner to adopt rules for the retention and destruction of financial institution records under the department's jurisdiction that are consistent with federal laws and regulations.

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: No other state rule establishes the schedule of retention and destruction of records for financial institutions under the department's jurisdiction so it should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-12
Guidelines Governing the Purchase and Sale of Loans and Participations in Loans by all State Chartered Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36530
FILED: 07/20/2012

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 7-1-301 authorizes the commissioner to establish guidelines for the purchase and sale of loans and participations in loans by state-chartered financial institutions.

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: No other state rule establishes the guidelines for the purchase and sale of loans and participations in loans by state-chartered financial institutions so it should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-14
Rule Governing Parties Who Engage in the Business of Issuing and Selling Money Orders, Traveler's Checks, and Other Instruments for the Purpose of Effecting Third-Party Payments

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36531
FILED: 07/20/2012

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 7-1-301 and 7-1-505, and Subsection 7-1-501(2)(h)(iii) authorize the commissioner to adopt rules requiring licensing and prescribing standards with regard to the financial condition and capability of all parties who issue instruments payable to third parties.

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: No other state rule establishes the authority to engage in the selling of money orders, traveler's checks, and other instruments in the state of Utah so it should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATION
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: 07/20/2012

Financial Institutions, Administration
R331-22
Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36533
FILED: 07/20/2012

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 7-1-301(6) and Section 7-1-1004 expressly authorize the Commissioner of Financial Institutions to promulgate rules establishing rates and conditions under which financial institutions that supply information to requesting agencies may seek reimbursement of 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 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: No other rule establishes cost-reimbursement guidelines for financial institutions that provide information to requesting agencies. Section 7-1-1004 requires the Commissioner to have a rule establishing the cost-reimbursement guidelines. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
ADMINISTRATIONROOM 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: 07/20/2012

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-60B
Preferred Drug List

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36559
FILED: 07/30/2012

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 under Section 26-18-2.4, which sets forth the policies of the Preferred Drug List (PDL) and the procedures and organization of the Pharmacy and Therapeutics (P&T) Committee. In addition, Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid drug 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 comments received are: 1) the comment advocated a provision for how the Department would apply the psychotropic and anti-psychotic drug exclusion as found in Section 26-18-2.4; 2) another comment expressed concern that pharmacies would bear the burden of documenting a physician's override of a script that purports to override the preferred drug list; 3) another comment suggested that language in the rule should direct the Department to carry out its duties of selecting therapeutic classes of drugs and selecting members to the P&T Committee; 4) another comment suggested the conflict of interest provision in the rule should extend to members on the committee who may have a direct or indirect conflict of interest, or appearance of the same; 5) another comment suggested the rule include a provision for a "vice chair" for those circumstances when the "chairperson" is not present; 6) another comment suggested the Department appoint a replacement from the same specialty area as the person who vacated the position on the committee; 7) another comment suggested the committee not make a decision based on a simple majority but rather having at least five members of the committee agreeing to the proposed action; 8) another comment suggested the chair of the committee should have more authority by setting agendas and meeting dates. The comment also suggested the vice chair, as designated by the chair, should chair all meetings instead of the staff manager; 9) another comment suggested there be greater notice than required by the Utah Open and Public Meetings Act to allow persons from out-of-state to travel and for those affected by the committee's actions to prepare for the meeting; 10) another comment suggested the rule not allow the committee manager to run meetings in the absence of the chairperson; 11) another comment suggested the rule declare when an executive session may be called, for what purpose, and how the committee shall conduct this session; 12) another comment stated the rule is redundant in its criteria (Subsections R414-60B-6(8)(a) through(d)) for reviewing drug classes and making recommendations; 13) another comment stated that the "substantially equal" standard as applied in the rule may not be proper where drug regimens need to be strictly regulated. For example, the federal equivalency standard may be as much as 80% but not more than 120% effective as the named drug; 14) another comment suggested that if therapeutic considerations cost are substantially the same under Subsections R414-60B-7(1) and (2), then all drugs should be authorized; 15) another comment stated that Subsection R414-60B-7(3) is confusing and contradictory to Subsections R414-60B-7(1) and (2) and should be removed; and 16) another comment suggested the committee consider the cost and clinical and therapeutic impact of requiring a patient to change to a preferred drug.

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 implements the composition and membership requirements of the P&T Committee to provide medically necessary and cost effective services for Medicaid recipients. This rule should also be continued because it spells out the functions of committee members to carry out their responsibilities for the Medicaid drug program. The Department response to the written comments it received is as follows: 1) the Department will seek additional guidance from the Legislature concerning psychotropic and anti-psychotic drugs before they come before the P&T Committee for consideration; and the burden of the requirement to document medical necessity is on the prescribing physician; 2) the Department does not expect the pharmacy to verify the physician's documentation. Enforcement of this provision will likely be undertaken by audits of prescribers who appear to have a pattern of excessively overriding the prescription drug list; the intent of Subsections R414-60B-4(1) and R414-60B-5(2) and (6) is clear; 3) the Department will consider adding directive language in the future and the rule should not be delayed to add this clarification; 4) conflict of interest provisions are intended to prevent persons from sitting on the committee who, by being a member of the committee, gain opportunity to influence the outcome of a decision by which they, their fellow associates, or their employers may personally profit. It is not intended to prohibit "intellectual bias" such as may occur by seating on the committee, either from within the Division or from within a specialty, a subject matter expert having no income interest in the outcome of the decision;. 5) the rule requires that the committee elect a chairperson. It neither requires nor prohibits the election of a vice-chairperson. The committee will likely elect a vice-chair as the need becomes apparent. The rule does not need to require a vice-chair. The rule dictates the makeup of the committee;. 6) if the pediatrician member resigns, only a pediatrician can possibly be appointed; 7) the simple majority decision is a fact on all committees whose members are selected on the basis of the interests they represent. The Department will study the suggestion that at least five members of the committee agree to a proposed action before making a decision. The committee is an advisory body; 8) the chairman organizes the committee and conducts the meetings utilizing the help of the committee manager. A vice chair will likely be elected by the committee; 9) the intent of the rule is to include the Utah Open and Public Meetings Act as well as other laws that apply, whether federal or state. It does not remove any requirement to comply with the Utah Open and Public Meetings Act. The Department and the committee have taken great efforts to inform all interested parties well in advance of the meetings. The committee had published a schedule detailing when it expects to deal with each class of drugs. This schedule is sufficient to allow interested parties to effectively participate in the process; 10) the committee will likely select a vice-chairperson to sit in the stead of the chair when the chair is absent instead of a committee manager; 11) the instances when any public body may go into executive session are established in the Utah Open and Public Meetings Act, which will be followed by the committee; 12) the Department does not view Subsection R414-60B-6(8)(a) through(d) as redundant. It is a statement

of the activities that the Department has directed the committee may undertake in providing advice to the Department; 13) the comment on the "substantially equal" standard confuses the federal FDA New Drug Application (NDA) standard for approving generic drugs with the standard established in this rule. The standard established in this rule is not the federal NDA standard. The 80 to 120% NDA standard applies to drug content for a specific generic drug. This rule looks to clinical and therapeutic considerations among a class of drugs, not drug content for a specific generic drug; 14) it is correct that if all drugs in a class were substantially the same in cost and clinical and therapeutic consideration, they would all be equally available on the preferred drug list or would simply not be restricted; 15) Subsection R414-60B-7(3) guides the committee on how to select among drugs within a class where the clinic and therapeutic considerations are not equal such that medical necessity may justify a more costly drug. Eliminating this subsection would deprive patients from receiving medically necessary drugs because they are more expensive; and 16) before requiring a patient to change to a preferred drug, the Department uses a grandfathering tool that considers both the drug and the disease state as reason dictates. Additionally, the physician has the ability to override the preferred drug if there is medical necessity.

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: 07/30/2012

Pardons (Board of), Administration
R671-403
Restitution

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36549
FILED: 07/27/2012

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, 77-27-6, and 77-27-5.5 give the Board of Pardons and Parole authority to order payment of restitution when necessary and gives the Board authority to make payment of restitution a condition of parole; all in accordance with restitution criteria outlined in Section 77-38a-302.

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 were 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 Board must have a rule in place which outlines our procedures with regard to restitution in order to ensure that victims can have justice and so that offenders are given 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: 07/27/2012

Transportation, Operations, Maintenance
R918-3
Snow Removal

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36609
FILED: 08/01/2012

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 is required under Section 63G-3-201 because it describes how UDOT provides the material benefit of snow removal service to the public, and because it impacts persons external to UDOT. Section 72-1-201 assigns responsibility to the Department of Transportation for maintenance, and safety of state transportation systems. Section 72-1-205 further assigns such responsibilities to each UDOT Region.

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 written comments from interested parties during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule delineates on which state roads, and under what circumstances, snow removal services will be provided. It defines which state route segments will be closed during the winter, and defines conditions under which state roads leading to for-profit winter recreation areas may receive snow removal service on weekends and holidays. The rule also outlines the responsibilities of private property owners with respect to removing snow from their properties where they intersect with state roads. The rule is necessary in order that the public may understand the priorities and limitations of UDOT in undertaking its snow removal operations, and understand their own responsibilities with respect to snow removal from private property. Therefore, this rule should be continued.

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

TRANSPORTATION
OPERATIONS, MAINTENANCE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Transportation, Operations, Traffic and Safety

R920-1

Manual of Uniform Traffic Control Devices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36616
FILED: 08/01/2012

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 is enacted under Section 41-6a-301 which requires the department to adopt standards and establish specifications for a uniform system of traffic-control devices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received comments regarding the need to adopt more current standards and an amendment to this rule will be filed to incorporate Utah's version of the Manual of Uniform Traffic Control Devices.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should remain in effect so there are uniform standards and specifications for traffic control devices as required by Section 41-6a-301 to regulate, warn, or guide traffic. Therefore, this rule should be continued.

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

TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Transportation, Operations, Traffic and Safety
R920-4
Permit Required for Special Road Use or Event

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36612
FILED: 08/01/2012

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 is authorized under the general grant of rulemaking authority found in Section 72-1-201 and is enacted to establish permitting procedures for special road uses, like races and organized events as anticipated in Sections 41-22-15, 41-6a-1111, and 41-6a-1602. The rule is enacted to ensure public safety, minimize disruption of traffic, and enable special events through a responsible and controlled permitting process.

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 group sued UDOT over requirements to provide traffic control and an insurance bond to hold an event on a state route. IMatter filed a Motion for Temporary Restraining Order (TRO) to stop UDOT from enforcing its insurance requirement. IMatter claimed that its free speech was being violated because of the cost for the insurance and wanted the state to incur the costs for traffic control. A hearing was held on the TRO in federal district court. The judge ruled that the imposition of the insurance requirement was not an infringement of their free speech because alternative forums were available without any cost. Other federal circuit decisions supported UDOT's position. In addition, the group did not make any attempt to raise money. Because of this lawsuit, UDOT reviewed the waiver and the waiver was found to be too broad. As a result, the waiver was subsequently revised.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The principle intent of this rule is to ensure public safety is adequately maintained in relation to any special events taking place within the state controlled right of way. This rule explicitly prescribes the process the state uses to ensure vehicular and pedestrian traffic conflict points are minimized. It also ensures that special events create the least amount of disruption to the traveling public while setting forth minimum liability protections for all involved parties. In effect, this rule is designed to enable special events through a responsible and controlled permitting process. Therefore, this rule should be continued. An amendment to this rule will be proposed as a result of this review.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Transportation, Operations, Traffic and Safety
R920-6
Snow Tire and Chain Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36617
FILED: 08/01/2012

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 is enacted under the general rulemaking authority of Section 72-12-201 which authorizes the department to make rules for the administration of its programs including road maintenance, snow removal, and requiring safety devices as authorized in Sections 72-3-102, 41-6a-302, and 41-6a-1636.

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 from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in effect so the

department can adequately meet its obligation to safely maintain and control use of state highways by imposing travel restrictions including requiring the use of snow tires or chains when and where conditions warrant it.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Transportation, Operations, Traffic and Safety
R920-51
Safety Regulations for Railroads

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36618
FILED: 08/01/2012

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 is enacted under the general rulemaking authority found in Section 72-1-201 and under the specific authority granted the department by Section 54-4-14 regarding safety functions of railroads.

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 from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in effect so the department can meets its obligation to regulate safety functions of railroads as authorized by Section 54-4-14 and Section 72-1-201 by incorporating federal standards which contribute to public safety.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, TRAFFIC AND SAFETY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Treasurer, Unclaimed Property
R966-1
Requirements for Claims where no Proof of Stock Ownership Exists

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36504
FILED: 07/18/2012

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: Section 67-4a-501 gives the Administrator broad discretion in allowing or disallowing claims. This rule provides guidelines to the public for filing a successful claim when a stock certificate has been lost.

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 because it provides notice to the public of acceptable forms of proof for claims.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TREASURER
UNCLAIMED PROPERTY
ROOM E315 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2315
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Betsy Ross by phone at 801-538-1355, by FAX at 801-538-1383, or by Internet E-mail at betsyross@utah.gov

AUTHORIZED BY: Betsy Ross, Director

EFFECTIVE: 07/18/2012

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).

Transportation, Operations, Traffic and Safety
R920-3
Manual of Uniform Traffic Control Devices, Part VI

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 36610
FILED: 08/01/2012

EXTENSION REASON AND NEW DEADLINE: The reason for the extension is to provide time for this rule to be repealed. Rule R920-1 will be amended to incorporate the Utah Manual of Uniform Traffic Control Devices which will make this rule unnecessary and redundant. New deadline is 12/08/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

Transportation, Operations, Traffic and Safety
R920-5
Manual and Specifications on School Crossing Zones. Supplemental to Part VII of the Manual on Uniform Traffic Control Devices

FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 36614
FILED: 08/01/2012

EXTENSION REASON AND NEW DEADLINE: The reason for the extension is to allow time for this rule to be repealed. Rule R920-1 will be amended to incorporate the Utah Manual of Uniform Traffic Control Devices which includes specifications for school crossing zones and will make this rule unnecessary and redundant. New deadline is 12/08/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 08/01/2012

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Agriculture and Food
Animal Industry
No. 36249 (REP): R58-10. Meat and Poultry Inspection
Published: 06/15/2012
Effective: 07/26/2012

No. 36248 (REP): R58-16. Swine Garbage Feeding
Published: 06/15/2012
Effective: 07/26/2012

Alcoholic Beverage Control
Administration
No. 36271 (AMD): R81-1-3. General Policies
Published: 06/15/2012
Effective: 07/31/2012

No. 35942 (AMD): R81-3-11. Application
Published: 04/01/2012
Effective: 07/17/2012

Commerce
Occupational and Professional Licensing
No. 36282 (AMD): R156-3a. Architect Licensing Act Rule
Published: 06/15/2012
Effective: 07/30/2012

No. 36228 (AMD): R156-60d. Substance Abuse Counselor Act Rule
Published: 06/15/2012
Effective: 07/30/2012

Corrections
Administration
No. 36292 (NEW): R251-115. Contract County Jail Programming Payment
Published: 06/15/2012
Effective: 08/01/2012

Education
Administration
No. 36308 (NEW): R277-617. Smart School Technology Program
Published: 06/15/2012
Effective: 07/23/2012

Environmental Quality
Air Quality
No. 35865 (CPR): R307-107. General Requirements: Unavoidable Breakdown
Published: 07/01/2012
Effective: 07/31/2012

No. 35865 (R&R): R307-107. General Requirement: Unavoidable Breakdown
Published: 03/01/2012
Effective: 07/31/2012

No. 35923 (R&R): R307-202. Emission Standards: General Burning
Published: 04/01/2012
Effective: 07/31/2012

No. 35923 (CPR): R307-202. Emission Standards: General Burning
Published: 07/01/2012
Effective: 07/31/2012

Environmental Response and Remediation
No. 36028 (AMD): R311-401-2. Hazardous Substances Priority List
Published: 05/01/2012
Effective: 07/20/2012

Health
Disease Control and Prevention, Epidemiology
No. 36247 (AMD): R386-702. Communicable Disease Rule
Published: 06/15/2012
Effective: 08/08/2012

Family Health and Preparedness, Children with Special Health Care Needs
No. 36109 (AMD): R398-5. Birth Defects Reporting
Published: 05/15/2012
Effective: 07/31/2012

No. 36281 (NEW): R398-15. Autism Treatment Account
Published: 06/15/2012
Effective: 07/31/2012

Health Care Financing, Coverage and Reimbursement Policy
No. 36186 (AMD): R414-501-2. Definitions
Published: 06/01/2012
Effective: 07/18/2012

No. 36187 (R&R): R414-503. Preadmission Screening and Resident Review
Published: 06/01/2012
Effective: 07/18/2012

Family Health and Preparedness, Emergency Medical Services
No. 36182 (AMD): R426-16. Emergency Medical Services Ambulance Rates and Charges
Published: 06/01/2012
Effective: 07/19/2012

Labor Commission
Occupational Safety and Health
No. 36306 (AMD): R614-1-4. Incorporation of Federal Standards
Published: 06/15/2012
Effective: 07/23/2012

Natural Resources
Parks and Recreation
No. 36237 (AMD): R651-201-7. Low Capacity Vessel
Published: 06/15/2012
Effective: 07/23/2012

No. 36242 (AMD): R651-205-2. Deer Creek Reservoir
Published: 06/15/2012
Effective: 07/23/2012

No. 36234 (AMD): R651-205-15. Lost Creek Reservoir
Published: 06/15/2012
Effective: 07/23/2012

No. 36238 (AMD): R651-206-1. Definitions
Published: 06/15/2012
Effective: 07/23/2012

No. 36243 (AMD): R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit
Published: 06/15/2012
Effective: 07/23/2012

No. 36239 (AMD): R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire
Published: 06/15/2012
Effective: 07/23/2012

No. 36241 (AMD): R651-219-3. Spare Propulsion
Published: 06/15/2012
Effective: 07/23/2012

No. 36240 (AMD): R651-226-2. Safety Vessels Permitted
Published: 06/15/2012
Effective: 07/23/2012

No. 36235 (AMD): R651-227. Boating Safety Course Fees
Published: 06/15/2012
Effective: 07/23/2012

No. 36233 (AMD): R651-401-1. Stickers
Published: 06/15/2012
Effective: 07/23/2012

No. 36232 (AMD): R651-406-1. Annual Registration Fee
Published: 06/15/2012
Effective: 07/23/2012

No. 36230 (AMD): R651-407-1. Appointment and Description of Vehicle Advisory Council Membership
Published: 06/15/2012
Effective: 07/23/2012

No. 36229 (REP): R651-612. Firearms, Traps and Other Weapons
Published: 06/15/2012
Effective: 07/23/2012

Public Safety
Driver License
No. 36231 (R&R): R708-21. Third-Party Testing
Published: 06/15/2012
Effective: 07/23/2012

School and Institutional Trust Lands
Administration
No. 36279 (AMD): R850-21-300. Lease Application Process
Published: 06/15/2012
Effective: 07/23/2012

Science Technology and Research Governing Auth.
Administration
No. 36156 (NEW): R856-1. Formation and Funding of Utah Science Technology and Research Innovation Teams
Published: 06/01/2012
Effective: 07/31/2012

No. 36155 (NEW): R856-2. Distribution of Utah Science Technology and Research Commercialization Revenues
Published: 06/01/2012
Effective: 07/31/2012

Tax Commission
Administration
No. 36172 (AMD): R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5
Published: 06/01/2012
Effective: 07/26/2012

Auditing
No. 36170 (AMD): R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104
Published: 06/01/2012
Effective: 07/26/2012

No. 36173 (AMD): R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017
Published: 06/01/2012
Effective: 07/26/2012

No. 36171 (AMD): R865-12L-14. Local Sales and Use Tax Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210 and 59-12-210.1
Published: 06/01/2012
Effective: 07/26/2012

No. 36175 (AMD): R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107
Published: 06/01/2012
Effective: 07/26/2012

Collections
No. 36168 (AMD): R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702
Published: 06/01/2012
Effective: 07/26/2012

No. 36169 (AMD): R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104
Published: 06/01/2012
Effective: 07/26/2012

Property Tax
No. 36174 (AMD): R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004
Published: 06/01/2012
Effective: 07/26/2012

Workforce Services
Employment Development
No. 36304 (AMD): R986-100-114a. Determining When a Document is Considered Received by the Department
Published: 06/15/2012
Effective: 07/25/2012

No. 36303 (AMD): R986-700-712. CC for Certain Homeless Families
Published: 06/15/2012
Effective: 07/25/2012

No. 36300 (AMD): R986-900-902. Options and Waivers
Published: 06/15/2012
Effective: 07/25/2012

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 August 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).

DAR NOTE: Due to space constraints, neither index is included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division’s web site (http://www.rules.utah.gov/).